

MAYOR
Michael L. Alvarez

MAYOR PRO TEM
David Cohn



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

Indian Trail Town Council Meeting
March 10, 2015
Civic Building
6:30 p.m.

1. **CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE**
2. **ADDITIONS AND DELETIONS** **action**
3. **MOTION TO APPROVE AGENDA**
4. **PRESENTATIONS**
 - a. [Certificate of Recognition for Vernon Moore](#)
 - b. [Stormwater Advisory Committee Annual Report](#)
 - c. Strategic Planning Initiative & Budget Presentation
5. **PUBLIC COMMENTS**
6. **PUBLIC COMMENTS FOR FY 2015/2016 BUDGET DEVELOPMENT**
7. **[PUBLIC COMMENTS FOR FUTURE TOWN HALL/COMMUNITY CENTER](#)**
8. **LAW ENFORCEMENT UPDATE**
9. **ABC BOARD INTERVIEWS** J. Sullivan - P. Cowan
10. **CONSENT AGENDA** **action**
 - a. [Approval of February 10, 2015 draft minutes](#)
 - b. [Approval of Tax Report for February month end](#)
 - c. [Approval of Pre-Qualification Policy](#)
 - d. [Approval of Budget Amendments](#)
 - e. [Approval of Concessions Agreement](#)
 - f. [Approval of Bill of Sale for Water Line at Crooked Creek Park](#)

- g. [Approval of Bill of Sale for Sewer Line at Crooked Creek Park](#)
- h. [Approval of Bill of Sale for Sewer Outfall Line at Crooked Creek Park](#)
- i. [Approval of Future Sanitary Sewer Easement for Crooked Creek Park](#)
- j. [Approval of Certification of Authorization and Corporate Resolution and Authority for Borrowing](#)
- k. [Approval of Part time Seasonal Employee Positions](#)
- l. [Approval of Motor Vehicle Policy](#)

11. PUBLIC HEARINGS

action

NONE

12. BUSINESS ITEMS

- a. [Council consideration of approval for Pre Construction Manager @ Risk Agreement](#)
- b. [Council Approval of Construction Manager @ Risk Agreement Exhibit 1 General Conditions of the Contract](#)
- c. [Council approval of Construction Manager @ Risk Agreement For Construction Manager at Risk Contract Fixed Guaranteed Maximum Price](#)
- d. Council consideration of approval of construction priorities for FY 2015/2016 and change order for Oakwood Lane

13. DISCUSSION ITEMS

- a. Discussion and review of PERF Law Enforcement Study Report
- b. [Discussion of US-74 Aesthetic Improvements](#)
- c. Discussion of Bond Referendum for New Town Hall – *this matter was requested by Council Member Cohn*

14. MANAGERS REPORT

15. COUNCIL COMMENTS

16. CLOSED SESSION

action

17. 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 704-821-5401

Certificate of Recognition

Whereas, the Moore family of Robert Murchison Moore and Roxanna Secrest lived in Union County on an 1100-acre farm in the area of Waxhaw-Indian Trail and Potters Road, as early as the 1750's where Vernon Andrew Moore was born on January 30, 1883, one of twelve children; and

Whereas, Vernon Andrew Moore and his siblings were orphaned at the age of thirteen and cared for by an older brother, he persisted and graduated from one-room Siler School, and through dedication and hard work earned enough to enroll in Trinity College, now Duke University, in 1907; and

Whereas, Vernon Andrew Moore, while starring on the college's basketball team and being active in student politics, received a degree in mathematics and religious studies in 1912 from Trinity College and completed a Master's degree in mathematics at the University of North Carolina in 1914; and

Whereas, Vernon Andrew Moore began his teaching career in Stedman, North Carolina where he met and married in 1915 a fellow teacher, Rena Lillie Geddie, and began a family while teaching and operating a farm store; and

Whereas, Vernon Andrew Moore accepted an offer from the Union County Superintendent to become principal of the new Indian Trail School where he served from 1921 through 1938 and attracted and hired quality teachers, taught classes, coached basketball, oversaw all student activities, and with his wife ran the Indian Trail teacherage; and

Whereas, Vernon Andrew Moore in 1938 responded to the request from the Union County Board of Education to open the new Jackson School in Waxhaw, where he served as its principal until July 1944 when he became Union County's first truant officer and served in that post until he retired in 1946; and

Whereas, Vernon Andrew Moore in his retirement balanced his family life, children and grandchildren; oversaw his farm and three tenant farms; continued his involvement in various community activities including politics, membership in the Masons, and Sunday School Superintendent for 39 years at the Indian Trail Methodist Church; and

Whereas Vernon Andrew Moore served three elected terms from 1956 to 1962 on the Union County School Board and oversaw the consolidation of fourteen community-based high schools into four in an effort to reduce operating costs, recruit quality teachers, and expand the curriculum through the addition of college preparatory and technical classes to better prepare students for college and technical and trade careers.

NOW THEREFORE, I, Mayor Michael L. Alvarez, along with the Indian Trail Town Council do hereby recognize the significant contributions of Vernon Andrew Moore as an educator to the growth and development of quality schools in Indian Trail and a modern education system in Union County.

This 10th day of March, 2015

Mayor Michael L. Alvarez



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: 3/10/15

SUBJECT: Stormwater Advisory Committee Annual Report

General Information:

In accordance with the regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, the Town of Indian Trail has been permitted to discharge runoff from its municipal storm sewer system since October, 2005. This National Pollution Discharge Elimination System Permit requires that the Town of Indian Trail develop a Stormwater Management Program (SWMP) responsible for implementing ordinances, policies, and procedures to improve local water quality.

The Stormwater Advisory Committee was established as an entity responsible for the oversight of the SWMP. The goal of the annual report presented by the Stormwater Advisory Committee is to inform Town Council of key actions and issues and the status of the annual work program.



Municipal Complex

February 10th, 2015

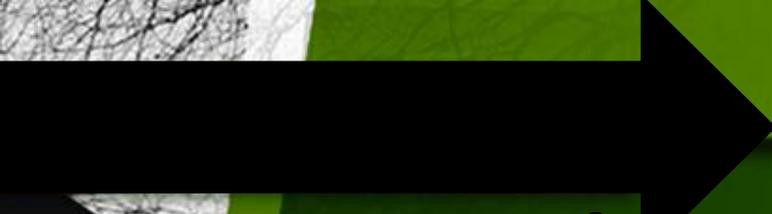


INTRODUCTION

- History
- Cost & Size
- Financing
- Development Process & Timeline
- Next Steps

History- Town Hall

- 2002- Discussion started on location
- 2003- Downtown Vision Plan
- 2004- Needs Analysis Completed
- 2004- Cost Estimate \$160 sq ft
- 2004- Cost Estimate 30,000 sq ft (\$4.32 million)
- 2005- Town Center Project Discussion
- 2007- Purchase Blythe Building- 8000 sq ft
- 2008- Last Discussion, reviewed possible locations
- 2014- ????



Why Would We Need A Town Hall

Historic reasons?

Community Needs?

Cost?

Interest Rates?

Cost & Size

- EDIFICE was asked to give the Town a schematic cost estimate on the proposed project.
- The proposed project is 20,000 +/- square feet.
- Estimated cost to construct Town Hall= \$5.81 million
- Additional= \$775,000 to include Edifice Fees & FFE
- Site Work= \$900,000 (Utilities, street access, parking 40 spaces, some aesthetics, sidewalks, etc)
- All numbers are based on a schematic design approximate estimates, estimates may increase or decrease in the future. Design not included.

Cost & Size

- COST OPTION #1:

\$5.80 million (construction) + \$775,000 (Edifice & FFE)+
\$900,000 (Site Work) + \$275,000 (contingency)=

\$7,475,000 + \$275,000 (contingency)

- Includes building, FFE, Edifice fee, site work, utilities,
parking, etc.

Cost & Size

- COST OPTION #2:

\$5.8 million (construction) + \$775,000 (Edifice & FFE)+
\$900,000 (Site Work) + \$520,000 (contingency)=

\$7,475,000 + \$520,000 (contingency)

- Includes building, FFE, Edifice fee, site work, utilities, parking, town square area, memorial area, 100 total parking spaces, technology upgrades for Council Chambers & Community Room, lobby feature.

Cost & Size

- COST OPTION #3:

\$5.8 million (construction) + \$775,000 (Edifice & FFE)+
\$900,000 (Site Work) + \$1,100,000 (contingency)=

\$7,475,000 + \$1,100,000 (contingency)

- Includes building, FFE, Edifice fee, site work, utilities, parking, town square area, memorial area, 100 total parking spaces, technology upgrades for Council Chambers & Community Room, lobby feature, Roundabout feature .



Financing Options

- Cash
- Loan
- Combination

Financing Options

Penny Allocation

Total Pennies:	18.0 cents
Operating Pennies:	11.5 cents
Capital Improvement Pennies:	4.0 cents
Transportation Fund Pennies:	2.0 cents
Parks & Recreation Capital Fund Pennies:	0.5 cents

Financing Options

- Cash
- Town Hall Fund- \$1.45 million
- Capital Reserve Fund- \$2.1 million
- Capital Reserve Fund: 4 cents

2014/15 \$1.33 million Total

2014/15 \$615,000 Remaining

Financing Options

- Loan-
- Two Types:
 - 1) Level Principal- Declining Payments
 - 2) Level Payments- Payment remains the same

Financing Options

- Loan- Level Payment

- \$6 million 15yr @ 4% interest= \$532,572 (Annual)
- \$5 million 15 yr @ 4% interest= \$443,808 (Annual)
- \$4 million 15 yr @ 4% interest= \$355,050 (Annual)
- \$3 million 15 yr @ 4% interest= \$266,287 (Annual)

Capital Reserve Fund:

2014/15 \$615,000 Remaining

Financing Options

- Funding Option 1:

Total Cost= \$7.775 million

Loan= \$4 million

Other \$ Sources= \$3.775million

Capital Reserve Fund:

2014/15 \$615,000 Remaining

\$4 million 15 yr @ 4% interest= \$355,050 (Annual)

Approximate Remaining in CRDS Fund= \$259,950

Financing Options

- Funding Option 2:

Total Cost= \$7.995 million

Loan= \$4 million

Other \$ Sources= \$3.995million

Capital Reserve Fund:

2014/15 \$615,000 Remaining

\$4 million 15 yr @ 4% interest= \$355,050 (Annual)

Approximate Remaining in CRDS Fund= \$259,950

Financing Options

- Funding Option 3:

Total Cost= \$8.575 million

Loan= \$4.00 million

Other \$ Sources= \$4.575million

Capital Reserve Fund:

2014/15 \$615,000 Remaining

\$4 million 15 yr @ 4% interest= \$355,050 (Annual)

Approximate Remaining in CRDS Fund= \$259,950

(Tentative) Development Process

- Start Construction Document: February
 - Early Site Package DENR/UC Complete: April
 - Early Site Package Permits: June
 - Early Site Package Bids: June
-
- Construction: June
 - Pad Ready: July

(Tentative) Development Process

- Finish Schematic Design: 1/16/15
 - CM@Risk Schematic Design Cost Estimate: 2/6/15
 - Schematic Design Scope & Budget: 2/10/15
-
- Start Design Development: 2/11/15
 - Finish Design Development: 3/11/15
 - CM@Risk DD Cost Estimate/Value Eng: 4/1/15

(Tentative) Development Process

- Start Construction Documents: April
- Early Site/Structural/Shell Package to DOI: April *
- Finish Construction Documents: June
- Pad Ready: July

-
- DOI Approval 90 days- over 20,000 sq ft
 - CM@ Risk Bidding
 - LGC Approval
 - Construction Begins

Next Steps

- 1) Council consideration of schematic budget costs, and discuss cost options and finance options?
- 2) Council consideration of setting up tour and review of interiors of area Town/City Halls?



Town of Indian Trail
Minutes of Town Council
February 10, 2015
Civic Building
06:30 P.M.

The following members of the governing body were present:

Mayor: Michael L. Alvarez

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

Staff Members: Town Manager Joe Fivas, Town Clerk Peggy Piontek, Town Attorney Keith Merritt, Director of Community & Economic Development Kelly Barnhardt, Director of Engineering and Public Works Scott Kaufhold , Planning Director Rox Burhans and Communications Coordinator Lindsey Edmonds.

CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE

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

ADDITIONS AND DELETIONS

None

MOTION TO APPROVE AGENDA

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

PRESENTATIONS

a. Town Services Update

Due to technological difficulties Mr. Fivas asked to have this item postponed, by consensus Council agreed.

PUBLIC COMMENTS

Susana Szarko 5101 West Street, Indian Trail, NC informed Council there is a problem on the unpaved section of 2nd Avenue and West Street. Ms. Szarko stated that she sent letters to Town Hall in 2013, 2014 and now decided to come in person. The problem at first was people driving by, parking there, abandoning vehicles, discarding trash, this week tree stumps were discarded there making it impossible for trash collection. Part of the street is considered private with public access which enables the public to use it but no one to monitor it. She requested assistance from the Town to clean up the debris and monitor the area.

Mr. Jan Brown, 6727 Long Nook Lane, Indian Trail, NC thanked the Town for the nice job on road repairs on Rogers Road and Brandon Oaks Pkwy.

Shirley Howe, 6205 Clearwater Drive, Indian Trail, NC advised that Public Comment is the only opportunity we have to express our concerns in 3 minutes, assuming Council is listening and taking the expressed concerns of citizens under consideration and investigate if necessary. She referred to the last meeting when a Councilman made a comment pertaining to his desire to hear positive public comments in 2015. Ms. Howe compiled and read a lengthy list of items that have been either removed from previous agendas and not returned or addressed in public comments that he considered negative and she has painfully waited for resolution on and turned into a positive. Upon completion of her reading of the list she reminded the Council of the possible tax increases from the County and stated that when he does his job he will earn the respect of the people and might begin to hear some very positive comments.

Tai Huunh, 4410 Edgeview Drive, Indian Trail, NC on behalf of the Union County Early College Program extended an invitation to the Council and community to the career fair at South Piedmont Community College and Relay for Life at Sun Valley High School on May 1, 2015.

Michael Faulkenberry, 519 Picketts Circle, Indian Trail, NC referred to his public comments on January 27th, advising that what can be unethical is not necessarily illegal. He stated in the past two Council members were directors of the Indian Trail Business Association, during an interview when one was asked if that was on the up and up, the response was yes he had contacted the UNC School of Government. Mr. Faulkenberry stated he has contacted the School of Government on numerous occasions and when they answer your questions, it is their opinion they provide. He pointed out that just because you think its right doesn't mean it is. Mr. Faulkenberry referred to a matter in 2012 when Lieutenant Coble was unable to

Speak during public comments and a different situation when certain Council Members not standing during a ceremony recognizing Lieutenant Coble, inquiring if the Council Members who are veterans feel that is respectful.

Mr. Senatari, owner of Starz Burgers stated he is happy to be in the town and provide healthy food. He did not know that he was not allowed to have signage on the road and would like to know if there is any way to solve this signage problem. He has exhausted all other avenues for advertising, but would like to get local residents to know he's there.

Mark Wireman sent an email the Mayor read. **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**

LAW ENFORCEMENT UPDATE

Lieutenant Coble referred to the information he presented to Council at the last meeting, provided statistics on calls, accidents, response times and crimes for the Month of January, stating it was slightly higher than December. He advised that the speed limit has been lowered to 25 MPH on Matthews Indian Trail Road.

PARC COMMITTEE APPLICATION

- a. Approval of application of Gabriel Ortiz for the PARC Committee

Mr. Fivas advised that we provided Council with the application of Gabriel Ortiz; he met with Mr. Fish who recommended approval.

David W. Drehs made a motion to approve the application of Gabriel Ortiz for the PARC Committee. Council voted unanimously in favor of the motion.

CONSENT AGENDA

- a. Approval of January 27, 2015 draft minutes
- b. Approval of advertisement of delinquent taxes
- c. Approval of January 2015 month end tax report **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**
- d. Approval of concession agreement
- e. Approval of proposed 2015-2016 Budget Schedule **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**
- f. Approval of Multi-Jurisdictional Hazard Mitigation Plan Resolution **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**
- g. Approval of LGC 203 **(COPY ATTACHED HERETO AND MADE A PART OF THE RECORD)**

David Cohn made a motion to approve the Consent Agenda.

Council voted unanimously in favor of the motion.

PUBLIC HEARINGS

NONE

BUSINESS ITEMS

- a. Council consideration and approval of 2015 Stormwater Maintenance Contract

Mr. Fivas advised that we update the ongoing Stormwater Maintenance Contract which is about to expire and this is to renew it so we can continue to do projects.

Christopher King made a motion to approve the 2015 Stormwater Maintenance Contract.
Council voted unanimously in favor of the motion.

- b. Council consideration of approval of Construction Manager @ Risk Agreements and discussion of initial cost estimates.

Mr. Fivas provided the history, possible cost and size of the project, several financing options, the development process and timeline and what the next steps might be. He informed Council that they will not be making any major financial decisions with the exception of paying for construction documents, which we will own. Council had a lengthy discussion on this matter, topics included: this could attract new businesses, digest the costs and act financially prudent, putting this on the November ballot and letting the residents decide, possible selection of option 2, having public hearings to let the residents speak, need the Law Enforcement Study first before agreeing to spend more funds. **(A COPY OF THE POWER POINT IS ATTACHED HERETO AND MADE A PART OF THE MINUTES)**

Mr. Fivas addressed Mayor Alvarez's matter (Discussion Item 10a) during this presentation, stating that The LGC 203 report which is approved by Council biannually was on tonight's Consent Agenda. Mayor Alvarez's inquiries were: list of accounts with Town assets that are interest bearing; what are the balances; interest rate and terms; long term plan for accounts; interest paid per FY 2013-2014; list of any interest used; it helps us to make a decision to put towards this verses how much money to hold back. Mr. Fivas replied that the LGC 203 approved tonight provides you with all of that information.

Gary M. Savoie made a motion to approve moving with cost option 2, to let staff run with that and return to Council with the appropriate materials needed.

Mr. King added a caveat that he will not make any final decision until the Law Enforcement Study comes back. Mr. Drehs wants a public hearing where they can address all options before he makes a final decision.

Council voted unanimously in favor of the motion.

Mr. Fivas clarified that Creech & Associates will begin their design development construction drawings, will have a public hearing at the next meeting to get some more input, to decide whether to continue or switch options.

DISCUSSION ITEMS

- a. Discussion on list of accounts with Town assets that are interest bearing. What are balances, interest rate and terms - long term plan for accounts, interest paid per FY 2013-2014 - list of any interest used.

This matter was addressed in item b of the Business Items.

- b. Discussion on NCDOT US-74 intersection improvements

Mr. Fivas advised they are doing new intersections, putting the drawings together, have reached out and want to know if we would be interested in doing any signs, landscaping or removal of poles. NCDOT would like to know that now while they are creating the drawings. Mr. Fivas inquired if Council wants to look at cost options for esthetic upgrades on 74.

Mr. Savoie requested staff get cost estimates and renderings and present to Council, by consensus Council agreed.

MANAGERS REPORT

Mr. Fivas stated that we are waiting on the Law Enforcement report from PERF. He addressed the person in public comments pertaining to 2nd Ave, stating we are aware of your situation; we don't know where the branches came from and appreciate your coming in tonight. He introduced Citizen Academy members and Gretchen Coperine our new Planner. Mr. Fivas announced that Rox Burhans has been promoted to the position of Planning Director. He advised Council that there are not many agenda items for the next meeting, so there's a possibility it would be a brief meeting or we delay it. We're not looking for a decision but if nothing changes we'll reach out to you.

COUNCIL COMMENTS

Mayor Alvarez encouraged everyone to reach out to the Early College program and encourage our youth for education. He will start removing people from Public Comments if you call someone out and Council you cannot comment their opinion is wrong. He suggested to Mr. Fivas if there is a possibility of a Veterans Memorial in front of the new Town Hall, there are several veterans that have come up with renderings and maybe we can give them the opportunity to present them.

Mr. Cohn spoke about Dean Smith, explaining he was more than a coach, he was a mentor, he lead the civil rights movement, he did so much more than coach a basketball team. In his death it's not the number of games he won or the players he coached but how he taught a person.

Mr. Drehs encouraged all the citizens to pull the slide of the Town Hall item that you didn't see tonight, come to the meeting and let us know what you think. He officially thanked the EMT and Fire Department for caring for his mother-in-law.

Mr. Daniels congratulated Kelly Barnhardt on her achievement of the 40 Under 40 Distinction by Charlotte Business Journal, Rox Burhans for his promotion and welcomed Gretchen Coperine. Thanked everyone for coming out tonight telling them to get home safely.

Mr. King stated out of respect for the Carolina Coach he wore a Carolina blue tie in honor of Dean Smith.

Mr. Savoie thanked everyone for coming, told Gretchen Coperine welcome aboard, congratulated Rox Burhans and thanked staff for their hard work.

CLOSED SESSION

None

ADJOURN

Gordon B. Daniels made a motion to adjourn
Council voted unanimously in favor of the motion.

APPROVED:

Michael L. Alvarez, Mayor

Attest: _____
Peggy Piontek, Town Clerk

Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Joe Fivas
CC: Marsha Sutton, Alicia Massey
DATE: March 10, 2015
SUBJECT: Month End February 2015



According to GS 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/she has collected on each year's taxes with which he is charged, the amount remaining uncollected, and the steps he/she is taking to encourage or enforce payment of uncollected taxes.

Attached is the month end report for February 2015 collections. The tax department is using all collection remedies as provided by general statute to collect delinquent taxes including but not limited to garnishments, attachments and NC Debt Setoff.

Description	Count	Principal			Future	Penalty	Total
		Arrears/Other	Fiscal 2014	Fiscal 2015			
Billing	31468	3,515.41-	561.88-	7,290,527.03	0.00		7,286,449.74
Payments	29618	61,468.75-	42,973.28-	7,085,452.57-	0.00	17,892.34-	7,207,786.94-
Reversals	21	86.28	0.00	2,098.71	0.00	29.49	2,214.48
Adjustments	1881	161.19-	4.97-	2,086.27-	0.00	1,581.62-	3,834.05-
Apply Over	0	0.00	0.00	0.00	0.00	0.00	0.00
Rev Appl Ovr	0	0.00	0.00	0.00	0.00	0.00	0.00
Penalty	<u>23756</u>					<u>24,111.48</u>	<u>24,111.48</u>
Totals	<u>86744</u>	<u>65,059.07-</u>	<u>43,540.13-</u>	<u>205,086.90</u>	<u>0.00</u>	<u>4,667.01</u>	<u>101,154.71</u>



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: March 10, 2015

SUBJECT: Prequalification Policy for First-Tier Subcontractors on Construction Management at Risk Contracts

General Information:

Pursuant to North Carolina General Statute 143-128.1, Construction Management at Risk (CMR) Contracts, the Town of Indian Trail and the CMR shall jointly develop an assessment tool and criteria to prequalify first-tier subcontractors.

The attached policy is intended for CMR projects only.

Attachments:

Prequalification Policy for Construction Management at Risk

TOWN OF INDIAN TRAIL

POLICY FOR PREQUALIFICATION OF FIRST-TIER SUBCONTRACTORS FOR CONSTRUCTION MANAGEMENT AT RISK CONTRACTS

A. PURPOSE:

1. The purpose of this prequalification process is to provide a policy in compliance with the requirements outlined in NCGS 143-128.1, Construction Management at Risk Contracts, by impartially evaluating first-tier subcontractors and properly determine by its responsible business practices, work experience, manpower, and equipment that it is qualified to bid on a construction project. The award of contracts should be the result of open competition in bidding; impartiality in the selection contractors; integrity in business practices; and skillful and safe performance of public contracts.
2. A bidder shall be deemed nonresponsive if it submits a bid on a construction project subject to prequalification for which it has not been accepted for prequalification in accordance with this policy.
3. Prequalification is prohibited for contracts for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services.
4. Notwithstanding the fact that a contractor was prequalified, the Town reserves the right to reject a contractor's bid if it is determined that the contractor has not submitted the lowest responsible and responsive bid. The prequalification of the contractor shall not preclude the Town from subsequently concluding that the contractor is not a responsible bidder pursuant to G.S.143-129. The prequalification of a contractor for a project shall only apply to the individual projects. All construction and repair contracts shall be awarded to the lowest responsive and responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

B. DEFINITIONS:

1. Project Manager – Town employee of the department responsible for a construction, repair, or purchasing project requiring a contract who shall be assigned the responsibility for managing the project and representing the Town in matters relating to the project.
2. Construction Manager at Risk (CMR) – A person, corporation, or entity that provides construction management at risk services. May also be referred to as Construction Manager.
3. Prequalification - A process of evaluating and determining whether potential first-tier subcontractors have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work.

C. PREQUALIFICATION PROCESS:

1. Each prospective bidder on contracts identified for prequalification by the Project Manager and all CMR projects shall submit an application on the approved prequalification application form in order to become prequalified.

2. The approved prequalification application form will require information to be provided on the ownership of the firm, experience of firm's personnel, any affiliations with other construction firms, bonding capacity, financial resources, the type of work performed by the firm, and other objective criteria rationally related to the particular contract to be awarded.

3. The Project Manager shall ensure that applications prepared for the projects comply with this policy and State law. The application is to be submitted by the deadline established in the notice of prequalification. The notice must be posted on the Town's website for a minimum of two weeks. The act of submitting the application does not permit the firm to submit a bid. Incomplete applications will be rejected or returned for further detail or correction in the sole discretion of the Town.

D. APPLICATION:

1. The application shall, at a minimum, address the following items:

- a. **Organizational Structure** – The firm shall provide a list of all owners, officers, partners, or individuals authorized to represent or conduct business for or sign legal documents for the firm. This list must include the full legal name, typed or printed in a clear legible form. Firms experiencing changes in ownership, organizational structure, or material changes in assets must inform the Project Manager prior to the award of a contract. Failure of the firm to comply with this requirement may result in the termination of any contract awarded by the Town.
- b. **Classification** – The firm shall indicate the type(s) of work the firm's workforce and equipment normally perform, licensure, and other pertinent information.
- c. **Experience** – The firm shall furnish a history documenting experience with projects of similar size, scope, or complexity involving the type(s) of work for which prequalification is requested.
- d. **Financial** – Firms will be required to provide a minimum of one year of complete audited financial statements from the most current period available.
- e. **Litigation/Claims** – The firm will be required to submit information regarding its litigation history, including litigation with owners and subcontractors.
- f. **Timeliness** – Firms must provide information on its success at completing projects on time, including the payment of liquidated damages.
- g. **Capacity** – Firms shall demonstrate sufficient bonding capacity, insurance and resources for the project. Firms must provide relevant information on the personnel that will be directly responsible for the work, including the location of the office that will be primarily responsible for work.
- h. **Safety** – Firms shall also demonstrate an acceptable safety history. Firms must provide copies of any complaints, safety violations or reports from the North Carolina Qualifications Board, OSHA, or any other regulating agency associated with any construction project.
- i. **Legal Authorization** – The Applicant must provide a copy of their North Carolina Contractor's License, or provide a statement indicating that they are able to acquire one before submitting a bid on a project. If a statement is required, the Applicant shall identify the states in which they are licensed for this type of work.

E. REVIEW OF APPLICATION

1. **Prequalification Committee** - The Construction Manager and the Project Manager shall agree upon the members of the Construction Manager's Prequalification Committee. The Prequalification Committee will review prequalification applications submitted by the firms and will determine prequalification eligibility for the CM at Risk project.
2. **Review of Applications** – The Construction Manager and the Project Manager shall develop scoring values for items D.1a-i listed above, and a minimum required score to be prequalified for the project. The prequalification criteria shall not require the firm to have previously been awarded a construction or repair project by the Construction Manager or the Town. The Prequalification Committee shall approve or deny the applications in accordance with the prequalification criteria and scoring system.
3. **Notice of Decision** – The Project Manager shall promptly notify the firms of the Prequalification Committee's decision via e-mail and first class mail. The notification to a contractor determined not to be prequalified shall include the reason(s) for denial. Notice shall be provided prior to the advertisement of bids for the project and with sufficient time for the firm to protest the denial of prequalification.

F. PROTEST PROCEDURE:

1. **Protest Procedure** – The protest procedure is as follows:
 - a. The firm may protest the denial of prequalification. A written protest must be received by the Project Manager within two business days of notice of denial. The written protest shall clearly articulate the reasons for the protest, and attach any documents or additional information in support of the firm's position. The Project Manager, will contact the firm and set up a date and time to discuss the protest. If upon review the Project Manager determines that the firm meets the criteria for prequalification, the firm shall be notified that it is prequalified to bid on the project and allowed to participate in the bid process. If the Project Manager upholds the denial, the firm shall be notified in writing by e-mail and first class mail.
 - b. If the firm desires further review after receiving the decision of the Project Manager, the firm may request an Administrative Review and final decision by the Town Manager. A written request for Administrative Review must be received by the Town Manager within two business days of the firm's receipt of the decision from the Project Manager. The request for Administrative Review shall clearly articulate the reasons for the review and attach any documents or additional information in support of the firm's position. The Town Manager will contact the firm and set up a date and time for the Administrative Review. If upon review, the Town Manager determines that the firm meets the criteria for prequalification, the firm shall be notified that it is prequalified to bid on the project and allowed to participate in the bid process. If the Town Manager upholds the denial, the firm shall be notified in writing by e-mail and first class mail.
2. **General Rules for Protests** – Firms submitting applications shall be provided an e-mail address for communication with the Project Manager during the protest process. The firm shall provide at least two e-mail addresses for use by the Project Manager in communicating with the firm. The bid opening cannot occur until the protest process is completed. The bid opening must be scheduled in order to allow sufficient time for a bidder that is prequalified as a result of a protest to submit a bid on that project.



TO: Mayor and Town Council
FROM: Joe Fivas
CC: Marsha Sutton
DATE: March 10, 2015
SUBJECT: Budget Amendments for March 10th Meeting

Please find attached budget amendments processed through March 5, 2015. Please feel free to call, email, come in or ask any questions you may have regarding these matters.

**TOWN OF INDIAN TRAIL
BUDGET TO BUDGET AMENDMENT REQUEST**

DATE: 1/31/15

DEPARTMENT: Various

Account Number	Account Description	(Transfer In / Out)	Amount
10-00-4130-292-000	Software < \$5,000	Out	1,000 ⁰⁰
10-00-4130-397-000	Contract Services	In	750 ⁰⁰
10-00-4130-397-002	Maintenance Contracts	In	250 ⁰⁰
10-00-4140-395-000	Staff Training	In	400 ⁰⁰
10-00-4140-311-000	Travel Expenses	In	400 ⁰⁰
10-00-4140-325-000	Tax Postage	Out	800 ⁰⁰
10-00-5000-397-000	Contract Services	In	2,000 ⁰⁰
10-00-5000-397-001	Employment Screening	In	200 ⁰⁰
10-00-5000-450-000	Insurance & Bonding	In	3,000 ⁰⁰
10-00-5000-491-000	Dues & Subscriptions	In	100 ⁰⁰
10-00-5000-125-000	Employee Incentive Program	Out	3,300 ⁰⁰
10-00-5000-185-000	Unemployment Insurance	Out	1,000 ⁰⁰
10-00-5000-395-001	Inhouse Training	Out	1,000 ⁰⁰

EXPLANATION:
Mid-year Budget Cleanup.

REQUESTED BY: _____

FINANCE: _____

TOWN MANAGER: _____

For Finance Dept Only:
 EFFECTIVE DATE: 1/31/15 JOURNAL NO. ASSIGNED: 442
 FISCAL YEAR: 2015 ENTERED: agaddy
 PERIOD: 7 DATE: 2/4/15

**TOWN OF INDIAN TRAIL
BUDGET TO BUDGET AMENDMENT REQUEST**

DATE: 1/31/15

DEPARTMENT: Various

Account Number	Account Description	(Transfer In / Out)	Amount
10-10-4310-357-000	Building Maintenance	In	5,000 ⁰⁰
10-10-4310-194-000	LEO Contract	Out	5,000 ⁰⁰
10-20-4570-491-000	Dues & Subscriptions	In	300 ⁰⁰
10-20-4570-571-000	OFF. Furn & Equip < \$5,000	Out	300 ⁰⁰
10-40-4260-491-000	Dues, Fees & Subscriptions	In	50 ⁰⁰
10-40-4260-397-001	Community Forestry	Out	50 ⁰⁰
10-40-4911-260-000	OFF. Supplies & Materials	In	200 ⁰⁰
10-40-4911-571-000	Equip < \$5,000	Out	200 ⁰⁰
10-40-4920-493-007	Halloween Event	In	300 ⁰⁰
10-40-4920-493-000	Community Events	Out	300 ⁰⁰

EXPLANATION:

Mid-year Budget Cleanup.

REQUESTED BY:

FINANCE:

TOWN MANAGER:

For Finance Dept Only:

EFFECTIVE DATE: 1/31/15 JOURNAL NO. ASSIGNED: 443

FISCAL YEAR: 2015 ENTERED: agaddy

PERIOD: 7 DATE: 2/4/15

**TOWN OF INDIAN TRAIL
BUDGET TO BUDGET AMENDMENT REQUEST**

DATE: 11/31/15

DEPARTMENT: Various

Account Number	Account Description	(Transfer In / Out)	Amount
10-60-9100-760-003	Crooked Creek Inst. Loan	In	.36
10-60-9100-760-002	Chestnut Park Inst. Loan	Out	.36
10-80-6130-290-000	Park Supplies	In	2,000 ⁰⁰
10-80-6130-330-000	Park Utilities - Chestnut Park	In	30,000 ⁰⁰
10-80-6130-499-000	Misc.	In	100 ⁰⁰
10-80-6130-212-000	Uniforms	Out	1,000 ⁰⁰
10-80-6130-330-000	Park Utilities - CPP	Out	4,000 ⁰⁰
10-80-6130-397-000	Contract Services	Out	10,000 ⁰⁰
10-80-6130-551-000	Equipment < \$5,000	Out	17,100 ⁰⁰
10-80-6140-260-000	Supplies	In	300 ⁰⁰
10-80-6140-351-000	Bldg Maint / Upgrades	Out	300 ⁰⁰
* 10-80-6130-330-001	Chestnut	In	30,000
10-80-6130-330-000	Crossing Paths	Out	30,000.

EXPLANATION:

Mid-year budget cleanup.

REQUESTED BY:

FINANCE:

TOWN MANAGER:

For Finance Dept Only:

EFFECTIVE DATE: 11/31/15 JOURNAL NO. ASSIGNED: 444/440

FISCAL YEAR: 2015 ENTERED: Agadony

PERIOD: 7 DATE: 2/4/15



Town of Indian Trail Parks & Recreation Department
CONCESSION AGREEMENT-Crooked Creek Park

The Town of Indian Trail Parks & Recreation Department (Town) and **Creative Food Concepts, INC.** (Concessionaire) hereby enter into this agreement for the operation by a concessionaire of Crooked Creek Park Concession stand.

The Concessionaire agrees to operate the concession stand in good faith and in accordance with (1) the conditions listed below, (2) the terms and conditions of the RFP for concession services issued by the Town of Indian Trail and attached hereto as Exhibit A, and (3) Concessionaire's Proposal, attached hereto as Exhibit B. To the extent there are any contradiction among the three documents, the term of this Concession Agreement shall govern:

The Concessionaire shall:

1. Ensure the concession stand operations shall meet all requirements as set forth by the State of North Carolina Department of Environment and Natural Resources for Limited Foodservice Establishments. It is the responsibility of the Concessionaire to insure that the facility meets the guidelines for Limited Food Service Establishments.
2. Agree to accept all responsibility and liability regarding the Foodservice operation. This responsibility includes but is not limited to, proper cleaning and sanitizing of the concession stand and all utensils, as well as, properly preparing, handling and storing all food items so as not to propose a health risk to the general public.
3. Agrees to obtain all appropriate permits from the appropriate departments, including the Union County Health Department, prior to this usage.
4. Will provide all equipment, supplies, items and articles necessary for provision of concession sales. The Town of Indian Trail will provide the following items:
 - Ice Machine (1)
 - Freezer (1)
 - Refrigerator (1)
 - Grill (1)
 - Blenders (2)
5. Not hold the Town of Indian Trail or any of its employees responsible in the event of injuries to persons who operate the concession stand.
6. Hold the Town of Indian Trail harmless for any and all losses or damages to equipment and supplies that occur at the concession stand as a result of theft, vandalism, or by any other means;

as well as any person raising a claim against the Town for reasons associated with the concession operation.

7. Pick up Trash in and around the immediate concession area.

8. Remove of all concession garbage to a trash tub at the conclusion of each day of operations.

9. Maintain equipment in good appearance and working condition and repair at no cost to the Town.

10. Keep a fire extinguisher in the concession stand at all times.

11. Not sell any items to be made that are of glass containers.

12. Agrees to maintain the concession stand in a clean, sanitary and safe condition and leave the concession stand in the state of cleanliness in which it was found. The Concessionaire shall accept responsibility for any repairs necessitated by the negligence or willful acts of the Concessionaire's agents, volunteers or invitees. Any repairs necessary due to the latter should be planned, coordinated and executed with the assistance of the Parks & Recreation Department.

13. Agree to operate concession stand for all baseball/softball games at the park during the term of this Concession Agreement. Operation of concession stand on weekends when games are taking place is required. The Concessionaire will operate on any other mutually agreed upon day in the event a regularly scheduled game is postponed until after these dates for any reason. Concessionaire will open for business at least 30 minutes prior to the scheduled starting time of the first game of the day/evening and close concession operation no earlier than 15 minutes following the end of the final game on that day/evening.

14. Tournaments: The concessionaire is expected to operate on all baseball/softball tournament date. However, should a tournament host/group request operation or control of the concession stand during that tournament, the concessionaire has first right of refusal; the tournament host/group will only be given permission to rent and operate the concession stand if the concessionaire opts not to run the concession stand himself/herself.

15. Provide concession services in a manner that adequately serves the total abled/disabled public wishing to utilize the service. Discriminatory methods of operation will not be tolerated.

16. Notify the Town if the need arises to cancel scheduled services at least fourteen (14) days prior to the service date(s). The Town may elect to obtain service from another vendor for that time period with no recourse from the concessionaire. The other vendor would not have access to the Concessionaires food and beverage products.

17. Conform to and abide by all park/usage policies, Town ordinances, all state and federal laws and regulations that are applicable to public park concession sales, and instructions from the Parks & Recreation Director.

18. Concession workers coming in contact with the public should be courteous, polite and helpful to the park and concession patrons; concession workers should not be minors unless directly supervised by an adult concession worker. The Concessionaire shall require that employees dress appropriately to provide food and beverage service to park patrons and shall ensure that its employees are courteous and respectful to park patrons at all times.

19. Understand and agree that the sale of alcohol and/or tobacco products is not allowed. The Concessionaire shall submit a list of all products for sale with prices to the Parks & Recreation Director with his/her proposals and for approval prior to usage. Any change in pricing proposed during the contact must be approved by the Director. The Town of Indian Trail Parks &

Recreation Department has the right of final approval of menu and pricing. The Town reserves the right to cancel the contract of any Concessionaire charging prices deemed unreasonable.

20. Agree to purchase and maintain at its own expense during the term of this contract the following insurance covering its operation, a copy of which is to be provided with the initial proposal to the Town:

1. General Liability – Bodily and property damage liability as shall protect the Concessionaire and any subcontractor performing work under this contract from claims of bodily injury and property damage which arise from the operations of this contract whether such operations are performed by Concessionaire, any subcontractor or any one directly or indirectly employed by either. The amounts of such insurance shall not be less than one million dollars (\$1,000,000.00) bodily injury each occurrence/aggregate, or one million dollars (\$1,000,000.00) property damages each occurrence/aggregate, or one million dollars (\$1,000,000.00) bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability and contractual liability.
2. Commercial concessionaires shall have Auto Liability for all owned, non-owned and hired vehicles for the same amounts and coverage listed in Item 1 (above).
3. Commercial concessionaires shall also have Workers Compensation insurance in the amount and form to meet all applicable requirements of the laws of the State of North Carolina.

The Town:

1. Will provide all available utilities including power, water and sewer at no charge to the Concessionaire for the duration of the agreement as set forth above.
2. Shall be responsible for maintenance of the structure, plumbing, exterior walls, roofs, exterior and interior doors, interior electrical and any other repairs.
3. Will provide Concessionaire with schedules of all games and special events during the time of the contract. Notification of rescheduled games/events and tournaments will be given to the Concessionaire as soon as dates are confirmed.
3. Reserves the right to conduct random, unscheduled inspections and/or to request a financial report of concession operations at any time deemed necessary.
4. Reserves the right to order the removal of any item sold or kept for sale that is judged to be inappropriate by the Town.

Payment

1. Payment to the Town is to be made by the 15th of each month. The Concessionaire agrees to pay the Town in consideration for concession rights and privileges, a monthly payment equal to **12%** of gross monthly receipts. The Concessionaire will be required to pay the Town on or before the 15th day of each succeeding month during the term of the agreement. The Concessionaire will also be required to submit with each payment a signed statement attesting to the total gross receipts for said month. The Town reserves the right to conduct audits and inspections without advance notice. The Concessionaire must also agree to provide copies of all receipts and relevant documents if requested.

2. A late fee of \$25 will be assessed for payments not received by the 15th of the month. Multiple late payments may result in suspension of concession permit.

OBLIGATION AND INDEMNITY

1. Neither party shall be held responsible to the other for losses resulting from fire, flood, ice snow, Act of God or any cause not within the control of the party whose performance is interfered with and which by the exercise of reasonable diligence the party is unable to prevent.
2. The Concessionaire agrees to indemnify and hold harmless the Town from any and all liability incurred, and will take up and defend any litigation arising from, any injury or damage to any person or firm to the extent resulting from any negligent or willful act or omission of the concessionaire, its agents or employees.

By signing below, both parties indicate that they have read and agree to abide by the terms listed above to the best of their abilities. This agreement will become null and void with written consent by both parties.

TERMS OF THE CONTRACT: This contract begins on March 1, 2015 and ends on March 1, 2016.

At this time the Town of Indian Trail has the right to extend this contract for up to 2 additional years.

CANCELLATION OF CONTRACT

The Town reserves the right to terminate this contact immediately for any of the following reasons:

1. Inaccurate reporting and/or failure to report sales revenue and submit proper percentages or fees to the Town.
2. Opening the concession stand for events later than specified in this contract or closing the concession stand earlier than stated in this contract.
3. Failure to properly serve a scheduled or assigned event previously agreed upon by Concessionaire or opening too late and/or closing too early as determined by the Parks & Recreation Director.
4. Detrimental behavior of concessionaire employees or other factors that are deemed to negatively impact the safety and well being of patrons, property or service of the Town.
5. Failure to comply with any aspect of this agreement

E-VERIFY REQUIREMENTS. Concessionaire certifies that it is in compliance with all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, which generally provides that each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The Concessionaire agrees that during the term of this Agreement it shall comply and shall require all subcontractors to comply with any and all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, and the Concessionaire agrees to

incorporate in all further contracts or subcontracts for the Project a provision requiring compliance with Article 2, Chapter 64 of the North Carolina General Statutes.

SIGNATURES:

_____	_____	_____	_____
Official Representative	Date	Official Representative	Date
Town of Indian Trail Parks		(Concessionaire)	
& Recreation Department (Town)			

Exhibit A

REQUEST FOR PROPOSAL

Town of Indian Trail, North Carolina
For Parks & Recreation Crooked Creek Park
Concessionaire

Deadline for Submission: January 2, 2015

Submit To:

Jason Tryon, Assistant Director of Parks & Recreation
100 Navajo Trail
Indian Trail, NC 28079

Phone: (704) 821-4207

Fax : (704) 821-9045

Email: Jtryon@Admin.IndianTrail.org

GENERAL INFORMATION

A. PURPOSE

The purpose of this Request For Proposal (RFP) is to solicit proposals for the provision of concession services for public purchase/consumption at the **Crooked Creek Park Concession Stand**. The successful proposal shall provide concession services at the facility at times deemed necessary by the Parks & Recreation Director. **This does not include vending machine services.**

B. BACKGROUND

- **Crooked Creek Park is a 140 acre community park that currently features:**
- 4 lighted softball/baseball fields
- 1 picnic shelters
- 1 concession stand
- 1 playground
- **Future phases of the park will include**
- 1 dog park
- Additional softball/baseball fields
- Multipurpose fields
- Walking Trails
- 1 disc golf course
- Miracle Field of Indian Trail

C. TERMS OF AGREEMENT

Anticipated term of the contracts would be for a period of one (1) year with two (2) annual renewals. Proposers may suggest alternative term, renewals, etc., in their proposal.

D. PAYMENT

The proposer's monthly payment of rental for the privilege of providing concession services at the facility will be at a percentage based fee of sales. All concessions are subject to semi-annual audit of expenses each Fiscal Year.

E. PROVISION OF SERVICES

Under the terms and conditions of the contract, the selected proposer shall be responsible for the procurement, installation, operation and maintenance of the equipment and supplies necessary for service provision including management of revenue collection and routine maintenance/cleaning of the facility. The selected proposer agrees to comply with applicable local, state and federal ordinances, statues, laws, rules, regulations and best business practices governing concession services. The selected proposer must obtain all permits/licenses required to provide services under this agreement prior to commencing service.

F. OPERATION

The successful proposer shall provide concession services in a manner that adequately serves the public wishing to utilize the service. Discriminatory methods of operation will not be tolerated. The proposer will be required to provide a level of service including routine maintenance/cleaning equal to the standards set by the Town of Indian Trail at all other facilities, areas and parks. **The successful proposer will provide service at the facility on a regular schedule during peak periods and special events identified by the Parks & Recreation Director. The Town of Indian Trail will provide the**

selected proposer a schedule of all tournaments three months in advanced. The concession stand shall be open during all tournaments and also during necessary programming and events times. The concession stand shall remain open during the peak season every day if programs and events are scheduled to take place in the park that require concessions. The selected proposer will have to agree to the schedule of operations that could include being open up to seven days a week during the peak times. The selected proposer must provide healthy food options including but not limited to fresh fruit, fruit and vegetable smoothies, and 100% juices. In addition the provider will not be permitted to provide fried foods. The Town of Indian Trail shall not be liable for any cost incurred by the selected proposer to commence and maintain operations of the concession services. The Town of Indian Trail is not liable for any losses incurred by the selected proposer during the term of any executed agreement. The Town of Indian Trail makes no promise of total sales amounts, nor does the Town guarantee the selected proposer a set number of potential patrons.

The selected proposer shall not sublease or transfer this agreement to any other party without prior written approval of the Town of Indian Trail. The Town shall have the option to terminate this agreement based on a request to transfer or sublease. Selected proposer cannot use glass containers; sell alcoholic beverages or tobacco products.

G. TOWN OF INDIAN TRAIL REQUEST FOR PROPOSAL (RFP)

The Town of Indian Trail may, at its sole discretion, reject any or all proposals submitted in response to this RFP. The Town of Indian Trail shall not be liable for any cost incurred in connection with preparation and submittal of any proposal.

In the event the Town accepts a proposal, a contract may be awarded to the proposer who has submitted the proposal deemed to be in the best interest(s) of the Town. Selection of the best proposal will be made on the basis of the criteria set forth in this RFP. The Town reserves the right to negotiate the final terms of the contract(s) with one (1) or more of the highest rated responsive proposers. Proposers are cautioned that any response to this RFP shall not be considered a "bid."

H. PROPOSER'S INSPECTION

It will be the responsibility of the individual proposers to schedule and coordinate visits to the facility and to secure information about the facilities for their proposal from the Parks & Recreation Director.

I. CONFIDENTIALITY

The proposer must include in its proposal material of a confidential nature, i.e., not intended for disclosure to third persons, if the proposer should so desire confidentiality. The Town of Indian Trail will then exercise its best efforts to protect this information, but only to the extent that the law permits. The Town assumes no responsibility for any loss or damage which may result out of any breach of confidentiality.

J. REPRESENTATIONS

1. The Town will not be bound by any representations that are not set forth in the RFP.
2. The proposer is responsible for making all necessary investigations/examinations of documents, operations and premises affecting performance. It is mutually agreed that the submission of a proposal shall be considered conclusive evidence that the proposer has made such investigations/examinations.
3. Any reasonable inquiry to determine the responsibility of a proposer may be entertained. The submission of a proposal shall constitute permission by the proposer for the Town to verify all information contained therein. If the Town deems it necessary, additional information may be requested

from the proposer. Failure to comply with any such request may disqualify a proposer from further consideration.

K. PROPOSER'S INSPECTION

If the proposer is interested in inspecting the facility a date and time will be created with the appropriate staff. Only those questions concerning the RFP, the selection process and questions regarding the facility will be considered during this timeframe. Please see the below design of the exterior of the facility that will act as a concession stand and scorers tower.



1 BUILDING ELEVATION
SCALE: 1/4"=1'-0"

INSTRUCTIONS TO PROPOSERS

A. Proposals deemed responsive to this RFP:

A proposer's response to this RFP must be made according to the specifications set forth in this section, both for content and sequence.

Any proposal failing to comply with said specifications, and therefore deemed to be non-responsive, shall be subject to rejection by the Town of Indian Trail.

1. **MINIMUM QUALIFICATIONS:** In order to be deemed minimally qualified for consideration in the award of the lease for the subject facility, a proposer must:

a. Have a minimum of three (3) years of experience in the provision of concession services or similar services as requested, or provide other evidence of qualifications to provide the service requested.

b. Possess the necessary line of credit or equity to manage a public operation of this nature.

c. In the event a corporation is proposing to provide the service, said corporation must verify that the person responsible as manager of the operation shall meet the above listed qualifications in item a.

2. In order to be deemed fully responsive to this RFP, a proposer must complete and submit the following:

a. Proposal Forms/Narrative Outline

b. Statement of Personal Business History

c. Affidavit to Accompany Proposals

d. Proposer's Equal Employment Opportunity (EEO) Certification

e. Authorization to Release Information

3. Proposers must present evidence, satisfactory to the Town of Indian Trail, indicative of their ability to operate and maintain the specified service. To this end, each proposer must attach the following information (Items (f) through (k)) to the Proposal.

f. **General Business Statement:** A statement of all the important business activities of the proposer's major business life. This statement should emphasize the proposer's experience in the maintenance, operations and/or management of a similar service. In the event that the proposer has provided such service on a contractual basis to a public agency or to a private entity, the proposer shall submit the name, address and phone number of such clientele, and a brief description of the services provided and other pertinent data. Further, the proposer must identify any such contracts that, within the last five (5) years, have been canceled or not renewed.

g. **Personal/Corporate References:** A minimum of three (3) personal/corporate references giving current names, addresses and telephone numbers in each instance is required.

h. **Credit References:** A minimum of three (3) credit references giving current names, addresses and telephone numbers in each instance is required. It is also required that at least one (1) of the three (3) references be a bank or savings and loan institution. The type of relationship shall also be indicated (i.e., checking, savings, real estate loans, construction loans, small business loans, etc.). A credit check of these references shall be conducted by the Town of Indian Trail.

i. **Proof of Insurance:** Proposers currently providing similar services shall submit a Certificate of Insurance for the operations involved. In the absence of such certificate, proposers may submit a Letter of Commitment from an acceptable insurance company setting forth that the required insurance coverage, as described in the Sample Management Agreement, will be available to the proposer at the time/term of contract commencement. The following minimum requirements are required by The Town of Indian Trail:

The selected proposer agrees to purchase and maintain at its own expense during the term of this contract the following program(s) of insurance covering its operations. Such insurance shall be provided by insurer(s) satisfactory to the Town of Indian Trail as approved by the Town Attorney. Such evidence shall specifically identify this Management Agreement and shall contain express condition that the Town of Indian Trail is to be given written notice of at least thirty (30) days in advance of any modification or termination of any program of insurance. Such insurance, with the exception of Workers' Compensation insurance, shall be primary to and not contributing, with any other insurance maintained by The Town, and shall name the Town of Indian Trail as an additional insured:

Commercial General Liability: Bodily injury and property damage liability as shall protect the concessionaire and any subcontractor performing work under this contract from claims of bodily injury and property damage which arise from operation of this contract whether such operations are performed by concessionaire, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than ONE MILLION DOLLARS (\$1,000,000.00) bodily injury each occurrence/aggregate and ONE MILLION DOLLARS (\$1,000,000.00) property damage each occurrence/aggregate, or ONE MILLION DOLLARS (\$1,000,000.00) bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability and contractual liability.

Auto Liability: For concessionaire operating from vehicles, bodily injury and property damage liability covering all owned, non-owned, and hired vehicles for limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) bodily injury each person, each accident and ONE MILLION DOLLARS (\$1,000,000.00) property damage, or ONE MILLION DOLLARS (\$1,000,000.00) combined single limit bodily injury and property damage.

Worker's Compensation: If applicable, a program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the laws of the State of North Carolina: \$100,000 per accident limit, \$500,000 disease per policy limit and \$100,000 disease each employee limit.

i. **Proposed Menu:** An example of a proposed menu including prices, fees and charges for all contemplated services must be submitted. **Please see examples of concession menus on pages 15-16.**

j. **Service Program:** A detailed, narrative description of all services contemplated shall be drafted and submitted. This must include the proposed plan for staffing of the concession stand (please include current staffing plans of similar services.) This must also include a list of all equipment that would be supplied (by the chosen concessionaire) at the facility. Please also provide a current privilege license.

k. **Americans With Disabilities Act:** Town of Indian Trail services are required to comply with the Americans With Disabilities Act which prohibits discrimination on the basis of disability. The Town of Indian Trail and its contracted facility operators will make reasonable accommodations in all programs to enable participation by an individual who meets eligibility requirements. Programs and services will be available in the most integrated setting for each individual.

B. PREPARATION OF THE PROPOSAL

1. All proposals must be **typed** for submission on 8-1/2" x 11" white paper and submitted via email as well as a hard copy.

2. **The Town may request additional information from any person, firm or corporation submitting a proposal.**

C. SUBMISSION OF PROPOSALS

1. The original proposal and two (2) additional copies must be submitted in a sealed envelope as well as via email to JTryon@Admin.IndianTrail.org. The envelope shall be plainly marked with the name, current mailing address and telephone number of the proposer. The envelope shall further state:

"Proposal for provision of concession services at the Crooked Creek Park Concession Stand."

2. It is the sole responsibility of the proposer to see that the proposal is received before the submission deadline. A proposer shall bear all risks associated with delays in mail, courier services or those being hand delivered.

E. DEADLINE FOR RECEIPT OF PROPOSALS

1. The Town of Indian Trail will receive proposals at the location indicated until January 2, 2015.

Proposals received after the above assigned date and time shall not be considered.

SELECTION PROCESS AND EVALUATION CRITERIA

A. SELECTION PROCESS

The Town of Indian Trail reserves the right to act as sole judge of the content of the proposals submitted for the Town's evaluation/selection.

B. EVALUATION CRITERIA

Selection of the best responsible proposal will be based upon the following considerations/criteria:

1. **Proposer's Experience and Capability**

a. Proposed demonstrated experience and compliance with minimum qualifications for similar operations

b. Proposer's demonstrated operational capabilities stressing the ability to provide/maintain concession services.

c.. Proposer's demonstrated financial status and ability to provide the proposed service operations.

d. Proposer's demonstrated past service including remittances to the Town of Indian Trail Parks & Recreation Department if applicable.

2. **Rent to the Town of Indian Trail**

a. The total cost benefit to the Town of Indian Trail based upon the proposed payment.

3. **Service Program**

a. The level of service to be provided at the Crooked Creek Park Concession Stand which must include healthy food and drink alternatives.

b. The level of program support and sponsorship provided for department facilities, programs and operations.

c. Demonstrated ability to provide start up funding, equipment, supplies, materials and staff sustain quality concession services.

C. **EVALUATION PROCESS**

The evaluation of proposals will be conducted by a selection panel selected by the Town of Indian Trail staff. In all cases, the panel on the whole will have the appropriate experience in the conduct, administration and evaluation of projects, proposals, agreements and operations similar to the subject of the RFP. The Town of Indian Trail, at its option, may invite one (1) or more proposers to make an oral presentation to the selection panel. During these interviews, the selected proposers will be allowed to present such evidence as may be appropriate in order that the panel can effectively analyze all materials and documentation submitted as part of the proposals. The panel will employ the applicable criteria and their expertise in evaluating all proposals, and thereafter shall create a prioritized ranking of highest to lowest of all selected proposals.

D. **APPROVAL OF CONTRACT**

Subsequent to the process, staff will recommend and seek authorization from the Town Council to award a contract with the successful proposers maintaining the highest rankings by the panel.

E. **MINORITY & WOMEN BUSINESS ENTERPRISES**

The Town of Indian Trail has an equal opportunity purchasing policy and seeks to ensure that all segments of the business community have access to supplying the goods and services needed by Town programs. The Town of Indian Trail encourages utilization of minority and women owned business enterprises in its procurement activities. The Town of Indian Trail provides equal opportunity for all businesses and does not discriminate against any bidder regardless of race, color, religion, age, sex, national origin or disability. A "Minority Business Enterprise (MBE)" is defined as a business, owned (51% minimum) and controlled by a person of African-American (BBE), Asian-American (ABE), Native-American (NBE), or Hispanic (HBE) descent. A "Woman Owned Business" is one owned (51% minimum) and controlled by a non-minority woman (WBE).

F. **RFP REVIEW & SELECTION TIMELINE**

The timeline for the Crooked Creek Park Concessionaire is as follows:

- ***December 9th 2014 - RFP distributed***
- ***January 2nd 2015 - RFP packets due (by 5pm EST)***
- ***January 5th 2015 – Selection panel review of packets***
- ***January 12th 2015 – Selection panel interview(s) of final proposals***
- ***January 27th – Selection Panel recommendation to Town Council***
- ***January 27th – Town Council selection of concessionaire***
- ***January 28th – Final contract prepared***

Further Information

The Town of Indian Trail appreciates your interest in providing services for this facility. For further information or questions regarding this RFP please contact,
Jason Tryon, Assistant Director of Parks & Recreation
100 Navajo Trail
Indian Trail, NC 28079

Phone: (704) 821-4207

Fax : (704) 821-9045

Email: Jtryon@Admin.IndianTrail.org

PROPOSAL FORM

Name of Proposer:

Date:

Parks & Recreation Department
100 Navajo Trail
Indian Trail, North Carolina 28079

A PROPOSAL FOR THE PROVISION, OPERATION, AND MAINTENANCE OF CONCESSIONS SALES AT CROOKED CREEK PARK CONCESSION STAND

I propose to provide the required concession operations, as well as required maintenance and upkeep of the facilities and grounds as related to my services.

I propose the term of the agreement be for a period of time not less than ONE year, with the ability

to enter into two additional years.

I propose to pay to the Town of Indian Trail the following amounts as a percentage each month of service from sales and related revenues:

OPERATING TABLE

OPERATING YEAR	MONTHLY PERCENTAGE
_____	_____
_____	_____
_____	_____

In addition to the services required in the Management Agreement, I further propose to offer the following additional services to the public (optional):

(use additional pages as necessary)

I am personally educated with the Town of Indian Trail Parks & Recreation Department and am familiar with the privileges to be granted thereon. I have read the related information in this RFP.

Furthermore, I feel qualified to submit a proposal.

The undersigned hereby respectfully submits this proposal, including all required Documents/statements.

(Indicate the form of business concern on the line above, i.e., Corporation, Individual, Partnership, Joint Venture, etc.)

Signature

Signature

Address

Address

(_____)_____
Telephone

(_____)_____
Telephone

**** FOR OFFICE USE ONLY ****

- | | |
|--|--|
| <input type="checkbox"/> General Business Statement | <input type="checkbox"/> Authorization to Release Information |
| <input type="checkbox"/> Proposal Form | <input type="checkbox"/> References (Business, Personal, Credit) |
| <input type="checkbox"/> Statement of Personal History | <input type="checkbox"/> Proof of Insurability |
| <input type="checkbox"/> Proposer's EEO Certification | <input type="checkbox"/> Proposed Price List |
| <input type="checkbox"/> Service Program | <input type="checkbox"/> Privilege License |

STATEMENT OF PROPOSER'S PERSONAL HISTORY

1. Legal Name in Full: _____
2. Residential Address: _____

3. Business Address: _____

4. Telephone: Home: (____) _____
Bus: (____) _____
5. Have you or your spouse ever filed bankruptcy or been declared bankrupt?
Yes: ____ No: ____
6. Have you ever been terminated or asked to resign?
Yes: ____ No: ____
7. Have you, as an adult, ever been convicted/fined/placed on probation/given a suspended sentence in any court or had any convictions?
Yes: ____ No: ____
8. Do you have any outstanding local, state or federal tax liens or issues that are currently unsettled, or have had a judgment in court against you on any related tax matter in the previous five (5) years?

NOTE: If you answered "YES" to any above questions, pertinent details must be provided on an additional information sheet. Failure to do so may result in delay of, or the possible disqualification of, your proposal.

I hereby certify that all statements made or in connection with this statement of Personal History are true to the best of my knowledge and belief, and I understand/agree that any misrepresentation, misstatement or omission of material fact may cause forfeiture on my part of all rights to the proposed agreement to be awarded by the Town of Indian Trail, North Carolina.

DATE: _____ SIGNATURE: _____

**PROPOSER'S
EQUAL EMPLOYMENT OPPORTUNITY (EEO)
CERTIFICATION**

Proposer's Name in Full

Address

Internal Revenue Service Employer Identification Number

GENERAL

The undersigned certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries or holding companies are and will be treated equally by the firm without regard to or because of race, creed, color, national origin, sex, age or handicap and in compliance with all anti-discrimination laws of the United States of America and the State of North Carolina.

PROPOSER'S CERTIFICATION

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| 1. The proposer has or will implement a written policy statement prohibiting discrimination in all phases of employment. | ___ | ___ |
| 2. The proposer periodically conducts a self-inspection of its workforce. | ___ | ___ |
| 3. The proposer has or will develop a system for determining if its practices are discriminatory. | ___ | ___ |
| 4. Where problem areas are identified in employment practices, the proposer has or will implement a system for applying reasonable corrective action. | ___ | ___ |

Name and Title of Endorser (print/type)

Signature

Date

AUTHORIZATION TO RELEASE INFORMATION

I hereby authorize the release of all financial and credit information and/or verification of employment to the Town of Indian Trail and its Parks & Recreation department as said items relate to my interest in security and agreement with the Town. This form may be reproduced/ photocopied to be utilized as my consent to release financial and credit information or employment verification.

Name (Print)

Signature

Date

Sunflower Seeds	\$1.50
Candy Bars	\$1.50
Chips	\$1.00
Skittles	\$1.50
M&Ms	\$1.50
Cookies	\$1.00
Muffins	\$2.50
Double Bubble	10 ¢
Blow Pops	50 ¢
Ring Pops	\$1.00
Big League Chew	\$2.50
Beef Jerky	\$3.50
Peanuts	\$1.50
Bag of Peanuts (In the shell) ***	\$3.50

ITALIAN ICE	\$3 \$4 \$5
SNOW CONES	\$2.50
Bottled Soda	\$2.00
Can Drinks	\$1.00
Gatorade	\$2.50
Sweet Tea	\$2.00
Water	\$1.00
Coffee	\$1.50
Hot Chocolate	\$1.50
Hotdogs	\$2.50
Barbeque	\$3.50
Nachos	\$3.50
Turkey and Cheese	\$3.50



Town of
Warrisburg
 North Carolina
Parks & Recreation

Hamburger/Cheeseburger.....\$3.00

Hot Dog.....\$2.00

Nacho's & Cheese.....\$3.00

Popcorn.....\$1.50

Shelled Peanuts.....\$1.50

Chips/Crackers/Seeds.....\$1.00

Baked Lays/ Whole Grain Crackers



Candies/Candy Bars.....\$1.00



Danish/Muffins/Cookies.....\$1.00



Granola Bars.....\$1.00



Whole Fruits.....\$1.00



\$2.00

Juice Boxes.....\$1.00



Coffee/Hot Chocolate.....\$1.00

Exhibit B

PROPOSAL FORM

Name of Proposer: Creative Food Concepts, Inc.

Date: 2/2/2015

Parks & Recreation Department
100 Navajo Trail
Indian Trail, North Carolina 28079

A PROPOSAL FOR THE PROVISION, OPERATION, AND MAINTENANCE OF CONCESSIONS SALES AT CROOKED CREEK PARK CONCESSION STAND

I propose to provide the required concession operations, as well as required maintenance and upkeep of the facilities and grounds as related to my services.

I propose the term of the agreement be for a period of time not less than ONE year, with the ability to enter into two additional years.

I propose to pay to the Town of Indian Trail the following amounts as a percentage each month of service from sales and related revenues:

OPERATING TABLE

OPERATING YEAR	MONTHLY PERCENTAGE
<u>2015</u>	<u>12%</u>
<u>2016</u>	<u>12%</u>
<u>2017</u>	<u>12%</u>

In addition to the services required in the Management Agreement, I further propose to offer the following additional services to the public (optional):

(use additional pages as necessary)

I am personally educated with the Town of Indian Trail Parks & Recreation Department and am familiar with the privileges to be granted thereon. I have read the related information in this RFP. Furthermore, I feel qualified to submit a proposal.

The undersigned hereby respectfully submits this proposal, including all required Documents/statements.

(Indicate the form of business concern on the line above, i.e., Corporation, Individual, Partnership, Joint Venture, etc.)

Gregory Wra

 Signature

[Signature]

 Signature

 P.O. Box 2132
 Address

 P.O. Box 2132
 Address

 Indian Trail, NC 28079

 Indian Trail, NC 28079

 (704) 650-0377
 Telephone

 (704) 607-3746
 Telephone

**** FOR OFFICE USE ONLY ****

- | | |
|--|--|
| <input type="checkbox"/> General Business Statement | <input type="checkbox"/> Authorization to Release Information |
| <input type="checkbox"/> Proposal Form | <input type="checkbox"/> References (Business, Personal, Credit) |
| <input type="checkbox"/> Statement of Personal History | <input type="checkbox"/> Proof of Insurability |
| <input type="checkbox"/> Proposer's EEO Certification | <input type="checkbox"/> Proposed Price List |
| <input type="checkbox"/> Service Program | <input type="checkbox"/> Privilege License |

STATEMENT OF PROPOSER'S PERSONAL HISTORY

1. Legal Name in Full: Gregory Alan Wren

2. Residential Address: 1902 Willow Crest Dr. Waxhaw, NC 28173

3. Business Address: P.O. Box 2132 Indian Trail, NC 28079

4. Telephone: Home: (704) 650-0377
Bus: (704) 290-5861

5. Have you or your spouse ever filed bankruptcy or been declared bankrupt?
Yes: No: X

6. Have you ever been terminated or asked to resign?
Yes: No: X

7. Have you, as an adult, ever been convicted/fined/placed on probation/given a suspended sentence in any court or had any convictions?
Yes: No: X

8. Do you have any outstanding local, state or federal tax liens or issues that are currently unsettled, or have had a judgment in court against you on any related tax matter in the previous five (5) years? **NO**

NOTE: If you answered "YES" to any above questions, pertinent details must be provided on an additional information sheet. Failure to do so may result in delay of, or the possible disqualification of, your proposal.

I hereby certify that all statements made or in connection with this statement of Personal History are true to the best of my knowledge and belief, and I understand/agree that any misrepresentation, misstatement or omission of material fact may cause forfeiture on my part of all rights to the proposed agreement to be awarded by the Town of Indian Trail, North Carolina.

DATE: 2/2/2015 SIGNATURE: 

**PROPOSER'S
EQUAL EMPLOYMENT OPPORTUNITY (EEO)
CERTIFICATION**

Gregory Alan Wren
Proposer's Name in Full

1902 Willow Crest Dr. Waxhaw, NC 28173
Address

03-0500434
Internal Revenue Service Employer Identification Number

GENERAL

The undersigned certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries or holding companies are and will be treated equally by the firm without regard to or because of race, creed, color, national origin, sex, age or handicap and in compliance with all anti-discrimination laws of the United States of America and the State of North Carolina.

PROPOSER'S CERTIFICATION

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| 1. The proposer has or will implement a written policy statement prohibiting discrimination in all phases of employment. | <u>X</u> | <u> </u> |
| 2. The proposer periodically conducts a self-inspection of its workforce. | <u>X</u> | <u> </u> |
| 3. The proposer has or will develop a system for determining if its practices are discriminatory. | <u>X</u> | <u> </u> |
| 4. Where problem areas are identified in employment practices, the proposer has or will implement a system for applying reasonable corrective action. | <u>X</u> | <u> </u> |

Gregory A. Wren President
Name and Title of Endorser (print/type)

Gregory A. Wren 2/2/2015
Signature Date

AUTHORIZATION TO RELEASE INFORMATION

I hereby authorize the release of all financial and credit information and/or verification of employment to the Town of Indian Trail and its Parks & Recreation department as said items relate to my interest in security and agreement with the Town. This form may be reproduced/ photocopied to be utilized as my consent to release financial and credit information or employment verification.

Gregory A. Wren
Name (Print)

Gregory A. Wren
Signature

2/2/2015
Date



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: March 10, 2015

SUBJECT: Water Line Easement and Bill of Sale for Water Distribution Line at
Crooked Creek Park 1B and Warranty Guarantee

General Information:

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

UCPW also requires a Warranty/Repair Guarantee in the form of a surety in an amount equal to ten percent (10%) of the cost/value of the water and sewer improvements to be accepted by UCPW. The Town's cost is estimated at \$73,860.00. The required surety, a Letter of Credit, or Cash Surety in the amount of \$7,386.00 will be held by UCPW for one (1) year from date of acceptance.

Required Actions:

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

Attachments:

1. Bill of Sale

9/09/2014

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

Water Line Easement and Bill of Sale for Water Distribution Line

DATE:

GRANTOR: **TOWN OF INDIAN TRAIL**

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

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

In consideration of \$1 and other valuable consideration, receipt acknowledged, Grantor hereby grants and conveys to Grantee a perpetual right, privilege and easement, appurtenant to and running with the land and for the following defined purpose and as hereinafter described, together with all water distribution lines, pipes, pumps, valves, taps and other fixtures, equipment and improvements for the distribution of water, located within said easement (the "Water Distribution Line").

Grantee, its employees, agents, contractors, subcontractors and assigns shall have the right, privilege, and easement to enter upon the land for purposes of inspecting, maintaining, excavating, repairing, replacing, improving, enlarging, making alterations, and operating in, upon, across, under and through the land in a proper manner, the Water Distribution Line, together with the right to transport water through the same, together with right to install lines, taps, appliances and other apparatus pertaining to operating and maintaining the Water Distribution Line. Grantee, its employees, agents, contractors, subcontractors and assigns is also granted the right to enter Grantor's land which shall be confined to streets, road and driveways when they exist at the time entry is necessary and when they are adequate for Grantee's purposes, but when they do not exist or are not adequate, such right to enter shall be over the nearest most practical route or routes to said easement.

The easement granted applies only to surface and below ground. A permanent water line utility easement is granted, as shown on Exhibit(s) A attached hereto.

Grantee agrees to leave the land in as good condition as before maintenance, inspection and repairs, except for necessary removal of any trees, shrubs, and other plant growth. Grantor shall have continued use of the surface area included within the easement area, but agrees not to interfere with Grantee's use and easement and privileges and responsibilities associated therewith, nor to construct or permit construction or placement of any type structure or make use of the easement area in any manner that will result in interference, interruption, or impediment of Grantee's easement and use, and Grantor will not cause any damage to Grantee's Water Distribution Line located within the easement area.

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

00014589.1

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

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

Town of Indian Trail _____ (SEAL)
(Signature)

By: _____ (SEAL)
(Name and Title) _____ (Signature)

WITNESS TO ALL GRANTOR SIGNATURES _____
(Signature of Witness)

STATE OF NORTH CAROLINA – UNION COUNTY

ACKNOWLEDGEMENT FOR WITNESS

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

My commission expires: _____ SEAL-STAMP

Notary Public

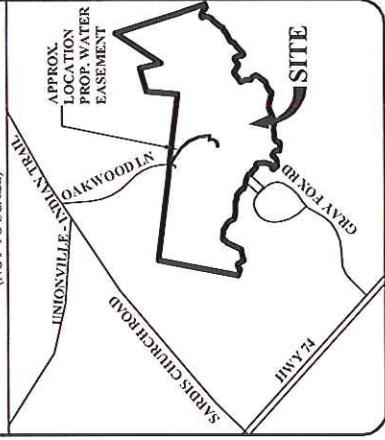
CORPORATE ACKNOWLEDGEMENT (use only black ink)
State of NORTH CAROLINA, _____ COUNTY.

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that ___ he is the _____ of the Town of Indian Trail, a North Carolina municipality, and that by authority duly given and as the act of such entity, ___ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official stamp or seal, this _____ day of _____, 20____ AD.

My commission expires: _____ SEAL-STAMP

Notary Public

VICINITY MAP
(NOT TO SCALE)



Tax # 07-048-19K
TOWN OF INDIAN TRAIL
Db. 5786, Pg. 144

Tax # 07-048-19L
TOWN OF INDIAN TRAIL
Db. 5786, Pg. 144

Tax # 07-048-19B
JUDY B. RICHARDSON
Db. 199, Pg. 122

OAKWOOD LANE
(PUBLIC R/W PER
PLAT CABINET L. FILE 924)

IPF

IPF

IPF

S2°40'37"E
14.94'

POINT OF
COMMENCEMENT

POINT OF
BEGINNING

S59°29'06"E
100.00'

Lot 1
Tax # 07-048-017
Town of Indian Trail
Db. 5786, Pg. 132
Db. 5786, Pg. 144
Cab. L. File 924

①
C 15' WATER
LINE EASEMENT

C1

N89°04'36"W
45.96'

C2

S40°33'41"W
21.44'

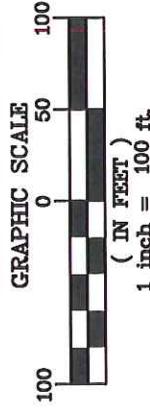
S63°42'02"W
24.93'

POINT OF
TERMINUS

S85°52'26"W
36.28'

CURVE TABLE					
CURVE	DELTA	LENGTH	RADIUS	CHORD	CH LENGTH
C1	31° 19' 53"	235.41	430.50	S46° 34' 52"E	232.49
C2	24° 41' 32"	185.19	429.71	S18° 35' 18"E	183.76
C3	7° 12' 17"	54.04	429.71	S2° 38' 23"E	54.00
C4	7° 40' 59"	51.55	384.50	S4° 45' 52"W	51.52
C5	14° 48' 44"	11.76	45.50	S16° 00' 31"W	11.73

AREA TABLE (LOT 1)		
PARCEL	SQ. FT.	ACRES
Total Area (by deed)	6,978,312	160.2
15' Water Line Easement	11,516	0.26
Temp. 10' Const. Esmt.	N/A	N/A
Area Remaining	6,966,796	159.9



Notes:
1. Bearings shown hereon are referenced to the Easterly right of way of Oakwood Lane being S 02°40' 37" E as per plat recorded in Plat Cabinet L. file 924 of the public records of Union County, NC.
2. This Map is not a certified survey and has not been reviewed by a local governmental agency for compliance with any applicable land development regulations.

I, **PAUL F. ALERS**, certify that this survey was completed under my direct and responsible charge from an actual ground survey made under my supervision; that this plat was prepared under my supervision and that the plat was prepared for the purpose of acquisition and assessments only, and is not intended to be a boundary survey of property shown; that the survey data was obtained JULY 1, 2015; and that all coordinates are based on NAD 83 (2007/Epoch 2002) NCSPC 3200 and NAD 88.

Paul F. Alers
North Carolina Professional Land Surveyor
PLS No. L-1144



UNION COUNTY /
TOWN OF INDIAN TRAIL
EASEMENT ACQUISITION PLAT



EXHIBIT 'A'

OWNER: TOWN OF INDIAN TRAIL
PID 07-048-17
OAKWOOD LANE
INDIAN TRAIL, UNION COUNTY, NC

PROJ. NO. _____
SCALE 1" = 100'
WOOLPERT
PREPARED BY _____
DATE 02/2015

NO.	DATE	PER USPW	REVISION
1	02/17/15		



WOOLPERT
11301 Carmel Commons Boulevard
Suite 300, Charlotte, NC 28217
704.525.6284 (o) 704.525.8529 (f)
FIRM LICENSE NO.: P-0648



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: March 10, 2015

SUBJECT: Sanitary Sewer Line Easement and Bill of Sale for Sanitary Sewage Collection/Outfall Line at Crooked Creek Park 1B and Warranty Guarantee

General Information:

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

UCPW also requires a Warranty/Repair Guarantee in the form of a surety in an amount equal to ten percent (10%) of the cost/value of the water and sewer improvements to be accepted by UCPW. The Town's cost is estimated at \$73,860.00. The required surety, a Letter of Credit, or Cash Surety in the amount of \$7,386.00 will be held by UCPW for one (1) year from date of acceptance.

Required Actions:

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

Attachments:

1. Bill of Sale

9/09/2014

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

Sanitary Sewer Line Easement and Bill of Sale For Sanitary Sewage Collection/ Outfall Line

DATE:

GRANTOR: TOWN OF INDIAN TRAIL

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

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

In consideration of \$1 and other valuable consideration, receipt acknowledged, Grantor hereby grants and conveys to Grantee a perpetual right, privilege and easement, appurtenant to and running with the land and for the following defined purpose and as hereinafter described, together with all sewage lines, pipes, taps, appliances, manholes, force mains, pump stations, and other fixtures, equipment and improvements for the collection and transporting of sewage located within said easement (the "Sanitary Sewage Collection/ Outfall Line").

Grantee, its employees, agents, contractors, subcontractors and assigns shall have the right, privilege, and easement to enter upon the land for purposes of inspecting, maintaining, excavating, repairing, replacing, improving, enlarging, making alterations, and operating in, upon, across, under and through the land in a proper manner, the Sanitary Sewage Collection/ Outfall Line, together with the right to transport sewage through the same, together with right to install lines, taps, appliances, manholes, force main, pump station, and other apparatus pertaining to operating and maintaining the Sanitary Sewage Collection/ Outfall Line. Grantee, its employees, agents, contractors, subcontractors and assigns is also granted the right to enter Grantor's land which shall be confined to streets, road and driveways when they exist at the time entry is necessary and when they are adequate for Grantee's purposes, but when they do not exist or are not adequate, such right to enter shall be over the nearest most practical route or routes to said easement.

The easement granted applies only to surface and below ground. A permanent sanitary sewage line utility easement is granted as shown on Exhibit(s) A attached hereto.

Grantee agrees to leave the land in as good condition as before construction, maintenance, inspection and repairs, except for necessary removal of any trees, shrubs, and other plant growth. Grantor shall have continued use of the surface area included within the easement area, but agrees not to interfere with Grantee's use and easement and privileges and responsibilities associated therewith, nor to construct or permit construction or placement of any type structure or make use of the easement area in any manner that will result in interference, interruption, or impediment of Grantee's easement and use, and Grantors will not cause any damage to Grantee's Sanitary Sewage Collection/ Outfall Line located within the easement area.

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

TO HAVE AND TO HOLD the aforesaid permanent easement and Sanitary Sewage Collection/ Outfall Line and all privileges and appurtenances thereto belonging to the Grantee. Grantor covenants with Grantee, that Grantors is seized of the premises in fee simple, has the right to grant and convey the aforesaid easement, unencumbered, and Grantor will warrant and defend the title thereto against the lawful claims of all persons whomsoever.

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

Town of Indian Trail _____ (SEAL)

(Signature)

By: _____ (SEAL)
(Name, Title) _____
(Signature)

WITNESS TO ALL GRANTOR SIGNATURES _____,
(Signature of Witness)

STATE OF NORTH CAROLINA – UNION COUNTY

ACKNOWLEDGEMENT FOR WITNESS

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

SEAL-STAMP

My commission expires: _____

Notary Public

CORPORATE ACKNOWLEDGEMENT (use only black ink)
State of NORTH CAROLINA, _____ COUNTY.

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that ___ he is the _____ of the Town of Indian Trail, a North Carolina municipality, and that by authority duly given and as the act of such entity, _____ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official stamp or seal, this _____ day of _____, 20____ AD.

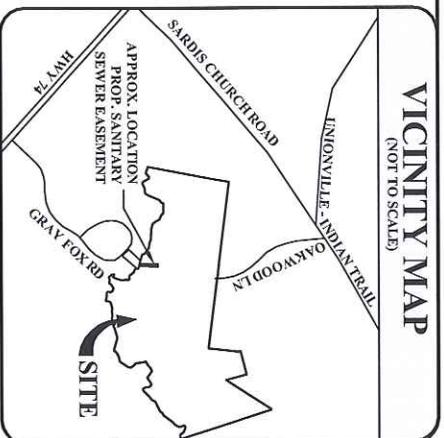
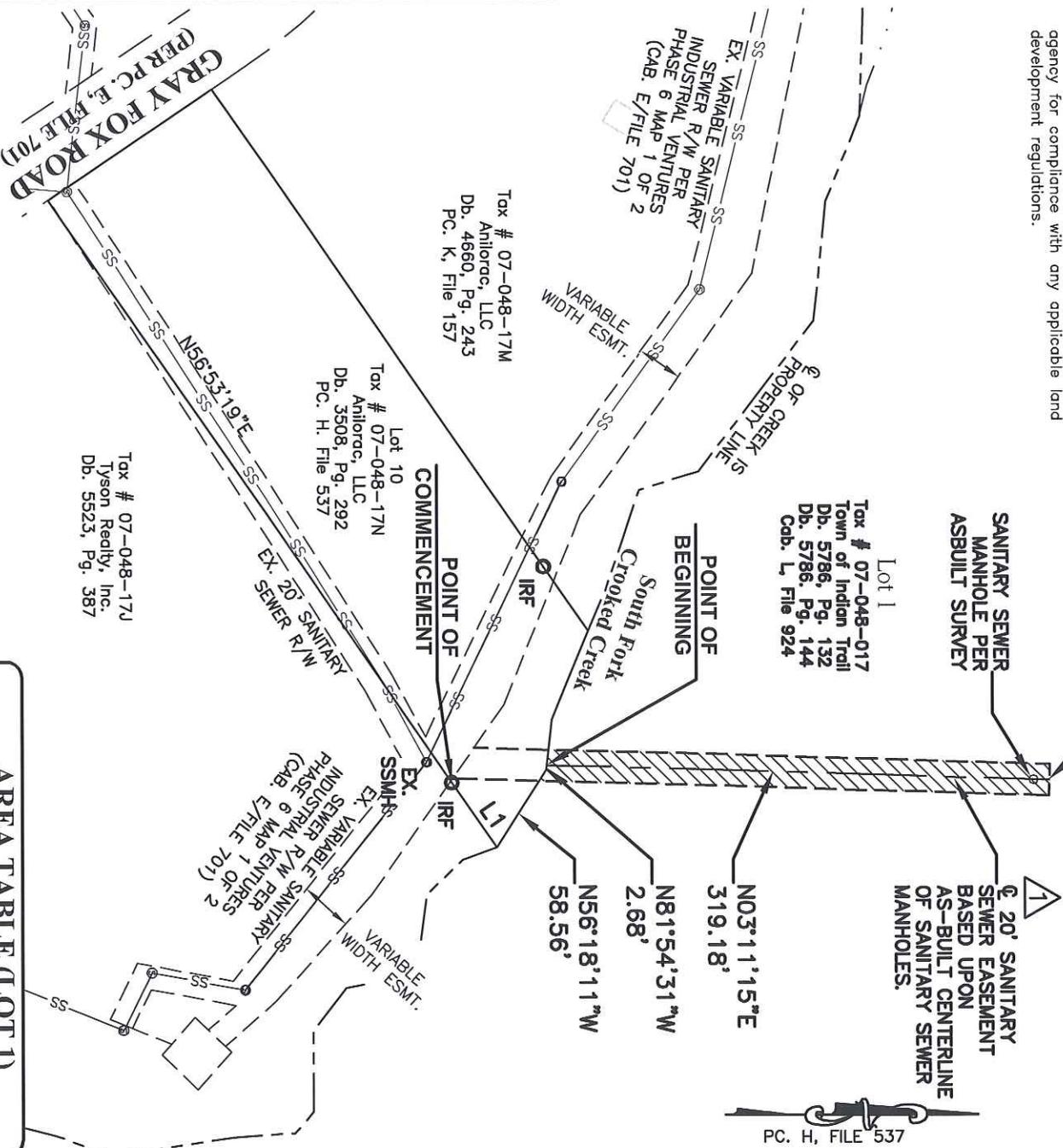
SEAL-STAMP

My commission expires: _____

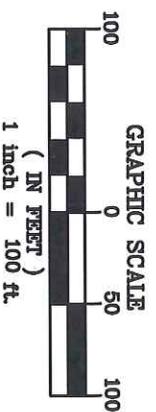
Notary Public

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	50.00'	N56°53'19"E

Notes:
 1. Bearings shown hereon are referenced to the Southeasterly line of Lot 10, Plat Cabinet H, File 537 as being N56°53'19"E.
 2. This Map is not a certified survey and has not been reviewed by a local governmental agency for compliance with any applicable land development regulations.



AREA TABLE (LOT 1)	
PARCEL	SQ. FT. ACRES
Total Area (by deed)	6,978,312 60.2
20' Sanitary Sewer Easement	6,399 0.15
Temp. 10' Const. Esmt.	N/A N/A
Area Remaining	6,971,913 60.1



I, **PAUL F. AKERS**, certify that this survey was completed under my direct and responsible charge from an actual ground survey made under my supervision; that this plat was prepared under my supervision and that the plat was prepared for the purpose of acquisition and assessments only, and is not intended to be a boundary survey of property shown; that the survey data was obtained JULY 1, 2015 and that all coordinates are based on NAD 83 (2007/Epoch 2002) NCSPC 3200 and NAVD 88.

Paul F. Akers
 North Carolina Professional Land Surveyor
 PLS No. L-4144



WOOLPERT
 11301 Carmel Commons Boulevard
 Suite 300, Charlotte, NC 28217
 704.525.6284 (o) 704.525.8529 (f)
 FIRM LICENSE NO.: P-0648

NO.	DATE	FOR USE BY	REVISION
1	02/11/15	PER USPW	



PROJ. NO.	1" = 100'	OWNER: TOWN OF INDIAN TRAIL
SCALE	DATE	PID 07-048-17
WOOLPERT	02/20/15	CROOKED CREEK PARK
PREPARED BY		INDIAN TRAIL, UNION COUNTY, NC

EXHIBIT 'A'

UNION COUNTY /
TOWN OF INDIAN TRAIL
EASEMENT ACQUISITION PLAT



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: March 10, 2015

SUBJECT: Bill of Sale for Sanitary Sewage Collection/Outfall Line Located Within
Sanitary Sewer Easement(s) and/or Road Right-of-Way(s) Previously
Granted to Union County and/or Allowed Through Encroachment(s) By
Third Party(s) at Crooked Creek Park 1B and Warranty Guarantee

General Information:

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

UCPW also requires a Warranty/Repair Guarantee in the form of a surety in an amount equal to ten percent (10%) of the cost/value of the water and sewer improvements to be accepted by UCPW. The Town's cost is estimated at \$73,860.00. The required surety, a Letter of Credit, or Cash Surety in the amount of \$7,386.00 will be held by UCPW for one (1) year from date of acceptance.

Required Actions:

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

Attachments:

1. Bill of Sale

9/20/2013

Drafted by & Return to: Union County Public Works, 500 North Main Street, Suite 500, Monroe, NC 28112-4730

Affecting Tax Parcel(s): _____

**Bill of Sale for Sanitary Sewage Collection / Outfall Line(s) Located
Within Sanitary Sewer Easement(s) and/or Road Right-of-Way(s)
Previously Granted to Union County and/or Allowed Through
Encroachment(s) By Third Party(s)**

DATE:

GRANTOR: TOWN OF INDIAN TRAIL

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

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

Union County has previously obtained Sanitary Sewer Easement(s) (the "Easement") by Third Party(s) pursuant to instrument(s) recorded per the map of "Industrial Ventures Phase 6" in Cabinet E, File 701 of the Union County Register of Deeds. Pursuant to an agreement between Grantor and Grantee, Grantor has constructed Sanitary Sewage Collection/ Outfall Line(s) within the area of the Easement(s) and/or Road Right-of-Way(s), consisting of sewage lines, pipes, taps, appliances, manholes, and other, fixtures, equipment and improvements for the collection and transporting of sewage (the "Sanitary Sewage Collection/ Outfall Line"). In consideration of \$1 and other valuable consideration, receipt acknowledged, Grantor hereby grants and conveys to Grantee and its assigns the Sanitary Sewage Collection/ Outfall Line located within said Easement(s) and/or Road Right-of-Way(s).

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

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

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

Town of Indian Trail _____

(SEAL)

(Signature)

By: _____
(Name and Title)

(Signature) (SEAL)

WITNESS TO ALL GRANTOR SIGNATURES _____,
(Signature of Witness)

STATE OF NORTH CAROLINA – UNION COUNTY

ACKNOWLEDGEMENT FOR WITNESS

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

SEAL-STAMP

My commission expires: _____

Notary Public

CORPORATE ACKNOWLEDGEMENT (use only black ink)

State of NORTH CAROLINA, _____ COUNTY.

I, _____, a Notary Public of the County and State aforesaid, certify that
_____ personally appeared before me this day and acknowledged that ___ he is the
_____ of the Town of Indian Trail, a North Carolina municipality, and that by authority duly given and as the act
of such entity, _____ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and
official stamp or seal, this _____ day of _____, 20 ____ AD.

SEAL-STAMP

My commission expires: _____

Notary Public



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: March 10, 2015

SUBJECT: Future Sewer Line Easements at Crooked Creek Park 1B

General Information:

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

Required Actions:

1. Council Approval of Future Sewer Line Easements

Attachments:

1. Future Sewer Line Easements

9/8/2014

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

Sanitary Sewer Line Easement

DATE:

GRANTORS:

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

In consideration of \$1 and other valuable considerations, receipt acknowledged, Grantors hereby grant and convey to Grantee a temporary construction easement and a perpetual right, privilege and easement, appurtenant to and running with the land and for the following defined purpose and as hereinafter described.

Grantee, its employees, agents, contractors, subcontractors and assigns to have the right, privilege, and easement to enter upon the land for purposes of excavating, constructing, installing, inspecting, maintaining, repairing, replacing, improving, making alterations, and operating in, upon, across, under and through the land in a proper manner, a **SANITARY SEWAGE COLLECTION/ OUTFALL LINE**, together with the right to transport sewage through the same, together with right to install line, taps, appliances, manholes, force main, pump station, and other apparatus pertaining to constructing and maintaining the line. Grantee, its employees, agents, contractors, subcontractors and assigns is also granted the right to enter Grantor's land which shall be confined to streets, road and driveways when they exist at the time entry is necessary and when they are adequate for Grantee's purposes, but when they do not exist or are not adequate, such right to enter shall be over the nearest most practical route or routes to said easement.

The easement granted applies only to surface and below ground. A temporary construction easement for a width of ten feet (10') and a permanent sanitary sewage line utility easement of twenty or thirty feet (20' or 30') in width are granted, either or both as shown on Exhibit A attached, all incorporated herein by reference for more particular descriptions.

Grantee agrees to leave the land in as good condition as before construction, maintenance, inspection and repairs, except for necessary removal of any trees, shrubs, and other plant growth. Grantors shall have continued use of the surface area included within the easement area, but agree not to interfere with Grantee's use and easement and privileges and responsibilities associated therewith, nor to construct or permit construction or placement of any type structure or make use of the easement area in any manner that will result in interference, interruption, or impediment of Grantee's easement and use, and Grantors will not cause any damage to Grantee's sanitary sewage line, materials, manholes, or apparatus located within the easement area.

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

TO HAVE AND TO HOLD the aforesaid temporary and permanent easements and all privileges and appurtenances thereto belonging to the Grantee. Grantors covenant with Grantee, that Grantors are seized of the premises in fee simple, have the right to grant and convey the aforesaid easements, unencumbered, and Grantors will warrant and defend their right to so grant said easements against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Grantors have hereunto set their hands and seals the day and year first above written. If corporate easement conveyance, Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of the Board of Directors, the day and year above written.

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

(Individuals) _____ (SEAL)

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

ACKNOWLEDGEMENT FOR WITNESS

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

My commission expires: _____

SEAL-STAMP

Notary Public

SEAL-STAMP

CORPORATE ACKNOWLEDGE (use only black ink)
State of NORTH CAROLINA, _____ COUNTY.

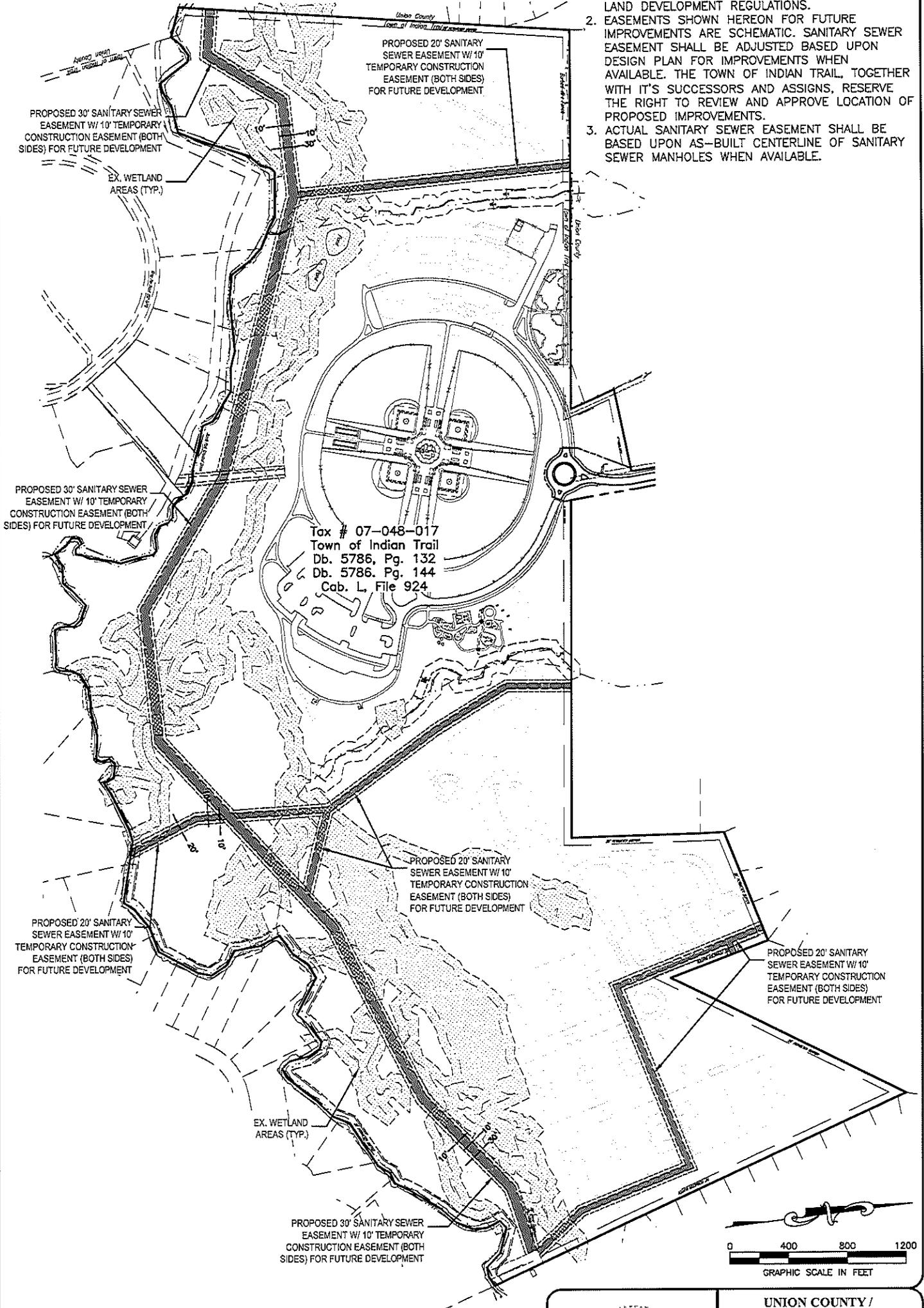
I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that he is Pres./Vice Pres. of _____ a North Carolina corporation, and that by authority duly given and as the act of such entity, _____ he signed the foregoing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

(My commission expires)

(NOTARY PUBLIC)

NOTES:

1. THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENTAL AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.
2. EASEMENTS SHOWN HEREON FOR FUTURE IMPROVEMENTS ARE SCHEMATIC. SANITARY SEWER EASEMENT SHALL BE ADJUSTED BASED UPON DESIGN PLAN FOR IMPROVEMENTS WHEN AVAILABLE. THE TOWN OF INDIAN TRAIL, TOGETHER WITH IT'S SUCCESSORS AND ASSIGNS, RESERVE THE RIGHT TO REVIEW AND APPROVE LOCATION OF PROPOSED IMPROVEMENTS.
3. ACTUAL SANITARY SEWER EASEMENT SHALL BE BASED UPON AS-BUILT CENTERLINE OF SANITARY SEWER MANHOLES WHEN AVAILABLE.



WOOLPERT
 11301 Carmel Commons Blvd., Ste. 300
 Charlotte, NC 28226
 704.525.6284 (o) 704.525.8529 (f)
 FIRM LICENSE NO.: P-0648

NO.	DATE	REVISION

	UNION COUNTY / TOWN OF INDIAN TRAIL EASEMENT ACQUISITION EXHIBIT	
	<h2>EXHIBIT 'A'</h2>	
PROJ. NO. WOOLPERT PREPARED BY	1"=400' SCALE 03/2015 DATE	OWNER: TOWN OF INDIAN TRAIL PID 07-048-017 OAK WOOD LANE INDIAN TRAIL, UNION COUNTY, NC



TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 10, 2015

SUBJECT: Certificate of Corporate Resolution

As part of the Town Council approval process for the Sale of Water and Sewer lines at Crooked Creek and the surety requirement, attached is a 'Certificate of Corporate Resolutions' from BB&T. This is a document required by the bank to complete the surety requirement for this project. This letter of credit will have to be held for 1-year after the acceptance by Union County Public Works of the entire Development Phase Project or until all infrastructure required in the final plat for the Development Phase (as that term is defined in the Ordinance) has been installed, whichever is later.

**CERTIFICATE OF CORPORATE RESOLUTIONS
And Authorization To Borrow**

I HEREBY CERTIFY to Branch Banking and Trust Company (herein "Bank"), that I am the duly elected or appointed and qualified Town Manager ("Certifying Officer") of Town of Indian Trail, a corporation organized and existing under the laws of the State of North Carolina, having its executive offices in the City of Indian Trail, State of North Carolina (herein "Corporation"); that the taxpayer identification number of the Corporation is 56-1108235; that I am the keeper of the records of the Corporation and its corporate seal, if required by law or its bylaws; that the following is a true and correct copy of resolutions duly adopted at a meeting of the Board of Directors of the Corporation held in accordance with its bylaws and the laws of said state, on the 10th day of March, 2015, as taken and transcribed by me from the minutes of said meeting and compared by me with the original of said resolutions recorded in said minutes, and that the same have not in any way been modified, repealed, or rescinded but remain in full force and effect.

COPY OF RESOLUTIONS

BE IT RESOLVED that the following officers of this Corporation, Joseph Fivas or any one or more of them unless otherwise limited below, are hereby authorized, empowered and directed to perform the following acts and deeds in the name of and on behalf of this Corporation:

- (a) To negotiate and procure loans from the Bank up to an amount not exceeding (if there is no limit, so indicate) \$ 7,386 in the aggregate at any one time outstanding on such terms and conditions as said officer or agent deems proper; and to negotiate and procure loans from BB&T on BB&T Business Cards under such terms and conditions as contained in the BB&T Commercial Card Plan Agreement; and
- (b) To pledge collateral to secure and/or to guarantee the indebtedness and obligations of _____ (herein "Borrower"), who/which is a _____, and to enter into and execute _____ (Resident of state, Corporation, Partnership, LLC, LLP or LLLP of state) any one or more of the following: security agreement, deed of trust, guaranty agreement, mortgage, other security instrument or other writing (herein "Documents") in favor of Bank upon such terms, in such form, and pledging as security such collateral owned by the Corporation, as such officer deems advisable and appropriate to guarantee payment and secure performance of all obligations of Borrower to Bank, whether direct or indirect, absolute or contingent, or now existing or hereafter arising. Corporation acknowledges that it has an economic interest in Borrower and that the funds, credit, or financial assistance desired by said Borrower from Bank will only be extended upon the promise of Corporation to guarantee and secure all obligations of Borrower as set forth in the Documents; and
- (c) To give security for any liabilities of the Corporation to Bank by pledge, mortgage, assignment, security interest, or other lien upon any real or personal property, tangible or intangible, of the Corporation, and to execute in such a form as may be required by the Bank all notes and other evidences of such loans, all instruments of pledge, mortgage, assignment, security interest, or other lien, all financing and other agreements with Bank relating to the terms and conditions upon which any such loans may be obtained and to the security to be furnished by this Corporation therefore, provided, however, that the endorsement of commercial or other business paper discounted may be effected by any one of them; and
- (d) To discount with said Bank, commercial or other business paper belonging to this Corporation, made or drawn by or upon third parties, without limit as to amount; and
- (e) To modify, supplement or amend such agreements, guarantees, notes or other writings, any such terms or conditions thereof, and any such security; and
- (f) To pledge, assign, guarantee, mortgage, cosign, grant security interests in and otherwise transfer to Bank additional security and collateral for any and all debts and obligations of either this Corporation or of Borrower to Bank, whenever and however arising; and
- (g) To do and perform all other acts and things deemed by any such officer or agent necessary, convenient, or proper to carry out any of the contents of these resolutions; hereby ratifying, approving, and confirming all that any such officers or agents have done or may do in the premises.

RESOLVED FURTHER, that the following officer(s), _____ are hereby authorized to enter into and execute on behalf of the Corporation foreign exchange transactions and wire transfers through the Bank to and from accounts of the Corporation in accordance with the Bank's procedures and requirements, and such officers are hereby authorized and directed to do and perform all necessary and proper acts to carry out such authority; and

RESOLVED FURTHER, that the Certifying Officer of this Corporation shall certify to said Bank the names and signatures of the persons who are at present authorized to act on behalf of this Corporation under the foregoing resolutions and shall from time to time hereafter, as changes in the personnel of said officers and employees are made, immediately certify such changes to said Bank, and Bank shall be fully protected in relying on such certifications of the Certifying Officer and shall be indemnified and saved harmless in any claims, demands, expenses, loss, or damage resulting from or growing out of honoring the signature of any officer or employee so certified; and

ACCOUNT# / NOTE#

RESOLVED FURTHER, that any officer, employee or person designated hereunder is authorized to sign, endorse and negotiate any Convenience Checks issued to the Corporation in connection with the BB&T Business Card. BB&T is authorized to honor, receive and pay all Convenience Checks even though drawn or endorsed to the order of any person signing the same or tendered by him for cashing, or in payment of the individual obligation of such persons, or for deposit to his personal accounts, and BB&T shall not be required or be under any obligation to inquire as to the circumstances of issuance, use or disposition of any Convenience Checks; and

RESOLVED FURTHER, that the foregoing resolutions shall remain in full force and effect until written notice of their amendment or rescission shall have been received by said Bank, and that receipt of such notice shall not affect any action taken by said Bank prior thereto; and

RESOLVED FURTHER that the Certifying Officer of the Corporation is hereby authorized and directed to attest the signatures of the above authorized officers as may be required from time to time by the Bank; and

RESOLVED FURTHER, that all transactions by any of the officers or employees of this Corporation on its behalf and in its name, with Bank prior to the delivery to Bank of a certified copy of the foregoing resolutions are, in all respects, hereby ratified, confirmed, approved, and adopted; and

RESOLVED FURTHER, that _____

RESOLVED FURTHER, that the following LIMITATIONS to the above apply, if any:

I HEREBY CERTIFY that neither these resolutions nor any action to be taken pursuant hereto are or will be in contravention of any provision of the articles of incorporation, bylaws or any agreement, indenture, or other instrument to which such Corporation is a party, and that no consent by shareholders is required to authorize the actions taken by this resolution, and that the actions authorized hereby are not in contravention of any applicable law or statute.

I HEREBY FURTHER CERTIFY that the following named persons have been duly elected or appointed to the offices set opposite their respective names, that they continue to hold these offices at the present time, and that the signatures appearing hereon are the genuine, original signatures of each respectively:

(PLEASE SUPPLY GENUINE SIGNATURES HEREUNDER)

_____ (Signature)	President	_____ (Signature)	Vice President
_____ Type or Print Name		_____ Type or Print Name	
_____ (Signature)	Treasurer	_____ (Signature)	Asst. Treasurer
_____ Type or Print Name		_____ Type or Print Name	
_____ (Signature)	Secretary	_____ (Signature)	Asst. Secretary
_____ Type or Print Name		_____ Type or Print Name	
_____ (Signature)	Town Manager	_____ (Signature)	
_____ Type or Print Name		_____ Type or Print Name	

Joseph Fivos
Type or Print Name

IN WITNESS WHEREOF, I have hereunto affixed my name as _____ of the Corporation
this _____ day of _____

Witness: _____
Signature of Certifying Officer
Type or Print Name

STATE OF NORTH CAROLINA
COUNTY OF _____

IMPRINT
SEAL HERE
(if Corporation has official seal)

I, _____ a Notary Public, do hereby certify that _____ personally came before me this day and acknowledged that (s)he is _____ of _____ a
(State of formation) corporation, and that (s)he, in such representative capacity voluntarily signed this instrument for the purposes stated therein.

Witness my hand and official stamp or notarial seal this _____ day of _____

(SEAL)

NOTARY PUBLIC
My Commission Expires: _____

(SEAL)



TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 10th, 2015

SUBJECT: Part-Time Seasonal Staff

Town staff is preparing for our first seasons of running athletic programs and park maintenance for the Town of Indian Trail. The Town expects to have approximately 400,000 visitors to our parks this next fiscal year. In order to maintain our park system and coordinate our athletic events, Town staff is requesting to hire four part-time seasonal Park Assistants that will be employed throughout the summer months. These employees will perform many tasks for our parks and recreation team. The Town is also requesting to hire a part-time seasonal Events Assistant. The Town will look to hire locally for these positions, and will be funded within the current allocated budget dollars for staff and future fiscal year budgets that are subject to approval by the Town Council.

Staff Recommendation:

Town staff is looking for the Town Council's approval of hiring and approving the creation of four part-time seasonal 'Park Assistant' positions, and one part-time seasonal 'Events Assistant'. If approved, Town staff will begin interviewing candidates for these positions.



TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 10th, 2015

SUBJECT: DMV User Code Agreement

Our Town code enforcement staff has had recent difficulties of having automobiles towed out of state maintained streets. Town staff is requesting the Town Council to consider approval of this agreement that would expedite the Town in having automobiles towed on state maintained streets. This would allow staff to identify the owners of abandoned automobiles.

Staff Recommendation:

Staff is requesting the Town Council's approval of the DMV User Code Agreement.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES

PAT MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

**PROSPECTIVE TELEPHONE SUBSCRIBERS
SPECIAL TELEPHONE SERVICE**

For more than 30 years the Division of Motor Vehicles has provided service to the citizens of North Carolina by the identification of motor vehicles through telephone service. A survey was conducted and it was determined that 40% of the telephone calls received in the Telephone Information Center (919-715-7000) were from automobile dealers, lending institutions and insurance companies.

The purpose of this specialized telephone service is to allow customers to acquire an unlimited number of inquiries per telephone call. A service charge of \$1.00 will be made for each inquiry. This will enable the Division to recover the cost of providing you this special service. This service is available from 8:00 to 5:00 Monday thru Friday.

The system is computerized and you will be billed monthly through the computer system. To facilitate record keeping and automated billing, each user will be assigned a **user code**. The user code and a special telephone number will be supplied upon approval of your application.

For the system to function efficiently, guidelines have been established, which are covered in the enclosed agreement. If your firm would like to subscribe to the service, please complete the enclosed agreements in order that you may be assigned a user code number. Please mail agreements to:

NC DIVISION OF MOTOR VEHICLES
Attn: Renita Kaczowsky
Driver and Vehicle Services Section
Customer Contact Center
286 Aviation Parkway
Elizabethtown, NC 28337

SPECIAL NOTE: AGREEMENTS & MVR 605A MUST BE COMPLETED IN FULL ACCOMPANIED BY A SELF-ADDRESSED STAMPED ENVELOPE.

**DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
USER CODE AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the Division of Motor Vehicles of the State of North Carolina, acting by and through the Commissioner of Motor Vehicles, (hereinafter called Division) party of the first party, and _____ (hereinafter called subscriber) party of the second part.

WHEREAS, it is the desire of the Division that an on-line service be established and maintained for the purpose of providing information relative to the registration records of motor vehicles, and

WHEREAS, the Division has agreed to operate an on-line service in accordance with the terms of this agreement:

NOW, THEREFORE, in consideration of the obligations hereinafter set forth, the parties agree as follows:

1. The term of this Agreement shall be indefinite and shall continue until cancelled according to the provisions of this Agreement.
2. Either party may terminate this agreement at such time as it is made apparent that the other party is not fully performing its obligations.
3. The service provided by the Division through this Agreement will be available only to subscribers to whom a user code has been assigned.
4. The service provided by the Division will be restricted to information contained in its computerized registration master record and will include only the current and former owner's records.
5. A billing notice, covering \$1.00 per record search, will be mailed by the Division to the subscriber monthly.
6. The service provided by the Division through this Agreement will be terminated for non-payment after thirty(30) days following the date of the monthly billing.

IN WITNESS WHEREOF, the said parties have hereunto set their hands the day and year first written above.

WITNESS

REPRESENTATIVE OF VEHICLE SERVICES

DATE

WITNESS

SUBSCRIBER

DATE

NAME OF ACCOUNT: _____

NAME OF CONTACT PERSON: _____

TELEPHONE NUMBER: _____

North Carolina Division of Motor Vehicles

Request for Motor Vehicle Information

The Federal Driver's Privacy Protection Act requires that personal information in DMV records be closed to the public. Personal information from these records may be released to individuals or organizations that qualify under one of the fourteen exceptions listed on the back of this form.

- I REQUEST CERTIFIED COPY OF COMPLETE TITLE HISTORY
- I REQUEST CERTIFIED COPY OF PARTIAL TITLE HISTORY
- I REQUEST AN IDENTIFICATION OF THE FOLLOWING:
(Check applicable block below)
 - License number: _____
 - Identification number: _____
 - Name (Full Name Registered) _____
 - Name of Insurance Company _____
 - Insurance Policy Number _____

I am qualified to obtain this information under exception number 197 listed on reverse side.
 I understand that I may not redisclose this information except as provided by statute. _____
 (Requester Must Initial)

Reason for Identification: _____

NOTE: Improper release of this information and/or false representation to gain information are prohibited acts under both state and federal law. (Class 2 misdemeanor G.S.20-43.1).

Requested by:

Signature: _____
 (First) (Middle) (Last)

Address: _____
 (Street)

 (City) (State) (Zip Code)

Telephone: _____

Driver License Number: W/A Date: _____

Vehicle Information - \$1.00 fee. Mail form & fee to N.C. Division of Motor Vehicles RTP Unit,
 3148 Mail Service Center, Raleigh, NC 27699-3148

Certified Copies - \$10.00 fee. Mail form & fee to N.C. Division of Motor Vehicles, Room 100,
 3157 Mail Service Center, Raleigh, NC 27699-3157

(SEE REVERSE SIDE)

FEDERAL DRIVER'S PRIVACY PROTECTION ACT

Enacted by Congress August 24, 1994

Chapter 123, Section 2721 requires that personal information in DMV records be closed to the public. This refers to photos, social security numbers, driver license numbers, names, addresses, telephone numbers and medical information.

General Purpose: A State Department of Motor Vehicles, and any officer, employee or contractor, thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record.

Permissible Uses: Personal information SHALL be disclosed for use in connection with matters of:

- A. Motor vehicle or driver safety and theft
- B. Motor vehicle emissions
- C. Motor vehicle product alterations, recalls or advisories
- D. Performance monitoring of motor vehicles and dealers by motor vehicle manufacturers
- E. Removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out purposes of the Automobile Information Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Safety Act of 1966, the Anti-Car Theft Act of 1992 and the Clean Air Act

Exceptions:

Personal information MAY be disclosed as follows: (List qualifying number on reverse)

1. For use by any government agency, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions
2. For use in matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities, including survey research, and removal of non-owner records from the original owner records of motor vehicle manufacturers
3. For use in the normal course of business by a legitimate business, but only:
 - a. To verify accuracy of personal information
 - b. To obtain correct information, but only for purposes of:
 - Preventing fraud by the individual
 - Pursuing legal remedies against the individual
 - Recovering on a debt or security interest against the individual
4. For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State or local court or agency (includes the execution or enforcement of judgments and orders or court orders)
5. For use in research activities and statistical reports
 - a. Personal information must not be:
 - Published
 - Redisclosed
 - Used to contact individuals
6. For use by insurance companies in connection with claims investigation, antifraud activities, rating or underwriting
7. For use in providing notice to owners of towed or impounded vehicles
8. For use by private investigators or licensed security service
9. For use by employer to verify information regarding CDL
10. For use in connection with private toll facilities
11. For any other use if person has opportunity to refuse disclosure on DMV forms (Prohibited by N.C General Statute 20-43.1)
12. For bulk surveys, marketing or solicitations, if person has opportunity to refuse disclosure on DMV forms. (Prohibited by N.C. General Statute 20-43.1)
13. For use by any requester that has obtained written consent of the individual to whom the information pertains
14. For any use authorized by state law



TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: March 2, 2015

SUBJECT: Construction Manager at Risk (CM@Risk) – Pre-Construction Agreement

Council chose Edifice Inc as Construction Manager at Risk for the proposed Indian Trail Town Hall. One of three agreements needing approval is the Pre-Construction Agreement.

Staff is recommending approval of this agreement.

KDB

CONSTRUCTION MANAGER AT RISK PRE-CONSTRUCTION SERVICES AGREEMENT

THIS PRE-CONSTRUCTION SERVICES AGREEMENT (the "Agreement"), made this ___ day of _____ in the year of 2015 for Town of Indian Trail New Town Hall Project (the "Project") by and between Edifice, Inc. (the "Construction Manager at Risk" or "CM"), a North Carolina corporation with its principal office and place of business in Charlotte, North Carolina, and the Town of Indian Trail, North Carolina ("the Owner"), a North Carolina municipality.

WITNESSETH:

Whereas the Owner has published a Request for Qualifications dated November 4, 2014 seeking the submission of qualifications and competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the New Town Hall Project (the "Project") identified and described in that Request for Qualifications; and,

Whereas, the undersigned Construction Manager at Risk submitted its qualifications and a competitive proposal that was evaluated by the Owner; and,

Whereas, the Owner, through its awarding authority, has made an award for the pre-construction services related to the Project work to the undersigned Construction Manager at Risk, and the parties desire to memorialize their contractual relationship with respect to such pre-construction services;

Now therefore, the Construction Manager at Risk and the Owner agree as follows:

1. The Construction Manager at Risk shall provide pre-construction services in accordance with Exhibit A attached hereto and incorporated herein by reference (the "Pre-Construction Services").
2. The Owner will compensate the Construction Manager at Risk for Pre-Construction Services in the amount of \$35,000.00 ("Lump Sum") (1/2 of 1% of project value) plus Reimbursable Costs (as defined in Exhibit B). On or before the 30th day of each month, the CM shall submit an application for payment to the Owner, complete with substantiating data, for the amount of that portion of the Lump Sum due, plus the Reimbursable Costs incurred during the prior month ("Application for Payment"). The amount of the Lump Sum due shall be determined by taking the CM's good faith estimate of the percentage of the Pr-Construction Services performed to date, multiplied by the Lump Sum, minus the previous progress payments of the Lump Sum. Payment will be made within thirty (30) days of the Owner's receipt of a properly submitted and correct application for payment.
 - a. Larger project (more site work and building costs) plus an additional pricing exercise (Schematic Estimate in addition to Design Development, Construction Documents, and Public Bid Process)

3. The Owner may terminate this Agreement for any reason upon ten (10) calendar days written notice (delivered by overnight mail or by certified mail, return receipt requested). This Agreement may be terminated by either party upon seven (7) calendar days written notice (delivered by overnight mail or by certified mail, return receipt requested) should the other party fail to perform in accordance with its terms through no fault of the party terminating this Agreement. In the event of termination, the Construction Manager at Risk shall receive payment for services rendered prior to receipt of the written termination notice. Any work done by the Construction Manager at Risk prior to termination shall become the property of the Owner.
4. The CM shall provide the insurance set forth in Exhibit C. To the fullest extent permitted by law, CM agrees to defend, indemnify and hold harmless the Owner, its public officials, officers, employees and agents, from and against any and all claims, damages, loss or expense, including reasonable attorney's fees and litigation expenses, arising out of, or resulting from: (a) injury to or sickness, disease or death of any person or injury to property, but only in the event caused in whole or in part by the negligence or intentional misconduct of the CM or anyone working under the CM; and (b) as long as all Owner payments to CM are current and paid in full, claims against Owner by the CM's consultants, subcontractors or suppliers (of any tier) arising out of or related to non-payment by CM. This indemnity shall survive termination of the Agreement. In any case in which CM provides a defense to the Owner, its public officials, officers, employees and agents, CM shall do so using attorneys reasonably acceptable to Owner.
5. **E-verify requirements.** CM certifies that it is in compliance with all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, which generally provides that each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The CM agrees that during the term of this Agreement it shall comply and shall require all subcontractors to comply with any and all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, and the CM agrees to incorporate in all further contracts or subcontracts for the Project a provision requiring compliance with Article 2, Chapter 64 of the North Carolina General Statutes.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and date first above written in two (2) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Construction Manager at

Risk: EDIFICE, INC

By: _____

Printed Name: _____

Title: _____

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

Date:

Attest: (Corporation)

By: _____

Title: _____

(Corporate Sec. or Asst. Sec. only)

(CORPORATE SEAL)

TOWN OF INDIAN TRAIL

By:

Title:

Date:

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

Finance Officer

Date: _____

|

EXHIBIT A
SCOPE OF PRE-CONSTRUCTION SERVICES

1. The CM shall meet with the Owner, the Project Designer and any other design team members (the “Project Team”) as needed to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project. The CM shall become an integral part of the Project Team and shall develop written project procedures in cooperation with the Owner that will be used as a guide for the management and coordination of this project throughout the design and construction of the project.

2. Consultation During Project Development
 - a. The CM shall attend regularly scheduled meetings with the Project Designer and consultants during the Design Phase to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The CM shall provide written recommendations on construction feasibility.

3. Value Analysis
 - a. The CM shall provide continuous value analysis studies as the project design is developed to offer suggestions that provide the most effective value in terms of first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and function. All recommendations by the CM shall be in writing and must be fully reviewed with the Project Designer and Owner, and approved by the Owner prior to implementation.

 - b. The CM shall promptly notify the Owner and Project Designer in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

 - c. The CM shall conduct a major value analysis study at 100% Design Development (utilizing the 100% Design Development documents) which shall include, but not be limited to, the items noted below:
 1. Develop value analysis concepts for consideration in brainstorming sessions with the Design Team.

 2. Written cost studies shall be produced and submitted to the Owner within two (2) weeks of the final brainstorming session. Written pro/con evaluation of the cost studies shall be provided to the Owner within two (2) weeks after submission of the cost studies.

3. A formal written value analysis study document including a summary of value analysis items, applicable cost savings, selected items and their corresponding cost savings shall be presented to the

Owner & Project Designer.

4. The CM shall also conduct value analysis studies during the Construction Document Phase of design to evaluate specific items as requested by the Owner.

4. Schedule

- a. The CM shall schedule Pre-Construction Services in accordance with the design schedule established in the agreement between the Owner and Project Designer. The CM is responsible to monitor this schedule during the pre-construction/design phase, insure that this schedule is updated, and to advise the Owner of any deficiencies in adhering to this schedule by any party.

5. Constructability Review

- a. The CM shall review the design continuously throughout the Pre-Construction Phase as to constructability. With respect to each constructability issue, the CM shall submit a written report to both the Owner and the Project Designer. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the in-depth study/research conducted by the CM; and, (3) the CM's written recommendations for addressing the issue.

6. Construction Cost Model/Estimates

- a. The CM shall develop a project budget/cost model (the "CM Cost Model"), independent from any similar cost estimates required of the Project Designer, which shall be updated as needed but at a minimum at the end of each design phase during which the CM is performing Pre-Construction Services. (the "CM Cost Model Update"). Prior to the development of the CM Cost Model, the CM will meet with the Project Designer and Owner to ascertain the Owner's project construction budget and to establish a common cost estimating format so that project cost estimates prepared by the Designer and CM may be directly compared.
- b. Each CM Cost Model Update must set forth the total construction costs for the project including alternates, the Construction Management Fee, General Conditions, Bonds, Insurance and CM Contingency.
- c. In the event that the Project Designer's Statement of Probable Construction Costs exceeds the project construction budget, the Owner may direct the CM to (and the CM shall without additional compensation) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the project program within the project construction budget.
- d. Each CM Cost Model Update and the Designer's Statement of Probable Construction Costs will be reviewed by the Project Designer and the

Owner for reasonableness and compatibility with the Owner's Project Construction Budget. Meetings and negotiations between Owner, Project Designer and the CM will be held to resolve questions and differences that may occur between the Designer's Statement of Probable Construction Costs and the CM Cost Model Update. The CM shall work with the Owner and Project Designer to reach a mutually acceptable joint Statement of Probable Construction Cost.

7. Coordination of Contract Documents

- a. The CM shall review the project plans and specifications for features that may be ambiguous, confusing, conflicting or erroneous and shall notify the Project Designer and Owner in writing when such features are observed.
- b. The CM shall provide a thorough interdisciplinary coordination review of the project plans and specifications submitted for review. The coordination review shall be performed by a qualified firm or personnel utilizing a structured and industry accepted process. The CM shall review the final documents to see that all comments have been incorporated.
- c. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM during the review process shall be deemed to be corrected, and any associated costs shall be included in the GMP unless the CM notifies the Owner otherwise in writing prior to the advertisement for bids from Principal Trade and Specialty Contractors or subcontractors.

8. Construction Guaranteed Maximum Price (GMP) and Final Schedule

- a. The CM shall prequalify Principal Trade and Specialty Subcontractors in compliance with Article 16 of the General Conditions.
- b. Prior to bidding, it shall be the responsibility of the CM to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the Project Designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages.
- c. The CM shall create a Bid Package Manual outlining the various subcontractor Bid Packages with the associated scopes for bidding purposes along with any milestone and logistical requirements,
- d. The CM shall solicit prequalified subcontractor bids as outlined within the Bid Package Manual and hold Bid Openings in compliance with the requirements of Articles 16 and 49 of the General Conditions.
- e. The CM may submit to Owner the GMP and Final Schedule for the Project at any time after completion and approval of the Design Development

Phase of design, likely after receipt of bids from Principal Trade and Specialty Contractors. However, in any event, the CM shall submit to the Owner the GMP and the Final Schedule within 44 calendar days from the date that the Construction Documents (reviewed, approved and permitted set of documents) are issued. The CM will develop and provide to the Owner in writing a GMP, which is more particularly described in the Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price, but which shall include all construction costs, including amounts to be paid to principal trade and specialty contractors (the "Principal Trade and Specialty Contractors") and others for construction of the project (the "Cost of the Work"), and all other projected costs including without limitation the Construction Management Fee, General Conditions and CM Contingency but not including the Owner's Construction Contingency. The GMP shall set out as the Cost of the Work each anticipated trade contract and subcontract amount. The GMP must not exceed the project construction budget.

- f. In the event that the GMP exceeds the project construction budget, the Owner reserves the right to direct the CM to (and the CM shall, without additional compensation) work in conjunction with the Project Designer to redesign the Project as necessary to meet the project construction budget. The CM shall work with the Project Team to identify alterations and revisions of the project plans and specifications as necessary to accomplish the required reduction in cost and shall provide the Owner

with a revised GMP based on the altered and revised documents.

Upon acceptance by the Owner of a GMP, the Owner shall prepare and the CM shall execute the Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price to reflect their agreement as to the GMP and the CM's Construction Management Services, such agreement to be in form and substance reasonably satisfactory to both parties.

9. Non-Acceptance of the GMP

- a. The Owner, at its sole discretion, may decline to accept the GMP submitted by the CM and thereupon without penalty, the CM's work will end upon completion of the Pre-Construction Phase contract.
- b. The CM shall accept the amount negotiated for Pre-Construction Services as full and complete reimbursement of all costs and services performed by the CM for Pre-Construction Services. Thereafter, the Owner shall have the right to continue its activities to place the project under construction with no obligation or restriction regarding the CM and with full ownership and use of any data and information written or electronic developed during Pre-Construction activities.

10. Ownership of Documents

All data information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the CM or in the possession or control of the CM relating to the Project are the property of the Owner and shall be turned over to the Owner within ten (10) days after the Owner's request.

EXHIBIT B
LIST OF APPROVED REIMBURSABLE COSTS

The term "Reimbursable Costs", as used in this Agreement, shall mean the reasonable costs necessarily, and actually, incurred in connection with CM's Services, and which shall include *only* the following items:

- (a) Mailing costs and overnight or special delivery services (but no additional charge shall be made for facsimile transmissions);
- (b) Statutory fees paid to governmental agencies for securing approvals of authorities having jurisdiction over the Project (i.e. permit fees, development fees, etc.);
- (c) Fees of subcontractors (other than those included in the Pre-Construction Services for this Agreement as part of the scheduled fee for the CM's Services) if their employment is authorized in advance by the Owner in writing; provided, however, that such subcontractors' fees shall be payable at cost, without markup to the Owner;
- (d) Costs of reproduction and printing of drawings, specifications and other documents in excess of that amount included in the Pre-Construction Services covered by the scheduled fee for the CM's services under this Agreement. Under no circumstances will the cost of reproductions for the office use of the CM or the CM's subconsultants be included as a Reimbursable Cost;
- (e) Costs of photographic production techniques when used at the written request of the Owner;
- (f) Any other necessary, incurred costs approved in advance by the Owner.
- (g) CM Design Phase plan allowance of \$2,000.00 (include with Preconstruction Services bills)
- (h) Bid and Outreach Session advertising costs in newspapers, websites, and any other necessary publications.

No data processing, word processing or other secretarial or clerical charges shall be allowed as Reimbursable Costs.

Receipts are required for all Reimbursable Costs. The Owner reserves the right to require additional documentation of Reimbursable Costs, and the right to audit all such Costs at a reasonable time and place.

**EXHIBIT C
INSURANCE
REQUIREMENTS**

The CM shall furnish the following insurance with respect to the Project or the services required under the Agreement:

1.1 Commercial Liability and Other Insurance. At all times while this Agreement is in effect, CM will take out and keep in force at its expense:

1.1.1. Commercial General Liability insurance, including insurance against assumed or contractual liability of the CM, with a combined single limit for each occurrence of not less than \$1,000,000 per occurrence and aggregate (including primary and excess coverage) with respect to claims and damages arising out of personal injury, sickness, disease, death or property damage.

1.1.2 If and to the extent required by law, worker's compensation or similar insurance in amounts, and in a form, as required by the law of the state where CM's employees are employed, or by the state where the services are performed, as may be applicable or required.

1.1.3 Automobile liability insurance to insure CM for operations of all owned, hired, and non-owned vehicles with limits for each accident of not less than \$1,000,000 Combined Single Limit with respect to Bodily Injury, Death and Property Damage.

1.1.4 All insurance required under this Section 1.1, with the exception of Section 1.1.2, shall be occurrence-based and name the Owner and/or, at the option of the Owner, any interested designees of the Owner as additional insureds.

1.2 Certificates of Insurance. At the time of commencement of services under the Agreement, certificates of insurance reflecting the actual retention of the insurance policies required by this Article shall be filed with the Owner. Such certificates shall bear the endorsement "not to be canceled, allowed to lapse or substantially modified without thirty (30) days' prior written notice by certified mail, return receipt requested, to the Owner, c/o Owner, Attn: _____"



TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: March 2, 2015

SUBJECT: Construction Manager at Risk (CM@Risk): Exhibit 1 - General Conditions of the Contract

Council chose Edifice Inc as Construction Manager at Risk for the proposed Indian Trail Town Hall. One of three agreements needing approval is the Exhibit 1- General Conditions of the Contract. This is a fixed maximum price agreement between the Town and Edifice, Inc.

Staff is recommending approval of this agreement.

KDB

EXHIBIT 1 TO FIXED GUARANTEED MAXIMUM PRICE AGREEMENT BETWEEN EDIFICE,
INC. AND TOWN OF INDIAN TRAIL

TOWN OF INDIAN TRAIL

NEW TOWN HALL PROJECT

GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION MANAGER-AT-RISK PROJECT

GENERAL CONDITIONS OF THE CONTRACT check references when finish

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ARTICLE 1 – DEFINITIONS

In addition to other definitions as set forth in the Contract Documents, the following are definitions of words and phrases used in the Contract Documents:

- a. The Contract Documents consist of the Owner’s Request for Qualifications dated _____, Construction Manager at Risk’s response to Request for Qualifications dated _____, Construction Manager at Risk’s project proposal presentation dated _____, Pre-Construction Services Agreement dated _____, Construction Manager at Risk’s HUB plan approved by Owner dated _____, Designer’s drawing and specification lists dated _____ (including the drawings and specifications listed therein), Form of Construction Manager at Risk Contract dated _____ (and exhibits thereto), Construction Manager at Risk’s payment and performance bonds dated _____ with Power of Attorney, Construction Manager at Risk’s Insurance Certificate dated _____, Detailed Budget and Statement of GMP including schedule of values for cost of the work, As used herein the term “Agreement” means the Contract Documents.
- b. The Owner is the Town of Indian Trail, North Carolina.
- c. The Designer or Project Designer means David A. Creech and the firm of Creech & Associates which have undertaken to design the Project pursuant to a contract with the Owner, (hereinafter, the “design contract”).
- d. The Construction Manager-at-Risk or CM means Edifice Inc.
- e. A subcontractor, shall mean an entity or individual who has entered into a direct contract with the CM to construct a portion of the Work, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the Contract Documents, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. Written notice shall be defined as notice in writing delivered in person to an officer, partner, or managing member of a contracting organization or sent to to such officer, partner, or managing member at the last known business address of the contracting organization by certified mail.
- g. Work, as used herein as a noun, is intended to include services, materials, equipment, labor, and workmanship of the appropriate contractor to construct the Project in accordance with the plans and specifications prepared by the Designer and as supervised by the CM or as provided by the CM.
- h. The “Cost of the Work” means the cost of the Work inclusive of costs of tap and impact fees and site security and the CM’s Project Cost, but exclusive of the CM Management Fee.
- i. The Project is the Indian Trail New Town Hall project and is the total construction work and services to be performed under the Contract Documents.
- j. Change Order shall mean a written amendment subsequent to the signing of the Agreement authorizing (i) a change in scope of the Work and (ii) either a change in the GMP or use of the CM Contingency. The Change Order shall be signed by the CM, Designer, and the Owner.

- k. Field Order, as used herein, shall mean a written approval from the Owner for the CM to proceed with the work requested by Owner prior to issuance of a formal Change Order. The Field Order shall be signed by the CM, Designer, and Owner.
- l. [intentionally deleted]
- m. Liquidated Damages, as stated in the Contract Documents, is an amount reasonably estimated in advance to cover the losses incurred by the Owner by reason of failure of the CM to complete the Work within the time specified.
- n. Surety, as used herein, shall mean the bonding company or corporate body which issues the performance bond and payment bond for the Project.
- o. Routine written communications between the Designer and the Construction Manager are any communication other than a “request for information” provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail, or facsimile. Such communications cannot be identified as “request for information”.
- p. Clarification or Request for Information (RFI) is a request from the CM seeking an interpretation or clarification by the Designer relative to the Contract Documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the CM’s interpretation or understanding of the Contract Documents requirements in question, along with reasons for such an understanding.
- q. Approval means written or imprinted acknowledgment that materials, equipment or methods of construction are acceptable for use in the Work.
- r. Inspection shall mean examination or observation of Work completed or in progress to determine its compliance with the Contract Documents.
- s. “Equal to” or “approved equal” shall mean materials, products, equipment, assemblies, or installation methods considered equal in all characteristics (physical, functional, and aesthetic) to those specified in the Contract Documents.
- t. “Substitution” or “substitute” shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the CM would improve competition and/or enhance the finished installation.

ARTICLE 2 - INTENT AND EXECUTION OF DOCUMENTS

- a. The Designer’s Project drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were called for and shown in both. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete Project. In case of discrepancy or disagreement in the Contract Documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.
- b. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

ARTICLE 3 - CLARIFICATIONS AND DETAIL DRAWINGS

- a. In such cases where the nature of the Work requires clarification by the Designer, such clarification shall be furnished by the Designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and drawings shall be consistent with the intent of the Contract Documents, and shall become a part thereof.
- b. The CM and the Designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with progress of the Work. The Designer shall furnish drawings or clarifications in accordance with that schedule. The CM shall not proceed with the Work without such detail drawings and/or written clarifications.

ARTICLE 4 - COPIES OF DRAWINGS AND SPECIFICATIONS

The Designer shall furnish free of charge to the CM copies of plans and specifications as follows: The CM shall receive up to five (5) sets of drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the CM shall clearly and legibly record all work-in-place that is at variance with the Contract Documents. Additional sets shall be furnished at cost, including mailing, to the CM at the request of the CM.

ARTICLE 5 - SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

- a. Within thirty (30) consecutive calendar days of the Notice to Proceed, a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals shall be prepared by the CM and provided to the Designer. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the Designer.
- b. The CM will be responsible for logging all shop drawings/submittals prior to submission to the Project Designer. The CM is to insure that shop drawings/submittal packages are submitted in an appropriate manner and, if not, return them to the Principal Trade or Specialty Contractor for proper submission.
- c. The CM shall develop and implement a system for the processing of all shop drawings/submittals and shall be responsible for tracking and monitoring all shop drawings/submittals until all have been approved by the Project Designer.
- d. Approval of shop drawings by the Designer shall not be construed as relieving the CM from responsibility for compliance with the design or terms of the Contract Documents nor from responsibility of errors of any sort in the shop drawings, unless such error has been called to the attention of the Designer in writing by the CM.

ARTICLE 6 - WORKING DRAWINGS AND SPECIFICATIONS AT THE JOB SITE

- a. The CM shall maintain, in readable condition at his job office, one complete set of working drawings and specifications for the Work including all shop drawings. Such drawings and specifications shall be available for use by the Designer or his authorized representative.
- b. The CM shall maintain at the job office, a day-to-day record of work-in-place that is at variance with the Contract Documents. Such variations shall be fully noted on Project drawings by the CM and submitted to the Designer upon project completion and no later than thirty (30) days after acceptance of the project.

ARTICLE 7 - OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of the Owner. The use of these instruments on work other than pursuant to this Agreement without permission of the Owner is prohibited. All copies of drawings and specifications other than contract copies shall be returned to the Owner upon request after completion of the Work.

ARTICLE 8 - MATERIALS, EQUIPMENT, EMPLOYEES

- a. The CM shall, unless otherwise specified, supply & pay for all lighting, power, heat, sanitary facilities & water in connection with the Work and shall require the Principal Trade and Specialty Contractors to supply and pay for all labor, transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of the Work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same. The CM shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the Contract Documents.
- b. All materials shall be new and of the quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice from the Owner, the CM shall require the Principal Trade and Specialty Contractors to furnish evidence as to quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the CM through the Principal Trade or Specialty Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the CM through the Principal Trade or Specialty Contractor has the option of using any product and manufacturer combination listed. However, the CM through the Principal Trade or Specialty Contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. The CM will be responsible for reviewing all substitution requests from Principal Trade or Specialty Contractors prior to submission to the Project Designer and Owner and shall track & monitor all such requests. Requests for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval; such approval or disapproval shall be made by the Designer prior to the opening of bids.
- e. The CM shall obtain written approval from the Designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered.
- f. The Designer is the judge of equality for proposed substitution of products, materials or equipment.

- g. If at any time during the construction and completion of the Work covered by these Contract Documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or Designer, or if any workman be considered detrimental to the Work, the CM shall order such parties removed immediately from grounds.

ARTICLE 9 - ROYALTIES, LICENSES AND PATENTS

It is the intention of the Contract Documents that the Work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The CM shall defend, indemnify and hold harmless the Owner against suit on account of alleged or actual infringement. The CM shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter, which royalties and fees may be included in the Cost of Work.

ARTICLE 10 - PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The CM shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the CM observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. Any necessary changes required in the scope of the Work, in the time for substantial or final completion of the Work, or in the Cost of the Work shall be made by change order in accordance with Article 19. If the CM performs any Work or authorizes any Work to be performed knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All Work shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the CM unless otherwise specified.
- c. The Project is subject to county and municipal building codes and inspection by local authorities. The CM shall pay the cost of these permits and inspections unless otherwise specified.

ARTICLE 11 - PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. The CM shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Owner or Designer, and by laws or ordinances governing such conditions. The CM shall be responsible for protecting against any damage to the Owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. The CM shall be responsible for and pay for any damages caused to the Owner's property. The CM shall have access to the Project at all times.
- b. The CM shall provide cover and protect all portions of the building when the Work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the Work on the building. Any Work damaged through the lack of proper protection, shall be repaired or replaced without extra cost to the Owner.
- c. No fires of any kind will be allowed inside or around the Project site during the course of construction without special permission from the Designer.

- d. The CM shall ensure that all trees and shrubs designated to remain in the vicinity of the Project site are protected in accordance with the requirements of the plans and specifications. All walks, roads, etc., shall be barricaded as directed by the Designer to keep the public away from the Project site. All trenches, excavations or other hazards in the vicinity of the Work shall be well barricaded and properly lighted at night.
- e. The CM shall develop and implement a Project safety plan that provides all necessary safety measures for the protection of all persons on the Project in accordance with applicable laws, regulations, and construction industry safety standards and practices, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the Work. The CM shall clearly mark or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. The CM shall insure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs are maintained throughout the progress of the Work.
- f. The CM shall adhere to all State and Federal rules, regulations and laws relating to Occupational Safety and Health Standards for the Construction Industry.
- g. The CM shall designate a responsible member of his organization as safety inspector, whose duties shall include accident prevention on the Project. The name of the safety inspector shall be made known to the Project Designer at the time the Work is started. The CM shall conduct daily safety and health inspections of the Project site and, on a weekly basis, report to the Owner and Project Designer, in writing, the results of such inspections, all workplace hazards identified during such inspections, and corrective action taken to correct such hazards.
- h. In the event of an emergency affecting the safety of life, the protection of Work, or the safety of adjoining properties, the CM is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the CM on account of such action shall be determined as provided for under Article 19(b).
- i. If reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the Project site by the CM or its Principal Trade or Specialty Contractors, the CM shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the Owner and Designer in writing. The Owner shall take responsibility for remediating the material or substance from the site. If the CM's progress in completing the Project is delayed as a result of the Owner's having to remediate the site, the Owner shall issue a change order to the CM in accordance with Article 19.

ARTICLE 12 - SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the CM or any Principal Trade or Specialty Contractor in connection with the Project shall comply with all erosion control measures set forth in the Contract Documents and any additional measures which may be required in order to ensure that the Project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C).

- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the CM shall be responsible for ensuring that all steps or actions necessary to bring the Project in compliance with said act are promptly taken.
- c. The CM shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. §113A-64 of the North Carolina Sedimentation Pollution Control Act against any party or persons described in this Article.
- d. To the fullest extent permitted by law, the CM shall indemnify and hold harmless the Owner, the Designer and the agents, consultants and employees of the Owner and Designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of Work or failure of performance of Work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act (but such indemnity does not include indemnification for improper or inadequate design of any pollution control measures, it being understood that design is the responsibility of the Designer). Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this Article.

ARTICLE 13 - INSPECTION OF THE WORK

- a. It is a condition of this Agreement that the Work shall be subject to inspection during normal working hours by the Designer, designated official representatives of the Owner, and those persons required by state law to test special work for official approval. The CM shall therefore provide all equipment necessary and safe access to the Work at all times for such inspections.
- b. The CM shall perform quality control inspections of the Work of Principal Trade and Specialty Contractors to guard the Owner against defects and deficiencies in the Work and shall coordinate this activity with the on-site duties of the Project Designer. The CM shall advise the Project Designer of any apparent variation and/or deviation in the Work from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations.
- d. Where special inspection or testing is required by virtue of any state laws, instructions of the Designer, specifications or codes, the CM shall give adequate notice to the Project Designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer, or his authorized representative, and it shall be the CM's responsibility to serve ample notice of such tests.
- e. All Construction Materials Testing (CMT) and Special Inspections (SI) are to be paid for by the Owner. Special Inspections by the Owner is a code requirement and since most firms perform both CMT and SI services, the Owner just hires one firm to cover both services. Edifice can help the Owner solicit these services.
- f. Should any Work be covered up or concealed prior to inspection and approval by the Project Designer such Work shall be uncovered or exposed for inspection, if so requested by the Project Designer in writing. Inspection of the Work will be made promptly upon notice from the CM. All cost involved in uncovering, repairing, correcting, replacing, recovering and restoring to design condition the Work that has been covered or concealed will be paid by the CM.

- g. If any other portion of the Work has been covered which the Designer has not specifically requested to observe prior to being covered, the Project Designer may request to see such Work and it shall be uncovered by the CM. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the Owner. If such Work is found not in accordance with the Contract Documents, the CM shall pay such costs.

ARTICLE 14 - CONSTRUCTION SUPERVISION AND SCHEDULE

- a. On-site representatives of the CM shall manage the Work of the Principal Trade and Specialty Contractors and coordinate the Work with the activities of the Owner and Project Designer to complete the Project with the Owner's objectives of cost, time and quality. Throughout the progress of the Work, the CM shall maintain a competent and adequate full-time staff approved by the Owner and Project Designer. It is understood that the designated and approved on-site representative of the CM will remain on the job and in responsible charge as long as those persons remain employed by the CM unless otherwise requested or agreed to by the Owner. The CM shall establish an on-site organization with appropriate lines of authority to act on behalf of the CM. Instructions, directions or notices given to the designated on-site authority shall be as binding as if given to the CM. However, directions, instructions, and notices shall be confirmed in writing.
- b. The CM shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision of the Work. Should he discover any discrepancies of any sort in the drawings or specifications, he shall report them to the Designer without delay. The CM will not be held responsible for discrepancies in the drawings and/or specifications, but shall be held responsible to report them should they become known to him.
- c. {NOT USED}
- d. The CM shall call and preside over monthly job site progress conferences. All Principal Trade and Specialty Contractors shall be represented at these job progress conferences by both home office and Project personnel. The CM shall require attendance from other subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Project within the specified contract time. The CM shall be prepared to assess progress of the Work and to recommend remedial measures for correction of progress as may be appropriate. The CM with assistance from the Designer shall be the coordinator of the conferences and shall preside as chairman.
- e. The CM shall, if required by the Supplementary General Conditions, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the Work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- f. {NOT USED}
- g. Prior to bidding, it shall be the responsibility of the CM to prepare an electronic and paper copy of a preliminary critical path method (CPM) schedule and submit such schedule to the Project Designer for his review and comment in sufficient time to allow revisions prior to inserting said schedule into the Principal Trade and Specialty Contractors' bid packages.

After contract award but prior to thirty (30) days from the date of the notice to proceed, the CM shall obtain from the Principal Trade and Specialty Contractors their respective work activities and integrate them into a baseline Project construction schedule in CPM form. The resulting baseline Project CPM schedule shall show all salient features of the Work required for construction of the Project from start to finish within the time allotted by the Contract Documents. The time in days between the CM's early completion date and the contractual completion date is Project float time and shall be used as such by the CM unless amended by change order. The CM shall submit to the Project Designer an electronic and paper copy of the final baseline Project CPM schedule after contracts are executed but within fifteen (15) days prior to the written notice to proceed. The Project Designer after reviewing and commenting on the Project CPM schedule shall submit it to the Owner for approval. No application for payment will be processed until the Project CPM schedule is approved by the Owner. No monthly application for payment will be processed without the submission of an electronic and paper copy of the Project CPM schedule attached.

- h. The Project CPM schedule shall be a complete computer generated network analysis showing the complete sequence of construction activities, identifying the Work of separate stages and other logically grouped activities, indicating early and late start and early and late finish dates, float duration and a complete logic. Monthly updates will show the estimated completion of each activity.
- i. The CM shall distribute to the Principal Trade and Specialty Contractors the approved baseline Project CPM schedule and shall display same at the Project site.
- j. The CM shall maintain and regularly update the baseline Project CPM schedule, making monthly adjustments, updates, corrections, etc., which are necessary to finish the Project within the time allotted by the contract. In doing so, the CM shall keep the Designer as well as all Principal Trade and Specialty Contractors fully informed as to all changes and updates to the Project CPM schedule. The CM shall submit to the Project Designer a monthly report of the status of all Work activities. The monthly status report shall show the actual Work completed to date in comparison with the original amount of Work scheduled. If the Work is behind schedule, the CM must indicate in writing what measures are being taken to bring the Work back on schedule and ensure that the contract completion date is not exceeded, and the CM shall provide written weekly schedule updates so long as the Work remains behind schedule. If the Work is greater than thirty (30) days behind schedule and no legitimate requests for time extensions are in process, then the CM shall prepare and submit to the Project Designer a recovery schedule for review and approval. Failure of the CM to abide by the directives in this paragraph will give the Owner cause to exercise the remedies set forth herein and pursue any other legal remedies allowed it by law.

ARTICLE 15 – EVERIFY

CM certifies that it is in compliance with all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, which generally provides that each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. The CM agrees that during the term of this Agreement it shall comply and shall require all subcontractors to comply with any and all applicable provisions of Article 2, Chapter 64 of the North Carolina General Statutes, and the CM agrees to incorporate in all further contracts or subcontracts for the Project a provision requiring compliance with Article 2, Chapter 64 of the North Carolina General Statutes.

ARTICLE 16 - PRINCIPAL TRADE AND SPECIALTY CONTRACTS AND CONTRACTORS

- a. Principal Trade and Specialty Contractors shall be pre-qualified by the CM in accordance with N.C.G.S. § 143-128.1. The prequalification criteria shall be determined by the CM and approved by the Owner to address quality, performance, the time specified in the bids for performance of the Work, the cost of construction oversight, time for completion, capacity to perform, and any other factors deemed appropriate by the Owner and/or CM. Only pre-qualified contractors are allowed to bid to and contract with the CM on the Project.
- b. All bids for Principal Trade and Specialty Contracts shall be publicly advertised and shall be opened publicly in a public venue, and otherwise handled in accordance with N.C.G.S. § 143-128.1. Once opened, the bids shall be public records under N.C.G.S. §132-1. The CM shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the time for completion, compliance with N.C.G.S. §143-128.2, and other factors deemed appropriate by the Owner and/or CM and advertised as part of the bid solicitation. When contracts are awarded pursuant to this section, the Owner shall provide for a dispute resolution procedure as provided by N.C.G.S. §143-128(f1). Once Principal Trade and Specialty Contractors are in place, upon request the CM shall provide copies of the contracts to the Project Designer and also provide a list of equipment and material suppliers.
- c. The CM may perform a portion of the Work only if (a) bidding produces no responsible, responsive bidder for that portion of the Work, or (b) the lowest responsible, responsive bidder will not execute a contract for the bid portion of the Work, or the Principal Trade or Specialty Contractor defaults and a prequalified replacement cannot be obtained in a timely manner, and (c) the Owner approves performance of the Work by the CM.
- d. The Designer will furnish to any Principal Trade or Specialty Contractor, upon request, evidence regarding amounts of money paid to the CM on account of the Work of the Principal Trade or Specialty Contractor.
- e. The CM is and remains fully responsible for his own acts or omissions as well as those of any Principal Trade or Specialty Contractor or of any employee of either. The CM agrees that no contractual relationship exists between the Principal Trade and Specialty Contractors and the Owner, and that the Principal Trade and Specialty Contractors act as agents, subcontractors, or employees of the CM with respect to the Work. The Principal Trade and Specialty Contractors are not intended third-party beneficiaries of this Agreement.

ARTICLE 17 - CONSTRUCTION MANAGER AND SUBCONTRACTOR RELATIONSHIPS

The CM agrees that the terms of these Contract Documents shall apply equally to each Principal Trade and Specialty Contractor as to the CM, and the CM agrees to take such action as may be necessary to bind each Principal Trade and Specialty Contractor to these terms. The CM further agrees that payments to Principal Trade and Specialty Contractors shall be made in accordance with the provisions of N.C.G.S. §143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

- a. The final balance of the contract amount due the CM from the Owner shall be paid in full within 45 days after the Project has been accepted by the Owner, certified by the Designer to be completed in accordance with terms of the Contract Documents, or occupied by the Owner and used for the purpose for which the Project was constructed, whichever occurs

first. Provided, however, that whenever the Designer determines that delay in completion of the Project in accordance with the Contract Documents is the fault of the CM, the Project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. Should final payment to the CM beyond the date the Project been certified to be completed by the Project Designer, accepted by the Owner, or occupied by the Owner and used for the purposes for which the Project was constructed, be delayed by more than 45 days, CM shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due the CM during construction shall be paid in accordance with the payment provisions of the Contract Documents or CM shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. In the event of a conditional acceptance of the Project, and where the Owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. [When the Designer certifies that the Project is substantially complete, a reasonable sum for the Owner to retain for the correction of punch list items (the "conditions") should be established and the acceptance of the Project should be conditioned on the correction of such conditions. Otherwise, the CM will be entitled to receive full payment of the contract sum within 45 days after occupancy even if the Project is not fully complete.]

- b. Within seven days of receipt by the CM of each periodic or final payment from the Owner, the CM shall pay the Principal Trade and Specialty Contractors or other subcontractors based on Work completed or service provided under their contract with the CM. Should any periodic or final payment to a Principal Trade or Specialty Contractor or other subcontractor be delayed by more than seven days after receipt of periodic or final payment by the CM, the CM shall pay the Principal Trade or Specialty Contractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.
- c. The percentage of retainage on payments made by the CM to the Principal Trade and Specialty Contractors shall not exceed the percentage of retainage on payments made by the Owner to the CM. Any percentage of retainage on payments made by the CM to the Principal Trade or Specialty Contractors or other subcontractor that exceeds the percentage of retainage on payments made by the Owner to the CM shall be subject to interest to be paid by the CM to the Principal Trade or Specialty Contractor or other subcontractor at the rate of one percent (1%) per month or fraction thereof. CM may not include such interest in the Cost of Work.
- d. Nothing in this section shall prevent the CM at the time of application and certification to the Owner from withholding application and certification to the Owner for payment to a Principal Trade or Specialty Contractor or other subcontractor for unsatisfactory job progress; defective construction not remedied; disputed Work; third-party claims filed or reasonable evidence that claim will be filed; failure of the Principal Trade or Specialty Contractor or other subcontractor to make timely payments for labor, equipment and materials; damage to CM or another subcontractor; reasonable evidence that a Principal Trade or Specialty Contract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed the initial percentage retained by Owner.

ARTICLE 18 - DESIGNER'S STATUS

- a. The Project Designer shall provide liaison and necessary inspection of the Work to ensure compliance with the Project plans and specifications. He is the agent of the Owner only for the purposes and to the extent stipulated in the Contract Documents. He has authority to stop work or to order Work removed, or to order corrections of faulty Work where such action may be necessary to assure successful completion of the Work.
- b. The Project Designer is the impartial interpreter of the Contract Documents, and, as such, he shall exercise his powers under the Contract Documents to enforce faithful performance by both the Owner and the CM, taking sides with neither.
- c. Should the Project Designer cease to be employed on the Work for any reason whatsoever, then the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic site visits and observations of the Project at intervals appropriate to the stage of construction. He will review the progress, the quality and the quantity of the Work.
- e. The Project Designer and the Owner shall have access to the Work whenever it is in preparation and progress during normal working hours. The CM shall provide facilities for such access so the Designer may perform his functions under the Contract Documents.
- f. Based on the Project Designer's inspections and evaluations of the Project, the Project Designer shall issue interpretations, directives and decisions as may be necessary to assist the CM in the administration of the Project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the Contract Documents. The CM's decisions, however, relating to means and methods, and administration of the contracts the CM holds are final.

ARTICLE 19 - CHANGES IN THE WORK

- a. The Owner may have changes made in the Work. These changes will not invalidate and will not relieve or release the CM from any guarantee given by him pertinent to the Contract Documents. These changes will not affect the validity of the surety bonds and will not relieve the surety or sureties of said bonds. All extra work shall be executed under conditions of the original Contract Documents.
- b. Except in an emergency endangering life or property, NO CHANGE IN THE GMP CONTRACT SHALL BE MADE BY THE CM EXCEPT UPON RECEIPT OF AN APPROVED CHANGE ORDER OR WRITTEN FIELD ORDER FROM THE DESIGNER, AND COUNTERSIGNED BY THE OWNER AUTHORIZING SUCH CHANGE. NO CLAIM FOR ADJUSTMENTS OF THE GMP OR CONTRACT PRICE SHALL BE VALID UNLESS THIS PROCEDURE IS FOLLOWED.

A FIELD ORDER, TRANSMITTED BY FAX OR HAND DELIVERED MAY BE USED WHERE THE CHANGE INVOLVED IMPACTS THE CRITICAL PATH OF THE WORK. A FORMAL CHANGE ORDER SHALL BE ISSUED WITHIN THE TIME STATED ON THE FIELD ORDER FOR ANY CHANGE IN THE CONTRACT TIME FOR SUBSTANTIAL OR FINAL COMPLETION OF THE PROJECT.

- c. A "Change Order" refers to changes in the Work that (i) result in a change to the GMP and/or, if additive, will be funded by the Owner's Contingency or (ii) involve the use of the CM Contingency.

- d. In the event of emergency endangering life or property, the CM may be directed to proceed on a time and material basis with a change in the Work by a Field Order whereupon the CM shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon completion of the changed Work a change order will be prepared as outlined under either Method "e(1)" (unit prices) or Method "e(2)" (lump sum adjustment) below or both. Any failure of the CM or its subcontractors to keep detailed cost records for time and material work shall constitute a waiver of the right to additional compensation.
- e. In determining the values of changes, either additive or deductive, for purposes of a Change Order or Field Order the CM and Principal Trade and Specialty Contractors are restricted to the use of the following methods:
 - 1. Where the extra work involved is covered by unit prices in a subcontract, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed, of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the subcontract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph e(2) herein. If neither party elects to proceed under e(2), then unit prices shall apply.
 - 2. Otherwise, the CM and Principal Trade and Specialty Contractors shall negotiate and agree upon the equitable value of the change prior to issuance of the Change Order or Field Order, and the Change Order or Field Order shall stipulate the corresponding lump sum adjustment.
- f. Under Method "e(2)" above, the allowance for overhead and profit combined for a Principal Trade or Specialty Contractor and all multi-tier subcontractors shall not exceed fifteen percent (15%) of net cost of the Work. CM may add an amount to the CM Management Fee not to exceed five percent (5%) of the net cost of the change order. In the case of deductible change orders, there shall be no change to the CM Management Fee.
- g. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The "cost" as used herein shall be limited to the following:
 - 1. The actual costs of materials and supplies incorporated or consumed as part of the Project;
 - 2. The actual costs of labor expended on the Project site;
 - 3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty percent (40%) of the actual costs of labor;
 - 4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the Project;
 - 5. The actual costs of premiums for bonds, insurance, permit fees and sales or use taxes related to the Project.

Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the Owner.

- h. Should concealed conditions including unsuitable soils be encountered [to be finalized as part of the GMP] in the performance of the Work below grade, the GMP and time for substantial and/or final completion may be equitably adjusted by Change Order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

All Change Orders shall be supported by a breakdown showing method of arriving at net cost as defined above.

- i. In all Change Orders, the procedure will be for the Project Designer to request proposals for the Change Order work or for the CM to propose to apply any part of the CM Contingency to the Cost of the Work or the CM Project Costs in writing. The CM will require the Principal Trade and Specialty Contractors to provide such proposals and supporting data in suitable format and will review and approve such Change Orders prior to submission to the Designer. Within fourteen (14) days after receipt of the CM's proposal, the Project Designer shall prepare and forward the Change Order to the CM for his signature or otherwise respond, in writing, to the CM's proposal. Within seven (7) days after receipt of the Change Order executed by the CM, the Project Designer shall certify the Change Order by his signature and forward the Change Order and all supporting data to the Owner for the Owner's signature. Upon approval and execution by the Owner, one copy will remain with the Owner, and the remaining copies will be sent to the Project Designer for distribution to the CM and the CM shall forward a copy to its surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or Field Orders approved by all parties, then shall be substantiated in writing as outlined under normal change order procedure.
- j. A Change Order, when issued, shall be full compensation, or credit, for the Work included, omitted or substituted. It shall show on its face the adjustment in time for substantial and/or final completion of the Project as a result of the change in the Work.
- k. If, during the progress of the Work, the Owner requests a Change Order and the CM's terms are unacceptable, the Owner may require the CM to perform such changed Work on a time and material basis in accordance with paragraph 19(e) above. Without prejudice, nothing in this paragraph shall preclude the Owner from performing or to have performed that portion of the Work requested in the Change Order.

ARTICLE 20 - CLAIMS FOR EXTRA COST

- a. Should the CM consider that as a result of any instructions given in any form by the Designer, he is entitled to extra cost above that stated in the Contract Documents, he shall give written notice thereof to the Designer within seven (7) days without delay, and shall not proceed with the Work affected until further advised, except in emergency involving the safety of life or property. No claims for extra compensation will be considered unless the claim is so made. The Designer shall render a written decision within seven (7) days of receipt of claim.
- b. The CM shall not act on instructions received by him from persons other than the Project Designer or Owner, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer and Owner will not be responsible for misunderstandings claimed by the CM of verbal instructions which have not

been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a properly authorized Change Order.

- c. Should a claim for extra compensation in excess of \$5,000 by the CM be denied by the Project Designer or Owner, and cannot be resolved by negotiation, the CM may request a mediation in connection with N.C.G.S. §143-128(f1) in the dispute resolution rules adopted by the State Building Commission. If the CM is unable to resolve its claims as a result of mediation, or if the claim was not subject to mediation on the ground it was not in excess of \$5,000, then the CM may pursue his claim as follows:
 1. If the CM has not completed this Agreement with the Owner and has not received the amount he claims is due hereunder, the CM may submit a verified written claim to the Town Manager for the amount the CM claims is due. The Town Manager may elect to hold an informal hearing at which the CM will be allowed an opportunity to explain its position. The Town Manager may deny, allow or compromise the claim, in whole or in part. For claims not in excess of \$5,000, the Town Manager shall act as the final arbitrator of the claim and the decision of the Town Manager shall be final and binding on the parties.
 2. (a) If the CM has completed this Agreement and has not received the amount he claims is due hereunder, the CM may submit a verified written claim to the Town Manager for the amount the CM claims is due. The claim shall be submitted within sixty (60) days after the CM receives a final statement of the Project Designer's disposition of his claim and shall state the factual and legal basis for the claim.
 - (b) The Town Manager shall investigate a submitted claim within ninety (90) days of receiving the claim, or within any longer time period upon which the Town Manager and the CM agree. The CM may appear before the Town Manager, either in person or through counsel, to present facts and arguments in support of his claim. The Town Manager may allow, deny or compromise the claim, in whole or in part. The Town Manager shall give the CM a written statement of the Director's decision on the CM's claim. For claims not in excess of \$5,000, the Town Manager shall act as the final arbitrator of the claim and the decision of the Town Manager shall be final and binding on the parties.
 - (c) If the CM is dissatisfied with the Town Manager's decision on a claim in excess of \$5,000 submitted under this subsection, the CM may institute a civil action for the sum he claims to be entitled to hereunder by filing a verified complaint for a non-jury trial and the issuance of a summons in the Superior Court of Mecklenburg County. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

ARTICLE 21 - NOT USED

ARTICLE 22 - UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged Work be considered inadvisable or inexpedient by the Owner and the Project Designer, the Owner shall be reimbursed by the CM. A change order will be issued to reflect a reduction in the GMP.

ARTICLE 23 - TIME OF COMPLETION, DELAYS, EXTENSION OF TIME

- a. Substantial Completion.

- i. **Substantial Completion** means that the Work has been certified by the Designer as sufficiently completed in accordance with the Contract Documents so that Owner can occupy or utilize such Work for its intended use. Owner and CM, in conjunction with the Designer, may agree that a designated portion of the Work has reached Substantial Completion.
- ii. The CM shall commence the Work to be performed under this Agreement on a date to be specified in a written Notice to Proceed from the Project Designer and shall substantially complete all Work hereunder within the time of completion specified in the Contract Documents. For each day in excess of the substantial completion date that the Work remains incomplete, the CM shall pay the Owner the sum stated as Liquidated Damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the CM to substantially complete the Work within the time specified, such time being in the essence of this Agreement and a material consideration thereof.
- iii. When the CM considers that the Work is substantially complete, the CM shall prepare and submit to the Designer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the CM to complete all Work in accordance with the Contract Documents.

Upon receipt of the Construction Manager at Risk's list, the Designer will observe to determine whether the Work is substantially complete. If the Designer's observation discloses any item, whether or not included on the CM's list, which is not sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended use, then the CM shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer. In such case, the CM shall then submit a request for another inspection by Designer to determine Substantial Completion.

When the Work is substantially complete, the Designer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, responsibilities of Owner and Construction Manager at Risk for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which Construction Manager at Risk shall finish all items on the list accompanying the Certificate of Substantial as well as a reasonable sum to be retained by the Owner pending the completion or correction of such items. Warranties and guarantees required by the Contract Documents shall commence on the date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion.

The Certificate of Substantial Completion shall be submitted to Owner and CM for their written acceptance of responsibilities assigned to them. Upon such acceptance, receipt of CM's application for payment, and consent of surety, if any, Owner shall make payment of retainage applying to such Work. Such payment shall be adjusted by a reasonable sum to be retained by the Owner for completing or correcting Work that is incomplete or not in accordance with the requirements of the Contract Documents.

- iv. If the CM is delayed at any time in the progress of the Work by any act or negligence of the Owner or the Project Designer, or by any employee of either; by changes ordered in

the Work; by labor disputes at the Project site; by abnormal weather conditions not reasonably anticipated for the locality where the Work is performed; by unavoidable casualties; by any causes beyond the CM's control; or by any other causes which the Designer and Owner determine may justify the delay, then the contract time for substantial and/or final completion may be extended by Change Order for the time which the Designer and Owner may determine is reasonable.

Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where the Work is performed. For purpose of determining extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where the Work is performed and on daily weather logs kept on the job site by the CM reflecting the effect of the weather on progress of the Work and initialed by the Designer's representative. Time extensions for weather delays do not entitle the CM to "extended overhead" recovery.

- v. Requests for extension of time shall be made in writing within twenty (20) days following cause of delay. In case of continuing cause for delay, the CM shall notify the Project Designer of the commencement of the delay within twenty (20) days of the beginning of the delay and only one claim is necessary.
- vi. The CM shall notify his surety in writing of an extension of time granted and a change in the substantial and/or final completion date shall be memorialized in a written Change Order prepared and executed as set forth in Article 19 above.
- vii. No claim shall be allowed on account of failure of the Project Designer to furnish drawings, clarifications or instructions until twenty (20) days after demand for such drawings, clarifications and/or instructions.

b. FINAL COMPLETION AND FINAL PAYMENT

- i. Upon receipt of the CM's written notice that the Work is ready for final inspection and acceptance and upon receipt of the CM's final Application for Payment, the Designer will promptly make the inspection described in Articles 25 and 32 and, when the Designer finds the Work complete and acceptable under the Contract Documents and the Contract Documents fully performed, the Designer will promptly issue a final Certificate for Payment stating that to the best of Designer's knowledge, information and belief, and on the basis of the Designer's on-site visits and observations, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the CM and noted in the final Certificate for Payment is due and payable. Designer's final Certificate for Payment will constitute a further representation that conditions listed in Article 32 as precedent to CM's being entitled to final payment have been fulfilled.
- ii. Neither final payment nor any remaining retained percentage shall become due until CM submits to Designer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid up to those amounts that Owner has paid to the CM, (2) a certificate evidencing that insurance

required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, (3) a written statement that the CM knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by Owner, other data establishing payment or satisfaction of obligations, such as releases and waivers of liens, claims, security interests or encumbrances arising out of the Work, to the extent and in such form as may be designated by Owner.

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

iv.Acceptance of final payment by the CM shall constitute a waiver of claims by the CM except those claims previously made as provided in the Agreement and remaining unsettled.

ARTICLE 24 - PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

- a. The Owner may desire to occupy or utilize all or a portion of the Project when the Work is substantially complete.
- b. Prior to the final payment, the Owner may request the CM in writing, through the Project Designer if applicable, to permit the Owner to use a specified part of the Project which the Owner believes may be used without significant interference with construction of the other parts of the Project. If the CM agrees, the Project Designer will schedule a beneficial occupancy inspection after which the Project Designer may issue a certificate of substantial completion for the part of the Project to be used by the Owner. The certificate shall include the following documentation:
 1. Date of substantial completion.
 2. The part of the Project that is substantially complete and a tentative list of items to be completed or corrected before final payment.
 3. Establishing responsibility between the CM and Owner for maintenance, heat, utilities and insurance for the part of the Project occupied by the Owner.
 4. Consent of surety.
 5. Endorsement from insurance company permitting occupancy.

- c. The Owner shall have the right to exclude the CM from any part of the Project which the Project Designer has so certified to be substantially complete, but the Owner will allow the CM reasonable access to complete or correct Work to bring it into compliance with the Contract Documents.
- d. Occupancy by the Owner under this Article will in no way relieve the CM from his contractual requirement to complete the Project within the date for final completion.

ARTICLE 25 - FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

- a. Upon notification from the CM that the Project is complete and ready for inspection, the Project Designer shall make a preliminary final inspection to verify that the Project is complete and ready for final inspection. Prior to final inspection, the CM shall ensure that all items requiring corrective measures are complete. The Project Designer shall schedule a final inspection at a time and date acceptable to the Owner and the CM.
- b. {NOT USED}
- c. At the final inspection, the Project Designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the Contract Documents. At the conclusion of the final inspection, the Project Designer shall make one of the following determinations:
 - 1. That the Project is completed and accepted.
 - 2. That the Project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance or the Owner may invoke Article 28, Owner's Right to Do Work.
 - 3. That the Project is not complete and another date for a final inspection will be established.
- d. Within fourteen (14) days of acceptance of the Project or within fourteen (14) days after completion of punch list items as described in c(2) above, the CM may request the Project Designer to certify the final completion of the Work.
- e. Any discrepancies listed or discovered after the date of final inspection and acceptance of the Project shall be handled in accordance with Article 42.

ARTICLE 26 - CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Any Work, materials, fabricated items or other parts of the Work which have been condemned or declared not in accordance with the Contract Documents by the Project Designer shall be promptly removed from the Work site by the CM, and shall be immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the Owner. Work or property of the Owner, damaged or destroyed by virtue of such faulty Work, shall be made good at the expense of the CM.
- b. Correction of condemned Work described above shall commence within twenty-four (24) hours after receipt of notice from the Project Designer, and the replacement Work shall make satisfactory progress until completed.

- c. Should the CM fail to proceed with the required corrections, then the Owner may complete the Work in accordance with the provisions of Article 28.

ARTICLE 27 - CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final certificate, final payment, occupancy of the premises by the Owner, nor any provision of this Agreement, nor any other act or instrument of the Owner, nor the Project Designer, shall relieve the CM from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. The CM shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the Work except as stated otherwise under Article 42, Guarantee. The Owner will report any defects as they may appear to the CM and establish a time limit for completion of corrections by the CM. The Owner will be the judge as to the responsibility for correction of defects.

ARTICLE 28 - OWNER'S RIGHT TO DO WORK

If, during the progress of the Work or during the period of guarantee, the CM fails to prosecute the Work properly or to perform any provision of this Agreement, the Owner, after fifteen (15) days written notice sent by overnight mail or by certified mail, return receipt requested, to the CM, may perform or have performed that portion of the Work. The cost of the Work may be deducted from any amounts due or to become due to the CM. Should the cost of such Work performed by the Owner exceed the amount due or to become due the CM, then the CM or his surety, or both, shall be liable for and shall pay to the Owner the amount of said excess.

ARTICLE 29 - DEFAULT

If the CM fails to begin the Work within the time specified, or the progress of the Work is not maintained on schedule, or the Work is not completed within the time above specified, or fails to perform the Work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of the Work, or performs the Work unsuitably or discontinues the prosecution of the Work, or if the CM becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency, or allows any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or makes an assignment for the benefit of creditors, or for any other cause whatsoever fails to carry on the Work in an acceptable manner, the Owner may give notice in writing, sent by certified mail, return receipt requested, to the CM and his surety of such delay, neglect or default, specifying the same, and if the CM within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Owner shall, declare this Agreement in default, and, thereupon, the surety shall promptly take over the Work and complete the performance of this Agreement in the manner and within the time specified. In the event the surety shall fail to take over the Work to be done under this Agreement within fifteen (15) days after being so notified and diligently pursue and complete the same, the Owner shall have full power and authority, without violating the Agreement, to take the prosecution of the Work out of the hands of said CM, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of this Agreement according to the terms and provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of this Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the Work, shall be deducted from any monies due or which may become due the CM and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under this Agreement, if it had been completed by the CM, then the CM and surety shall be entitled to receive the difference, but in case such

expense shall exceed the sum which would have been payable under this Agreement, then the CM and the surety shall be liable and shall pay to the Owner the amount of such excess.

ARTICLE 30 – CONSTRUCTION MANAGER’S RIGHT TO STOP WORK OR TERMINATE

- a. Should the Work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the CM, or if the Owner should fail or refuse to make payment on account of a certificate issued by the Project Designer within thirty (30) days after receipt of same, then the CM, after seven (7) days' written notice sent by overnight mail or certified mail, return receipt requested, to the Owner and the Project Designer, may suspend the Work or terminate this Agreement.
- b. The Owner shall be liable to the CM for the cost of all materials delivered and Work performed under this Agreement and shall make such payment. The Project Designer shall be the judge as to the correctness of such payment.

ARTICLE 31 - REQUEST FOR PAYMENT

- a. Based on applications for payment submitted to the Project Designer by the CM and certificates for payment issued by the Project Designer, the Owner shall make progress payments on account of the contract sum to the CM as provided below and elsewhere in the Contract Documents. The period covered by each application for payment shall be one calendar month ending on the last day of the month.
- b. Provided an application for payment is received by the Project Designer not later than the 25th day of the month, the Owner shall make payment to the CM not later than the 15th day of the following month. If an application for payment is received by the Project Designer after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Project Designer receives the application for payment.
- c. Prior to submitting the first payment request, the CM shall prepare a schedule of values showing a breakdown of the contract price into values of the various parts of the GMP. The Cost of the Work breakdown will be arranged so as to facilitate payments by the CM to the Principal Trade and Specialty Contractors. The CM Management Fee, CM’s Project Costs, Bonds & Insurance, CM Contingency, and Project Reserve (if any) will be shown on the schedule of values as separate lines. The values for the CM Contingency and Project Reserve (if any) will move to appropriate lines within the Cost of the Work as those funds are committed and expended. This schedule of values will be submitted to & approved by the Project Designer and Owner within 30 days of the Notice to Proceed. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Project Designer and Owner may require.
- d. Applications for payment shall be in a form agreed upon by the CM, Project Designer and Owner and shall be prepared and supported by such data to substantiate the accuracy of the request as the Project Designer may require.
- e. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 1. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion Cost of the Work and CM’s

Project Costs by the share of the GMP allocated to that portion of the Work in the schedule of values.

2. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or if approved in advance by the Owner, suitably stored off site at a location agreed upon in writing.
 3. Add that portion of the GMP properly allocable to CM's obtaining Bonds and Insurance.
 4. Subtract the aggregate of previous payments made by the Owner.
 5. Subtract the amount, in any, by which the CM has been previously overpaid, as evidenced by the Owner's review of the CM's documentation.
 6. Subtract amounts, if any, for which the Project Designer has withheld or nullified a certificate of payment.
 7. Subtract retainage as per paragraph (f) below.
 8. Add the amount due for the CM Management Fee based on the percentage completion of the Project or on a schedule of payment negotiated with the Owner less five percent (5%) retainage and less previous payments for CM Management Fee.
- f. Payment allocated to Principal Trade and Specialty Contractors shall be subject to five percent (5%) retainage, provided, however that after fifty percent (50%) of the Cost of the Work has been satisfactorily completed on schedule, with the approval of the Owner and with written consent of the surety, further requirements for retainage will be waived only so long as the Work continues to be completed satisfactorily and on schedule. Satisfactory completion and close out of the Project means that the Owner and Project Designer are satisfied that the Project has been fully and finally completed in accordance with the plans and specifications and within the GMP, all requirements of the Contract Documents pertaining to close out have been satisfied, and all Principal Trade and Specialty Contractors have satisfactorily completed their respective contracts. No retainage will be held for the cost of Bonds and Insurance.
- g. Except with the Owner's prior approval, the CM shall not make advance payments to suppliers for materials or equipment, which has not been delivered and stored at the Project site.
- h. The Project Designer shall take action on the CM's application for payment in accordance with this Agreement. The Project Designer's certification for payment shall be based upon the Project Designer's on-site observation and the documentation submitted by the CM with the application for payment.

ARTICLE 32 - CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) business days from receipt of request for payment from the CM, the Project Designer shall issue and forward to the Owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the Project Designer. If the certificate is not approved by the Project Designer, he shall state in writing to the CM and the Owner his reasons for withholding payment.

- b. No certificate issued or payment made shall constitute an acceptance of the Work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except:
 - 1. Claims arising from unsettled liens or claims against the CM.
 - 2. Faulty Work or materials appearing after final payment.
 - 3. Failure of the CM to perform the Work in accordance with the Contract Documents, such failure appearing after payment.
 - 4. As conditioned in the performance bond and payment bond.

- c. Prior to submitting a request for final payment to the Project Designer for approval, the CM shall fully comply with all requirements specified in the “project closeout” section of the specifications. These requirements include but are not limited to the following:
 - 1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The Project Designer must approve the Manuals prior to delivery to the Owner).
 - 2. Transfer of required attic stock material and all keys in an organized manner.
 - 3. Record of Owner’s training.
 - 4. Resolution of any final inspection discrepancies.

- e. The CM shall forward to the Project Designer, the final application for payment along with the following documents:
 - 1. List of minority business subcontractors and material suppliers showing breakdown of the contract amounts.
 - 2. Affidavit of Release of Liens.
 - 3. Affidavit from CM of payment to material suppliers and subcontractors.
 - 4. Consent of Surety to Final Payment.
 - 5. Certificates of state agencies required by state law.

- f. The Project Designer will not authorize final payment until the Work has been certified by Project Designer, certificates of compliance issued, and the CM has complied with the closeout requirements. The Project Designer shall forward the CM’s final application for payment to the Owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 - PAYMENTS WITHHELD

- a. The Owner may withhold payment for the following reasons:
 - 1. Faulty Work not corrected.

2. The unpaid balance on the contract is insufficient to complete the Work.
 3. To provide for sufficient contract balance to cover Liquidated Damages that will be assessed against the CM.
 4. Claims filed against the CM or evidence that a claim will be filed.
 5. Evidence that Principal Trade or Specialty Contractors have unjustifiably not been paid the amounts equal to those paid to the CM by the Owner.
- b. When grounds for withholding payments have been removed, payment will be released.

ARTICLE 34 - MINIMUM INSURANCE REQUIREMENTS

The Work shall not commence until the CM has verified to the Owner that all required insurance and verifying certificates of insurance have been obtained and approved in writing by the Owner. These certificates shall contain a provision that coverage²s afforded under the policies will not be cancelled, reduced in amount or eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the Owner, Attn: _____.

a. Worker's Compensation and Employer's Liability

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of this Agreement, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of at least \$100,000.

b. Public Liability and Property Damage

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of this Agreement, comprehensive general liability insurance, on an occurrence basis, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors and Owner from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury:	\$1,000,000 per occurrence
Property Damage:	\$1,000,000 per occurrence

In lieu of limits listed above, a \$2,000,000 combined single limit shall satisfy both conditions.

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the Work.

Owner shall be named as an additional insured.

c. Automobile Liability Insurance.

The CM shall ensure that it and all Principal Trade and Specialty Contractors shall provide and maintain, during the life of this Agreement, automobile liability insurance for all owned, hired, and non-owned vehicles with limits for each accident of not less than \$1,000,000 Combined Single Limits with respect to Bodily Injury, Death and Property Damage.

Owner shall be named as an additional insured.

d. Property Insurance (Builder's Risk/Installation Floater)

The CM shall ensure that it shall purchase and maintain property insurance during the life of this Agreement, upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the CM, and subcontractors in the Work and shall insure against the perils of fire, extended coverage, and vandalism and malicious mischief. If the Owner is damaged by failure of the CM to purchase or maintain such insurance, then the CM shall bear all reasonable costs properly attributable thereto; the CM shall effect and maintain similar property insurance on portions of the Work stored off the site when a request for payment includes such portions. Any deductible, if applicable to a loss covered by Builder's Risk insurance provided, is to be borne by the Owner.

ARTICLE 35 - PERFORMANCE BOND AND PAYMENT BOND

- a. The CM shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina with an A.M. Best Company financial strength rating of "A" or better. The bonds shall be in the full contract amount, which shall be in the amount of the GMP for the entire project. Bonds shall be executed in the forms attached as Exhibit 8 to the Construction Manager at Risk Contract – Fixed Guaranteed Maximum Price between Owner and CM.
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 - CONSTRUCTION MANAGER'S AFFIDAVIT

The final payment of retained amount due the CM on account of this Agreement shall not become due until the CM has furnished to the Owner through the Project Designer an affidavit signed, sworn and notarized to the effect that (i) all payments then due to all Subcontractors for materials, services or subcontracted Work have been satisfied; (ii) all final payments due to all Subcontractors for materials, services or subcontracted Work will be paid and satisfied by CM promptly upon CM's receipt of final payment., (iii) no claims or liens exist against the CM in connection with this Agreement, and (iv) that the CM shall defend, indemnify, and save the Owner harmless from any and all claims of Subcontractors

ARTICLE 37 - ASSIGNMENTS

The CM shall not assign any portion of this Agreement or any subcontract. Except as may be required under terms of the performance bond or payment bond, no funds or sums of money due or become due the CM under this Agreement may be assigned.

ARTICLE 38 - USE OF PREMISES

- a. The CM shall confine his apparatus and equipment, the storage of materials and the operations of his workmen to limits of the Project indicated by law, ordinances, permits or directions of the Project Designer and shall not exceed those established limits in his operations.
- b. The CM shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
- c. The CM shall enforce the Project Designer's instructions regarding signs, advertisements, fires and smoking.
- d. No firearms, any type of alcoholic beverages or drugs (other than those prescribed by a physician) will be permitted at the job site.

ARTICLE 39 - CUTTING, PATCHING AND DIGGING

- a. The CM shall ensure that all cutting, fitting or patching that may be required to make the Work come together properly and fit it to receive or be received by Work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the Project Designer may direct.
- b. Any cost brought about by defective or ill-timed Work shall be borne by the party responsible therefor.
- c. No Principal Trade or Specialty Contractor shall endanger any Work of another such contractor by cutting, digging or other means, nor shall he cut or alter the Work of any other such contractor without the consent of the Project Designer and the affected contractor(s).

ARTICLE 40 - UTILITIES, STRUCTURES, SIGNS

- a. The CM shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer, and other utility services, which may be necessary and required for completion of the Project. If the Owner specifies that the CM is to pay all utilities, any permanent meters installed shall be listed in the CM's name until the Work is fully accepted by the Owner. The Owner will reimburse the CM for the actual cost of temporary utilities as part of CM's Project Costs. The Owner or CM, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in Project completion.
- b. If applicable meters shall be relisted in the Owner's name on the day following Substantial Completion of the Work, the Owner shall pay for utilities services used after that date.
- c. {NOT USED}
- d. Prior to the operation of permanent systems, the CM will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- e. The CM shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and

electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the CM and the Designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the CM.

- f. The CM shall coordinate the Work so that the building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.
- g. The CM shall coordinate the Work so that the building's permanent lighting system shall be ready at the time interior painting and finishing begins and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- h. The CM shall be responsible for his permanently fixed service facilities and systems in use during progress of the Work. The following procedures shall be strictly adhered to:
 - 1. Prior to acceptance of Work by the Owner, the CM shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.
 - 2. Temporary filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the Work.
 - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and site Work operations are creating dust in excess of what would be considered normal if the building were occupied.
 - 4. It shall be understood that any warranty on equipment presented to the Owner shall extend from the day of final acceptance by the Owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
 - 5. The CM shall ensure that all lamps are in proper working condition at the time of final acceptance of the Project.
- i. The CM shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets, chemical toilets, and facilities required for a complete and adequate sanitary arrangement. These sanitary facilities will be available to other subcontractors on the job and shall be kept in a neat and sanitary condition at all times.
- j. The CM shall provide or erect a temporary field office, complete with lights, telephone, heat and air conditioning and shall be reimbursed for the costs thereof as part of CM's Project Costs.
- j. On multi-story construction projects, the CM shall either provide or ensure that temporary elevators, lifts, or other necessary special equipment is available for the general use of all contractors. The cost for such elevators, lifts or other special equipment and the operation thereof shall either be included in the CM Project Costs or specified as part of the Work of a Principal Trade or Specialty Contractor and paid for as a part of the Cost of the Work.
- k. The CM will erect one sign on the Project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign

shall bear the name of the Project, and the CM's name, and the name of the Project Designer and consultants. Directional signs may be erected on the Owner's property subject to approval of the Owner with respect to size, style and location of such directional signs. Such signs may bear the name of the CM and a directional symbol. No other signs will be permitted except by permission of the Owner.

ARTICLE 41 - CLEANING UP

- a. The CM shall ensure that the building and surrounding Project area is reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the Project Designer. The CM shall provide an on-site refuse container(s) for the use of all Principal Trade and Specialty Contractors. The CM shall ensure that each Principal Trade and Specialty Contractor removes their rubbish and debris from the building on a daily basis. The CM shall ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.
- b. The CM shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, the CM shall ensure that all portions of the Work are clean, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the Owner, with no cleaning required by the Owner.

ARTICLE 42 - GUARANTEE

- a. The CM shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the date of final acceptance of the Work or beneficial occupancy and shall replace such defective materials or workmanship without cost to the Owner.
- b. Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The CM shall replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period.
- c. Additionally, the Owner may bring an action for latent defects caused by the negligence of the CM, which are hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.
- d. Specific Guarantees for roof, equipment, materials, and supplies may be stipulated in the specifications sections governing such roof, equipment, materials, or supplies.

ARTICLE 43 - CODES AND STANDARDS

Wherever reference is given to codes, standard specifications or other data published by regulating agencies including, but not limited to, national electrical codes, North Carolina State Building Codes, federal specifications, ASTM specifications, various institute specifications, etc., it shall be understood that such reference is to the latest edition including addenda published prior to the date of the Contract Documents.

ARTICLE 44 - INDEMNIFICATION

To the fullest extent permitted by law, the CM shall indemnify, defend and hold harmless the Owner, its public officials, officers, employees and agents, from and against all claims, damages,

losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the Work, provided that any such claim, damage, loss or expense arises out of or results from (1) bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, but only in the event caused in whole or in part by the negligence or intentional misconduct of the CM or anyone working under the CM; or (2) as long as all Owner payments to CM are current and paid in full claims against Owner by the CM's consultants, subcontractors or suppliers (of any tier) arising out of or related to non-payment by CM. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article. Nothing herein shall be interpreted as requiring the CM to indemnify any party for that party's own negligence. This indemnity shall survive termination of the Agreement. In any case in which CM provides a defense to the Owner, its public officials, officers, employees and agents, CM shall do so using attorneys reasonably acceptable to Owner.

ARTICLE 45 - TAXES

- a. Federal excise taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3442(3)).
- b. Federal transportation taxes do not apply to materials entering into state work (Internal Revenue Code, Section 3475(b) as amended).
- c. North Carolina sales tax and use tax, as required by law, do apply to materials entering into state work and such costs shall be included in the GMP.
- d. Local option sales and use taxes, as required by law, do apply to materials entering into state work as applicable and such costs shall be included in the GMP.
- e. Accounting Procedures for Refund of County Sales & Use Tax

Amount of county sales and use tax paid per CM's statements:

The CM shall ensure that the Principal Trade and Specialty Contractors provide information to allow the CM to give the Owner a signed statement containing the information listed in N.C.G.S. §105-164.14(e), the North Carolina Sales and Use Tax Act, for purposes of the Owner obtaining a sales tax refund.

Name of taxing county: The position of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. Therefore, it is important that the county tax be reported for the county of sale rather than the county of use.

When property is purchased from out-of-state vendors and the county tax is charged, the county should be identified where delivery is made when reporting the county tax.

Such statement must also include the cost of any tangible personal property withdrawn from warehouse stock and the amount of county sales or use tax paid thereon by the CM.

Principal Trade and Specialty Contractors are not to include any tax paid on supplies, tools and equipment which they use to perform their contracts and should include only those building materials, supplies, fixtures and equipment which actually become a part of or annexed to the building or structure.

ARTICLE 46 - EQUAL OPPORTUNITY CLAUSE

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

ARTICLE 47 - EMPLOYMENT OF THE HANDICAPPED

The CM agrees not to discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. The CM agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

ARTICLE 48 - ASBESTOS-CONTAINING MATERIALS (ACM)

{NOT USED}

ARTICLE 49 - MINORITY BUSINESS PARTICIPATION; LOCAL BUSINESS PARTICIPATION

The CM shall identify and define contract packages (the value of which shall total to at least five percent (5%) of the GMP) that remove barriers to participation commonly experienced by Historically Underutilized Businesses and Minority Business Enterprises as those terms are defined in N.C.G.S. §143-128.2, hereinafter referred to as Reduced Barrier Packages (RBP). Such contract packages will be submitted to the Owner for review. As an example, RBP's may require no performance or payment bond, or may offer the participation of the CM as a guarantor or surety in the financing of material purchases by the Principal Trade and/or Specialty Contractors, provided that the CM may condition such financing participation upon the issuance of joint checks or other similar arrangements to allow the CM to verify that timely payments are made to suppliers furnishing credit. The CM may propose other and/or additional provisions for reducing barriers to participation.

The Owner shall require the CM to submit a plan for compliance with N.C.G.S. §143-128.2 by approval by the Owner prior to soliciting bids for the Principal Trade and Specialty Contracts. The CM and Principal Trade and Specialty Contractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to N.C.G.S. §143-128.2.

It is the Owner's desire to include as much local business participation with the Project as can be obtained. Local shall mean a business which business premises physically located within the borders of the Town of Indian Trail and then Union County. The CM shall prepare a listing of local Subcontractors and suppliers and shall publicly advertise the Project to them and provide the details of their potential participation. Publicly shall mean individual letters sent to such local subcontractors and suppliers and an advertisement in the local newspaper(s) to announce a public meeting for their potential participation. All Subcontractors and suppliers shall be evaluated to confirm each can meet the CM's pre-qualification requirements of the bid packages.

ARTICLE 50 – CONTRACTOR EVALUATION

{NOT USED}

ARTICLE 51 – GIFTS

N.C.G.S. §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any municipal corporation employee of any gift from anyone with a contract with the municipal corporation, or from any person seeking to do business with the municipal. By execution of any response in this Agreement, the CM attests that the CM is not aware that any such gift has been offered, accepted, or promised by any of its employees.



TO: Mayor and Town Council

FROM: Kelly Barnhardt

DATE: March 2, 2015

SUBJECT: Construction Manager at Risk (CM@Risk) – Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price

Council chose Edifice Inc as Construction Manager at Risk for the proposed Indian Trail Town Hall. One of three agreements needing approval is the Form of Construction Manager at Risk Contract Fixed Guaranteed Maximum Price.

Staff is recommending approval of this agreement.

KDB

FORM OF CONSTRUCTION MANAGER AT RISK CONTRACT FIXED GUARANTEED MAXIMUM PRICE

THIS FIXED GUARANTEED MAXIMUM PRICE AGREEMENT (the "Agreement"), made to be effective _____, 2015 [**to be dated and signed when we are ready to set GMP after bids from subcontractors**] for Town of Indian Trail New Town Hall Project (the "Project") by and between Edifice, Inc. (hereinafter called the "Construction Manager at Risk" or "CM"), and the Town of Indian Trail, North Carolina (hereinafter called the "Owner").

BACKGROUND

Whereas, the Owner has published a Request for Qualifications dated November 4, 2014 seeking the submission of qualifications to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Qualifications; and,

Whereas, the undersigned Construction Manager at Risk submitted its qualifications and a competitive proposal that were evaluated by the Owner; and,

Whereas, the Owner, through its awarding authority, has made an award of the construction management services to the undersigned Construction Manager at Risk; and

Whereas Owner and Construction Manager at Risk entered into that certain Pre-construction services Agreement dated _____; and

Whereas, design of the Project is now completed and the Owner and Construction Manager at Risk now are ready to memorialize the contractual relationship between the parties as set forth herein.

AGREEMENT

Now therefore, the Construction Manager at Risk and the Owner agree as follows:

1. PROJECT OVERVIEW

The Project is the Town of Indian Trail New Town Hall Project located in Indian Trail, North Carolina and described in more detail in the Owner's Request for Qualifications dated November 4, 2014 and the Construction Manager at Risk's Project proposal presentation dated November 24, 2014.

This Agreement incorporates by reference the General Conditions of the Contract attached hereto as Exhibit 1 and the documents referred to and incorporated therein.

2. OWNER'S ROLE

- a. **DESIGN SERVICES** - The Owner has retained David A. Creech and the firm of Creech & Associates as the Project Designer. The Project Designer will provide all design

services throughout the duration of the Project.

- b. **DESIGNATED REPRESENTATIVE** - The Owner's Town Manager shall be the CM's Owner contact, shall be the primary channel of communication to the Owner, and shall act as the Owner's liaison with the CM. The Owner may designate multiple representatives responsible for defined aspects of the Project, and may replace or re-designate any or all representatives in the Owner's sole discretion.
- c. **DECISION MAKING AUTHORITY** – The Owner's Town Manager is vested with final decision making authority for the Owner.

3. CONSTRUCTION MANAGER-AT-RISK ROLE (OVERVIEW)

- a. The Owner is employing a Construction Manager-at-Risk contracting system to aid the Owner in the review and management of the design and to effect the construction of this Project. In broad terms, the CM will perform the following:
 - i. Pre-construction services in accordance with the previously approved Pre-construction services Agreement and, to the extent any such pre-construction services remain to be performed after the execution of this Agreement, in accordance with this Agreement. The CM shall publicly advertise bids as prescribed in N.C.G.S. §143-129; and shall pre-qualify and accept bids from first-tier subcontractors (the "Principal Trade and Specialty Contractors") for all construction work, and otherwise comply with N.C.G.S. § 143-128.1.
 - ii. Construction services, on the condition that the Owner accepts the submitted GMP, which will include the CM's Project Costs and the CM Management Fee as set forth herein, and all construction being accomplished through Principal Trade and Specialty Contractors and others as provided herein. Accordingly, without limiting the guaranty given by the CM with respect to the GMP, the primary duties of the CM also include the proper and timely completion of the construction of the Project through the employment of the best construction management practices.
- b. The requirements for the CM's services set forth in this section supplement the requirements of the General Conditions of the Contract that are attached hereto as Exhibit 1 and are incorporated herein by reference.

4. RELATIONSHIP OF OWNER AND CONSTRUCTION MANAGER

- a. The CM project records will be an "open book". The Owner may attend any and all meetings and the Owner or its designated auditors or accountants and the Project Designer shall have access to any and all records maintained by the CM that relate to the Project.
- b. The CM's employees and personnel assigned to provide services with respect to the Project shall be as identified in the CM's response to the Owner's Request for

Qualifications dated November 4, 2014 and in the CM's Project proposal presentation dated November 24, 2014. The CM agrees not to change its employees or personnel assigned to the Project without the Owner's approval, which approval will not be unreasonably withheld.

5. CONSTRUCTION MANAGER-AT-RISK PROJECT COSTS ALLOWANCE AND FEES

- a. Pre-Construction Phase (the "Pre-Construction Phase" or "Design Phase").
[intentionally deleted; see Pre-construction services Agreement]
- b. Construction Phase (the "Construction Phase"). The CM's Project Cost Allowance & Construction Phase Fee (the "CM Fee") for construction management services shall be an all inclusive management fee which will include all CM home office, Project site and Project related costs, including all CM overhead costs and profit. There are two "components" of the CM Fee: the management fee (the "CM Management Fee") and the CM's Project costs fee ("CM Project Costs") The CM Management Fee shall be a "flat fee" fixed amount or 5% at the time of the GMP as set forth in Section 9 below **[to be inserted when ready to set GMP +- 4% of the Cost of the Work, excluding CM Project Costs.]**. The CM Project Costs shall be reimbursed by the Owner and shall be the CM's actual costs and expenses associated with the Project up to the maximum amount as set forth in Section 9, below, and shall include the following:
 - i. Project and home office staff costs for all CM's Project executives, superintendents, Project managers and Project assistants performing work or services in connection with the Project consisting of direct salary or wages plus customary labor burden (which is defined to mean 49% of actual costs paid or incurred by Construction Manager at Risk for taxes, insurance, contributions, assessments and benefits required by law and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions), transportation, vehicle, and/or subsistence allowances, cell phones & travel expenses related to the Project.
 - ii. Mobilization – establishment of job site including office & storage trailer set-up & utility connections, and CM's Project signage.
 - iii. Temporary Field Office Facilities, Utilities, and Controls – rental of field office facilities including a conference room; utilities costs for field office; rental (or purchase) of field office furniture & equipment; field office telephone(s) with voice mail, telephone service, dedicated fax lines and high speed internet connections; field office operation cost (i.e. stationary, postage, shipping, equipment maintenance, etc); temporary construction utilities (if required); small tools, first aid and safety gear, safety inspections, photography, storage yard rental, parking lot rental, and parking fees.
 - iv. Plans/Surveys/Permits – reproduction of Construction Documents during the construction phase and all appropriate contractor and equipment licenses and permits.

- v. Safety/Cleanup – establishment and maintenance of an on-site safety program; installation and maintenance of temporary facilities (safety barricades, partitions, fences, ladders, stairs, safety signage, first aid, traffic control devices, etc.); dust control and pavement cleaning; trash collection and removal; maintenance of work area security; site snow removal as required; temporary weather and/or dust protection as required, vehicle wash stations as may be required; fire extinguishers and fire watch as required; safety harnesses, lanyards and fall arrest equipment as required.
 - vi. Close-out/Demobilization – final site/facility clean-up; final release of bond/lien claims for all subcontractors; an as-built set of drawings in hard copy to the Project Designer for preparation of record as-built drawings; one copy of Project files and records for the Owner’s archives.
 - vii. Quality Control/Project Documentation – monthly reports, photographs, inspection reports, logs (RFIs, submittals, change orders, etc.)
- c. All CM Project Costs shall be paid by the CM and shall not be passed down to the Principal Trade and Specialty Contractors or any subcontractor.
- d. The CM Project Costs shall not include costs for the following:
- i. The cost of Performance and Payment Bonds and Insurance as required by the General Conditions of the Contract;
 - ii. The costs of tap and impact fees and site security;
 - iii. Certain soils and materials testing as set forth in Article 13 __ (the “Excluded Testing”).
 - iv. The cost of Performance and Payment Bonds and Insurance as required by the General Conditions of the Contract shall be carried in the GMP as a separate line item, but not as part of the CM Fee or Cost of the Work. Reimbursement for insurance shall be calculated as follows and shall not exceed:

General Liability Insurance:	0.49% of the Cost of the Work
Builder’s Risk Insurance:	0.25% of the Cost of the Work
 - v. The costs of tap and impact fees and site security shall be carried in the GMP as a separate line item and included in the Cost of the Work but not as part of the CM Fee.
 - vi. The cost of the Excluded Testing shall not be carried in the GMP but shall be paid for separately and directly by Owner.

6. PAYMENTS TO THE CONSTRUCTION MANAGER-AT-RISK

- a. Payment of the CM's Pre-Construction Fee shall be in accordance with the Pre-construction services Agreement.
- b. Payments of the Construction Management Fee shall be made in conformance with Article 31 of the General Conditions to the Contract.

7. PRE-CONSTRUCTION SERVICES & CONTINGENCIES

- a. The Pre-construction Services shall be provided in accordance with the previously approved Pre-construction services Agreement and, to the extent any such pre-construction services remain to be performed after the execution of this Agreement, in accordance with this Agreement.
- b. Financial Contingencies are to be addressed as follows:
 - i. Owner/Owner's Construction Contingency.
 - A. An Owner's Construction Contingency will be established but shall not be included in the GMP. Expenditures against this contingency will be available to cover all costs resulting from changes in scope not specifically covered in Paragraph 7.b.ii below and initiated by the Owner's designated representative with the Owner's written approval via a change order amendment issued by the Owner.
 - ii. Construction Manager-at-Risk GMP Contingency.
 - A. The GMP shall include a CM Contingency in an amount approved by the Owner not to exceed ___ **[expected to be +- 3%]** of the total Cost of the Work contemplated by the GMP [note that total Cost of the Work includes the CM Project Costs and costs for tap and impact fees and site security], to help reduce the risks assumed by the Construction Manager-at-Risk in providing the GMP for the Project. The Owner and the CM acknowledge that the CM Contingency is included to accommodate eventualities not taken into precise account in the CM's establishment of the GMP that are not reasonably anticipated by the CM including (1) scope gaps between trade contractors which a prudent CM could not have reasonably detected during the discharge of its Pre-construction services, (2) contract default by Principal Trade and Specialty Contractors or other subcontractors, **[to be discussed as part of setting GMP whether unforeseen field conditions comes out of Owner's Contingency or CM Contingency; these alternatives will be priced as part of setting the GMP]** and (4) design omissions which a prudent CM could not have reasonably detected during the discharge of its Pre-construction services. It is understood that the amount of the CM Contingency is the maximum

sum available to cover costs incurred as a result of such unanticipated causes and that cost overruns in excess of the amount of this CM Contingency will be borne solely by the CM.

- B. The CM Contingency may be applied to any items within the Cost of the Work or CM Project Costs without resulting in any change in the GMP. The CM will notify the Owner and Project Designer in writing of the intent to apply any part of this CM Contingency to any item within the Cost of the Work or CM Project Costs prior to any such application per the "Change Order" process set forth in Article 19 of the General Conditions. The CM shall fully document the application of any part of the CM Contingency by submission of a written Change Order.
- C. Sixty-five (65) percent of any unapplied CM Contingency (the "Savings") after the closeout of the Project will be retained by the Owner and thirty-five (35) percent of any Savings shall be paid to the CM.
- D. The amount of the CM Contingency is to be reviewed by the Owner as part of the review of the GMP. The Owner retains the right to specifically request revisions to the amount of the CM Contingency prior to the Owner's acceptance and approval of the GMP.

8. CONSTRUCTION PHASE SERVICES

- a. Construction Phase services provided by the CM shall be in accordance with this Agreement and shall be as required to effect the complete construction of the Project and to maintain the established GMP of the Project. The CM undertakes to furnish professional construction management services during the construction of the Project. The providing of the CM services shall be in compliance with the requirements of the Contract Documents (as defined in Article 1 of the General Conditions). To the extent that any terms, requirements, or specifications in the Contract Documents are inconsistent, the terms, requirements, and specifications most favorable to the Owner shall control.
- b. The CM shall commence provision of construction phase services under this Agreement on a date to be specified in a written order of the Owner (the "Notice to Proceed") and shall accomplish substantial completion of the Project within 395 consecutive calendar days from the date of the Notice to Proceed. For each day in excess of the above number of days that the Project remains substantially incomplete, the Owner shall be entitled to liquidated damages from the CM in the sum of One Thousand Dollars (\$1,000.00) per day as damages reasonably estimated in advance to cover the losses to be incurred by the Owner by reason of failure of the CM to substantially complete the Project within the time specified.
- c. The CM shall fully complete all services hereunder and accomplish final completion of the Project within 30 consecutive calendar days from Substantial Completion.

d. The CM shall furnish to the Owner various schedules and updates as provided in the Contract Documents setting forth planned progress of the Project broken down by the various activities, divisions, or parts of the work and by calendar days, and shall fully complete all work hereunder within the time of completion specified.

e. Without limiting the foregoing, CM Construction Phase services shall include:

i. Consultation During Continuing Project Development:

Upon acceptance of the GMP, the CM shall continue to advise and assist the Owner and Project Designer during any continuing Design Activities.

ii. Principal Trade & Specialty Contracts

Principal Trade and Specialty subcontractors will be selected during the Preconstruction phase, unless otherwise agreed by the parties. In any case, the method for selecting subcontractors is set forth in the Preconstruction Contract scope of work, as well as Articles 16 and 49 the General Conditions.

A. The CM will require the Principal Trade & Specialty Contractors to provide the applicable contract documents including insurance certificates, Historically Underutilized Businesses (HUB) and Minority Business Enterprise (MBE) participation schedules, and verification of HUB and MBE participation (by submission of letters of intent, copies of purchase orders, etc).

B. All contract documents between the CM and the Principal Trade and Specialty Contractors and other subcontractors shall be made available for review by the Owner. The CM shall provide to Owner the proposed terms and conditions it intends to utilize in the subcontracts for Owner's input regarding those terms and conditions that impact the Owner's risk of additional costs.

iii. Project Control & Management

A. The CM shall accept delivery and arrange for storage, protection and security for any Owner purchased materials, systems and equipment to be incorporated in the Project until such items are turned over to the respective Principal Trade & Specialty Contractors.

B. The CM shall schedule and conduct regular progress meetings as conditions on the Project require but at least weekly, and the CM shall conduct bi-weekly Owner's meetings and other meetings as may be directed by the Owner, at which Principal Trade and Specialty Contractors, Owner, Project Designer, and other designated representatives, and the CM can discuss jointly such matters as progress, scheduling, and construction-related problems. The CM shall prepare and

distribute complete minutes of meetings to all attendees and others as directed by the Owner or Project Designer within three (3) days of such meetings. Representatives of the Owner may attend meetings and shall in any case receive all notices and minutes of meetings.

iv. Requests for Information (RFI)

The CM will be responsible for developing and implementing an RFI process for use on the Project and shall be responsible for tracking and monitoring all RFI's throughout the Construction Phase.

v. Claims Avoidance/Resolution

The North Carolina State Building Commission's rules implementing mediated settlement conferences in North Carolina public construction contracts, issued pursuant to N.C.G.S. §142-135.26(11) shall be followed for mediation of claims or disputes between the parties.

vi. Reports

- A. The CM shall keep accurate and detailed written records of Project progress during all stages of construction.
- B. The CM shall maintain a detailed daily diary of all events, which occur at the jobsite or elsewhere, and which affect, or may be expected to affect, Project progress. The diary shall be available to the Owner at all times and shall be turned over to the Owner upon final completion of the Project. Upon request, the CM shall provide copies of the diary on a weekly basis.
- C. The monthly report by the CM shall include the following items: Project status, schedule update, cost status, change order summary, shop drawing/submittal/RFI summary, quality control/inspection summary, any current construction and/or cost issues with proposed solutions for resolution, an accident report, and a 30 and 60 day look ahead report. In the event the progress of the Project falls behind the approved schedule, the CM shall provide written weekly schedule updates until such time as the progress of the Project is in accord with the approved schedule.

vii. Contract Close-Out

- A. The CM is responsible for compliance with all Contract Close Out items per the Contract Documents and shall obtain data from Principal Trade & Specialty Contractors and maintain a current set of record drawings, specifications and operating manuals.
- B. With mechanical and electrical equipment, the CM will obtain the

Operating and Maintenance (O&M) manuals at least four (4) months prior to the demonstration for such equipment. These O&M manuals are to be sent to the Owner for review prior to the equipment demonstration.

- C. At the completion of the Project and before final payment, the CM shall deliver all such records to the Owner along with a complete set of as-built drawings for use by the Project Designer in preparing Record Drawings.

viii. Separate Contracts

Without invalidating the relationship with the CM, the Owner reserves the right to let other contracts in connection with the Project, the work under which shall proceed simultaneously with the execution of the work of the CM. The CM shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the CM shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the CM from carrying out his work according to the Project plans and specifications, the CM shall immediately notify the Project Designer and the Owner upon discovering such conditions.

9. GUARANTEED MAXIMUM PRICE (GMP)

The Fixed Guaranteed Maximum Price shall be as follows: **[insert]**

Cost of the Work (excluding CM Project Costs, tap and impact fees, and site security)	\$ TBD
CM Management Fee	\$ TBD
CM Project Costs per Section 5, above, not to exceed	\$ TBD
CM's Bonds and Insurance	\$ TBD
Tap and impact fees and site security	\$ TBD
CM Contingency	\$ TBD
Total Fixed Guaranteed Maximum Price	\$ TBD

10. DEFAULT

- a. If the CM fails to commence providing the construction phase services within the time specified, or the progress of the Project is not maintained on schedule, or the Project is not completed within the time above specified, or if the CM shall allow the work to be performed unsuitably or shall discontinue the prosecution of the work, or if the CM shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Owner may give notice of such event in writing, sent by overnight mail or by certified mail, return receipt requested, to the CM and his surety of such delay, neglect or default,

specifying the same, and if the CM within a period of fifteen (15) days after such notice shall not correct or cure such event, then the Owner shall declare this Agreement in default, and, thereupon, the CM's surety shall promptly take over the work and complete the performance of this Agreement in the manner and within the time frame specified. In the event the CM's surety shall fail to take over the work to be done under this Agreement within fifteen (15) days after being so notified and shall fail to notify the Owner in writing, sent by certified mail, return receipt requested, that he is taking the same over and that he will diligently pursue and complete the same, the Owner shall have full power and authority, without violating this Agreement, to take the prosecution of the work out of the hands of said CM, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of this Agreement according to the terms and provisions thereof or use such other methods as in the Owner's opinion shall be required for the completion of this Agreement in an acceptable manner. All costs and charges incurred by the Owner, together with the costs of completing the work under this Agreement, shall be deducted from any monies due or which may become due said CM and surety. In case the expense so incurred by the Owner shall be less than the sum which would have been payable under this Agreement, if it had been completed by said CM, then the CM and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under this Agreement, then the CM and the surety shall be liable and shall pay to the Owner the amount of said excess.

- b. It is further mutually agreed between the parties hereto that if at any time after the execution of this Agreement and the surety bonds hereto attached for its faithful performance, (i) the Owner shall reasonably deem the surety or sureties upon such bonds to be unsatisfactory, or (ii) if, for any reason, such bonds cease to be adequate to cover the performance of the work, the CM shall, at its expense, within five (5) days after the receipt of notice from the Owner so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be reasonably satisfactory to the Owner. In such event no further payment to the CM shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and date first above written in four (4) counterparts, each of which shall without proof or accounting for other counterparts, be deemed an original contract.

Construction Manager at Risk:

EDIFICE, INC.

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest: (Corporation)

Title: _____

(CORPORATE SEAL)

TOWN OF INDIAN TRAIL

By: _____

Title: Town Manager

Date: _____

This agreement has been pre-audited in the manner required by the "local Government Budget and Fiscal control Act."

Finance Officer

Date: _____

LIST OF EXHIBITS

- Exhibit 1:** General Conditions of the Contract
- Exhibit 2:** Owner's Request for Qualifications dated _____
- Exhibit 3:** CM's Response to Request for Qualifications dated _____
- Exhibit 4:** CM's Project Proposal Presentation dated _____
- Exhibit 5:** Pre-Construction Services Agreement dated _____
- Exhibit 6:** CM's HUB Plan approved by Owner
- Exhibit 7:** Designer's drawings and specification lists dated _____ (including by reference all drawings and specifications listed therein)
- Exhibit 8:** CM Payment and Performance Bonds
- Exhibit 9:** Detailed Budget and Statement of GMP including schedule of values for cost of the work (Approved by both CM and Owner)

**EXHIBIT 8 TO FIXED GUARANTEED MAXIMUM PRICE AGREEMENT
BETWEEN EDIFICE, INC. AND TOWN OF INDIAN TRAIL**

PERFORMANCE AND PAYMENT BOND FORMS

FORM OF PERFORMANCE BOND

Date of Contract: _____
Date of Execution: _____
Name of Principal
(Contractor) _____
Name of Surety: _____
Name of Contracting
Body: _____
Amount of Bond: _____
Project _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterparts.

Contractor: (Trade or Corporate Name)

By: _____

Title: _____

Attest: (Corporation)

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: _____

Title: _____
(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)

(Surety Company)

By: _____

Title: _____

(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

FORM OF PAYMENT BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal shall promptly make payment to all persons supplying labor/material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in _____ counterparts.

Contractor: (Trade or Corporate Name)

By: _____
Title: _____

Attest: (Corporation)

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

By: _____

Title: _____
(Corp. Sec. or Asst. Sec.. only)

(Corporate Seal)

(Surety Company)

By: _____
Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address



TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: March 10th, 2015

SUBJECT: US-74 Aesthetic Improvements

At the February 10th Council meeting, the Town Council requested additional costs from the NCDOT on added aesthetics improvements on the future NCDOT US-74 improvements. Staff has attached these costs for the Council's review.

jaf

Convert four intersections on US 74 to Superstreet in Indian Trail

W-5520

Signal Poles	Cost per Strain Pole	Total Cost of Strain Poles	Cost per Wood Pole	Total Cost of Wood Poles	Enhancement Cost
32	\$ 16,000	\$ 512,000	\$ 2,700	\$ 86,400	\$ 425,600
Signing Poles	Cost per Strain Pole	Total Cost of Strain Poles	Cost per Wood Pole	Total Cost of Wood Poles	Enhancement Cost
32	\$ 16,000	\$ 512,000	\$ 2,700	\$ 86,400	\$ 425,600
TOTAL					\$ 851,200