

MAYOR
Michael L. Alvarez

MAYOR PRO TEM
David L. Cohn



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

Town Council Regular Meeting
Tuesday, November 10, 2015
Civic Building
6:30 PM

AGENDA

- 1. CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE**
- 2. ADDITIONS AND DELETIONS**
- 3. MOTION TO APPROVE AGENDA** **action**
- 4. PRESENTATIONS**
- 5. PUBLIC COMMENTS**
- 6. LAW ENFORCEMENT UPDATE**
- 7. CONSENT AGENDA**
 - a. Approval of the October 13, 2015 Regular Meeting draft minutes
 - b. Approval of the October 19, 2015 Special Meeting draft minutes (Open Session)
 - c. Approval of Budget Amendments
 - d. Approval of Tax Month End Report-October 2015
 - e. Approval of Tax Refund in Excess of \$500
 - f. Approval of Parks Annual Operating Hours
 - g. Approval of NCDOT Speed Limit Changes
 - h. Approval of Additional Signatories on Town Bank Accounts
 - i. Approval of Parks & Recreation Organization Chart

8. PUBLIC HEARINGS

action

-Please adhere to the following guidelines:

- **Proceed to the podium, and state your name and address clearly;**
- **Be concise; avoid repetition; limit comments to three (3) minutes or less;**
- **Designate a spokesperson for large groups**

- a. **CZ2015-004 Austin Village:** Proposed Zoning Map Amendment to Residential Zoning District SF-5-Conditioned to support development of approximately 51 single-family residential homes targeted towards senior housing on an approximate 14-acre site. Site is located on the north side of Chestnut Lane, west of Potter Road (portion of Parcel # 07147130). Council consideration to approve Ordinance #0151110-222

9. BUSINESS ITEMS

- a. Council consideration of approval of Chestnut Square Park Irrigation/Well Upfit Contract
b. Council consideration of Stormwater Outfall Inventory & Dry Weather Screening Contract

10. DISCUSSION ITEMS

11. MANAGER'S REPORT

12. COUNCIL COMMENTS

13. CLOSED SESSION

action

14. ADJOURN

action

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

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

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

7a



**Town of Indian Trail
Town Council Regular Meeting
October 13, 2015
Civic Building
6:30 P.M.**

MINUTES

The following members of the governing body were present:

Mayor: Michael L. Alvarez

Council Members: David Cohn, Gordon B. Daniels, David W. Drehs, Christopher King and Gary M. Savoie; all members were present.

Staff Members: Town Manager Joe Fivas, Town Clerk Kelley Southward, Town Attorney Keith Merritt, Planning Director Rox Burhans and Communications Coordinator Mike Parks.

CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Alvarez called the Meeting to order at 6:30 PM and led the Pledge of Allegiance to the Flag.

ADDITIONS AND DELETIONS

Councilman Savoie moved to add the following Business Items to #9 of the agenda:

- 9a: Council Consideration of Water & Sewer Extension Agreement for Municipal Complex; and*
- 9b: Council Consideration of Right of Way Encroachment Agreement for utilities at the Municipal Complex.*

The motion to add the two items of business carried unanimously.

MOTION TO APPROVE AGENDA

Councilman King moved to approve the agenda, as amended; the motion carried unanimously.

At this point Mayor Alvarez realized that an item he had requested through email was not included on the agenda. Mayor Alvarez said that some time ago he had sent a sample Resolution in Support of Law Enforcement along with an Agenda Request Form to the Town Manager so that the Resolution, if approved, could be presented to Sheriff Cathey, who was present in the audience. Mr. Fivas said he never received the Resolution or Agenda Request Form. Upon query by Mayor Alvarez, Sheriff Cathey confirmed that the Union County Board of Commissioners recently adopted a Resolution of Support for Law Enforcement.

Councilman King moved to suspend the agenda rules to add another item to the agenda under "Presentations"; the motion carried unanimously.

Councilman Savoie moved to add "discussion/action to consider approving a Resolution in Support of Law Enforcement" to the "Presentations" section of the agenda; the motion carried unanimously.

PRESENTATIONS

Mayor Alvarez relayed that it is felt by Union County representatives, Sheriff Cathey and others that Union County should take the lead to create a unity in the County to stand up and support law enforcement and their families for the work they do and sacrifices they make. The hope is that the voice of support will become louder than those who are attacking these brave men and women that put themselves in harm's way on a daily basis to protect and serve the public. This effort was reduced to writing in the form of a Resolution, recently adopted by Union County.

Councilman King moved that the Indian Trail Town Council adopt the same language of the Resolution in Support of Law Enforcement that the Union County Board of Commissioners recently adopted except that "Union County" shall be changed to "Town of Indian Trail" in said Resolution; the motion carried unanimously.

Sheriff Cathey was thanked for the work he and his department does to protect Union County and the Town of Indian Trail. Mayor Alvarez said that we will stand up to the bullies.

PUBLIC COMMENTS

Mayor Alvarez reminded everyone of the Public Comment Guidelines.

Mischelle Reece of 2201 Bonterra Blvd was the first to address Council. She expressed her extreme displeasure for the Council's blatant disregard for what the people of Indian Trail have told Council they want and don't want. Ms. Reece said she understands that the law does not require every issue to be put to a referendum vote but Council should be respectful of how they spend taxpayers' money. Some Council members have sat back and chuckled at residents stating they don't need permission to change a light bulb. Additionally, Ms. Reece was concerned about Item 10 of the agenda. First, the item alleging that Councilman Cohn raised taxes 27%. She said that this particular tax increase was as a result of the decision to build parks; a matter that actually was put to a bond referendum vote of the citizens. So, it was actually the citizens who raised the taxes at that time. Also, the item pertaining to Councilman Cohn's decision to build apartments is concerning. As she recalled, if Indian Trail did not annex the area in question, Monroe would have annexed them. The apartments would've been built anyway and

the residents thereof would've been using Indian Trail roads and other amenities while Monroe collected the taxes. Finally, Ms. Reece said that no one Council member has the authority to solely raise taxes or take any other action; individual members have one vote each. She said that she and others support Councilman Cohn and his actions as an elected official for the Town of Indian Trail. Additionally, she noted her gratitude and support of the Union County Sherriff's Office. However, Ms. Reece said that she wanted to put the remainder of the Council on notice that the people of Indian Trail are tired of Council's irresponsible and reckless behavior. She looks forward to November.

Roger Stanton of 2017 Apogee Drive addressed Council next. Mr. Stanton noted that the job of serving as an elected official is largely thankless in nature and can be very demanding on members' time and families. However, when you strike the balance of your constituents' wants and needs with the long and short-term needs of the community, serving in this capacity can be one of the most rewarding jobs. Mr. Stanton said that it is against the law to use tax-funded resources for campaigning. This law applies at the federal, state and local levels. Tax funding cannot be used to promote, or in the case of tonight's agenda, smear a candidate. While Council may not need taxpayer permission or money to change a light bulb, Council members cannot break the laws that they took an oath to uphold. Tax-funded staff prepared this agenda, tax-funded email systems distributed this agenda, a tax-funded website will archive this agenda and other documents and tax-funded staff is here working late with an agenda that has very little bonafide Town business. Why single-out one Council member when four others voted on the actions listed in item 10 of tonight's agenda? The truth is that it was another Council member who introduced and pushed the matters. It is a J-V error for these items to be included on this agenda. Mr. Stanton said that Council positions come with some amount of local power but the most important local power is to be the face and voice of Indian Trail and not to be an embarrassment to the citizens or yourselves.

Shirley Howe of 6205 Clearwater Drive addressed the Council. Mrs. Howe noted that the 2nd meetings of August, September and October were all cancelled; so, we know it is an election year. She has been attending Council meetings for many years and never witnessed an agenda like tonights. She said that at the last meeting Council agreed to make a policy for members missing meetings; why is that not on this agenda? Mrs. Howe said there must be nothing else to do in Indian Trail than to roast a Council member; a member who stands up for the people and wants them to decide on how their money is spent. Council should listen to the people. Who set the agenda this evening? The Town Manager or the Council member who requested these items be placed on the agenda? This is nothing more than attempt to discredit Councilman Cohn because of the upcoming elections. Mrs. Howe said the idea was to belittle him to get rid of him but the Good Lord is watching out for him. Not one of the Council members that voted for the new Town Hall gave a reason as to why they refused to put the matter to a vote of the people. Mrs. Howe went on to say that last year at a Council meeting there was a discussion of the need to hire a new accounting firm to prepare the Fiscal Year Audit and Financial Statements. The current firm has been providing these services too long; the School of Government recommends changing auditors after several years. Mrs. Howe said that she and others would like to request a forensic audit of the Town.

Before calling the next speaker, Mayor Alvarez wanted to clarify that he spoke with the School of Government (SOG) regarding the agenda items included for discussion as Item 10 a-c on this agenda. The SOG said that however irregular or illegal they may be, they must remain unless Council makes a motion to remove them with a majority vote. Additionally, he foresaw that speakers would be naming two council members when speaking in regard to the items of #10 on the agenda; which is against the

rules for public comments. However, the SOG opined that since both members are included and named on the agenda with regard to these items they are a part of the agenda items and comments can be made about agenda items. So, if public comment speakers name either of the two Council members included on the agenda (Councilman Daniels and Councilman Cohn) it will be permissible as long as it pertains to the agenda item and does not become a personal attack. No other Council members shall be called out by name and this will only be permitted during this particular public comments. Mayor Alvarez said this was the conclusion by the person he spoke with at the SOG and himself. Although, the SOG had nothing to compare this matter to; this was the first they had heard of something of this nature.

Gregory Hazelbaker of 1013 Filly Drive was the next person to address Council. Mr. Hazelbaker said that the previous speakers have relayed his sentiment; it is not proper procedure to call out one member of Council. He works with a large company and if someone attempted a stunt like this, they wouldn't get too far. A better process for running should be followed. He is very displeased with what he is seeing.

Michael Faulkenberry of 519 Picketts Circle, addressed Council. Mr. Faulkenberry provided to the Town Clerk a signed, written copy of his comments made to Town Council and is ATTACHED HERETO AND MADE PART OF THESE OFFICIAL MINUTES.

Samantha Towns of 104 Pine Lake Drive address Council stating that she was embarrassed that one Council member included another as an agenda item in this manner. This difference should be cleared up among these members themselves, privately without embarrassing the Town. This is not Council business and should not be taking place at a Town Meeting. She said this is nothing but a vendetta showing, again. Ms. Towns opined that Councilman Daniels had shown vendettas in the past. She noted several situations that she felt were examples of Councilman Daniels vendettas: an instance when a resident was who spoke against some apartments was denied a seat to serve on a committee; she felt that he swept an accusation of bullying staff by the Manager under the rug; and, that he walked out when there was a need to appoint a Council member to a vacant seat. Everyone knows that this is a political year but these antics need to stop. She asked why Council isn't using this time to discuss or take action regarding the Community Enhancement Project. Ms. Towns said the attacking of people at meetings needs to stop.

Gary Evans of 4800 Mossy Cup Lane addressed Council stating that he was disgusted by the lack of courage and backbone that the majority of Council has; that they cannot make up their own minds. It's amazing to him that a couple thousand dollars of campaign funds can persuade Council members to vote the way that they do. He believes that other candidates are going down the same path and he finds it disgusting. Mr. Evans opined that the Town Manager's days are numbered in Indian Trail.

Eddie Mitchell of 3269 W. Chapel Street noted that he has owned a business in Indian Trail for several years. He felt that the proposed Town Hall on the selected site is going to be huge and wondered how that would be handled. He also asked if any thought was given to the maintenance, upkeep and utilities; those expenses are going to be large. He felt that the people of Indian Trail should've had the opportunity to vote on the project. He said that he agreed with a lot of the comments of the previous speaker. He tries to do the best he can for Indian Trail as a business owner.

Mark Wireman of 2001 Sedjewick Road addressed Council noting that he is a Veteran of both Gulf Wars and relative of those who fought and died in World War II and the Korean War. He and his relatives fought defending the freedoms of our great nation. At times he does not like or agree with how some US citizens hold or dishonor the flag, dishonor Veterans or display their frustrations over public officials. He took an oath to defend this nation with his life, if necessary, so that other US citizens would have and express such freedoms as freedom of speech. Should he become elected, he will serve the residents of Indian Trail without fear of intimidation and fight to defend their rights. However, what everyone is being subjected to by Councilman Daniels this evening is short of freedom of speech. Mr. Daniels is attempting to use a position of public trust to directly influence the election using smear tactics and intimidations in an attempt to help the candidates that he supports. There are multiple issues that Council needs to address rather than take up time with this attempt to discredit a candidate. It is time to restore accountability, ethics, integrity, honesty and openness to the Town Government. Mr. Wireman said that it is time for change from Town Hall to Council. It is time that we work together to give the Town back to the people.

John Killman of 101 Silver Glen Lane began by thanking the Sheriff's Office for providing traffic calming devices on Plyler Road and having more of a presence in the area. Their efforts seemed to have helped slow traffic in that area which often gets treated like it is a raceway. Mr. Killman said he never knew anyone on Council until he began coming to meetings a year or two ago when he started receiving notices about a proposed apartment complex to be built near Plyler Road. He could not get the Planning Director, who has since separated from the Town, to return his phone calls. So, he began to contact Council members and individually met with most, if not all members, to express his concerns. He was impressed by the responsiveness of Councilman Cohn who joined him in knocking on doors in the area to gain the opinions of Mr. Killman's neighbors as they related to the proposed apartment project. They learned through this process that many of his neighbors shared the same concerns as Mr. Killman. Mr. Killman noted that Councilman Drehs as well as Mr. Faulkenberry also participated in the canvassing of the neighborhood. Mr. Killman said it is the job of elected officials to find out what the people want and don't want. Mr. Killman opined that Indian Trail is the greatest Town in Union County; located in the greatest state in the nation. He thanked Council for their time and efforts and hopes that they will listen to the people regularly.

Dennis Gay of 405 Pioneer Lane was the next speaker to address the Council. He has lived here for 60 years and seen a lot of changes; some good, some bad. The nice thing is that we still have a strong democracy here as is shown with tonight's turn-out. He said that at one time the Town had become difficult for the citizens to work with; the Town was more focused on working with developers and corporations. One year while assisting a friend at the polls, he was afforded the opportunity to give Councilman Cohn an "ear-full". Mr. Gay said he never had an elected official not only listen but take action to help him and address his concerns. Councilman Cohn made phone calls and got Mr. Gay in touch with the right people so that his issues could be addressed. Mr. Gay said that is all the people want; someone to truly listen to their concerns and take action on their behalf to address their concerns. He hopes that Council would have a discussion with any one Council member that has a vendetta against another Council member to resolve issues without embarrassing the Town. Mr. Gay thanked Sheriff Cathey and his Deputies for all that they do for Indian Trail and Union County.

Councilman David Cohn had signed up to speak under public comments; he left his seat at the dais and made his comments from the podium, the same as everyone else that gave public comments.

Councilman Cohn stated his address, 1019 Filly Drive, for the record. He began by thanking everyone that stood up in support of him. Councilman Cohn said reads a lot of things in the paper and just can't believe some people. After receiving the agenda for tonight's meeting last week he was baffled by the items of #10 and couldn't sleep that first night. But after it resonated with him he said to himself that he could do this. He noted that there were discussions of removing the items from the agenda after it had been sent to hundreds of people including the media and posted on the Town's website. He did not want the items removed; he wants to address the accusations and hopes to do so in a few minutes. He said that he ran for office on (building) parks. For four years he has left his (previous campaign) website up so that people could compare what he has done to what he said he was going to do. He said he has been criticized for raising taxes but he didn't know that there were going to be three other Council members that wanted to build parks. He asked Councilman King if he knew that Council was going to raise taxes; Councilman King said he had no clue that was going to happen. Councilman Cohn said they did raise taxes before the people voted in favor of the parks and he did not like that but at the end of the day at least the people had a voice in the parks. He said that people that are criticizing him now wanted the parks and voted for the parks. He apologized that this meeting tonight is what it is; meetings should always be about the Town and never about any Council member. This is why we need change. Again, he thanked those who spoke on his behalf.

LAW ENFORCEMENT UPDATE

Lt. Chase Coble addressed Council giving an update of activity in September. Quite ironically and amazingly there were 116 motor vehicle accidents and 262 criminal reports taken in September which were both the same amounts as August. Lt. Coble said he doesn't ever recall any numbers matching from one month to the next but it happened with two series of reports this past month. Lt. Coble highlighted a few instances of criminal activity that took place since the last meeting. Lt. Coble said he shares these accounts as reminders that there are drugs in the community and crime happens but they are attempting to do their due diligence to rid the community of drugs. Four officers have been reassigned out of Indian Trail and replaced with four other deputies; so don't be surprised to see some new faces.

Lt. Coble introduced Chief Deputy Todd Elmore who addressed the Council. Chief Deputy Elmore noted that he lives in Wesley Chapel and is a retired Special Agent for the Internal Revenue Service and Homeland Security. He specialized in financial crimes mainly based on narcotics; in total he was a Federal Drug Agent for 26 years. He retired a couple years ago until about 2 months ago when he was honored to accept a position with the Union County Sheriff's Office. He is honored to work for Sheriff's Cathey's Office (UCSO), an extremely professional and perhaps the best Sheriff's Department in the Country. Chief Deputy Elmore noted that Lt. Coble and his deputies; although a part of the UCSO they are vested in the Indian Trail community. Chief Deputy Elmore looks forward to working with the Town in his new position with the UCSO.

CONSENT AGENDA

- a. Approval of the September 8, 2015 Regular Meeting draft minutes
- b. Approval of Tax Month End Report-September 2015
- c. Approval of Budget Amendments

Councilman Daniels moved to approve the Consent Agenda, as presented, and carried by way of a unanimous vote.

PUBLIC HEARINGS

Mayor Alvarez noted that there were no Public Hearings scheduled for this meeting.

BUSINESS ITEMS

a. Council Consideration of Water & Sewer Extension Agreement for the Municipal Complex.

Town Manager Fivas explained that this type of agreement has been approved in the past. Basically, it allows for the Town to build the infrastructure and once completed and inspected a process would be completed to convey the infrastructure to Union County Public Utilities.

Councilman Savoie moved to approve the Water & Sewer Extension Agreement with Union County Public Utilities for the Municipal Complex, as presented; the motion carried unanimously.

b. Council Consideration of Right of Way Encroachment Agreement for utilities at the Municipal Complex.

Mr. Fivas explained that this agreement acknowledges that there will be infrastructure located under a Town road and gives Union County Public Utilities the right to maintain what will be their property (the infrastructure as noted and approved be above).

Councilman Drehs moved to approve the Right of Way Encroachment Agreement at the Municipal Complex; the motion carried unanimously.

DISCUSSION ITEMS

a. Review Councilman Cohn's 2012—27% tax increase. (Item requested by Councilman Daniels)

Since this item was requested by Councilman Daniels he was given the floor by Mayor Alvarez. Councilman Daniels made a brief statement before beginning. He said that the cost of transparency is high. When he originally requested these three items on the agenda his intent was to get the truth out there; he did not intend to hurt anyone and did not have any vendetta. Councilman Daniels said that he has no problems with Councilman Cohn and if he offended him, he apologizes. Councilman Daniels said that when his constituents ask him what the truth is about items being "put out there" then he believes it's his duty to convey the truth to the residents. He said that the truth comes from the minutes; the official record. He said this is an opportunity for clarification for the truth; from the minutes.

There was a back and forth discussion between Councilman Daniels and Councilman Cohn regarding Town Council action that was taken in June 2012 through the referendum vote (of the

citizens) in November 2012. During the discussion, some of the official minutes of the time frame aforementioned were referenced as well as a newspaper article published in the June 15, 2012 edition of the Union County Weekly.

At one point during the discussion Mayor Alvarez stated that these agenda items should've have been presented as a review of Town Council Minutes of the dates in which these issues were addressed rather than the way in which they were worded. The way in which these items were worded and included on the agenda is an embarrassment. If as Mayor, he had the power to remove the items, he would have done so. Mayor Alvarez took Councilman Daniels at his word that if he had to do it over, he would have worded the items differently. He asked that members stay on topic, keep it brief and be respectful.

b. Review Councilman Cohn's record that raised the Town's debt. (Item requested by Councilman Daniels)

Councilman Daniels asked Councilman Cohn if he sat on a Council that raised Town debt 520%. Councilman Cohn said although he has not done the math, it is likely that debt was raised significantly by the previous Council because of the \$8.5 million bond referendum for the parks. However, at least the people voted on that debt increase. This Council just voted for an \$8 million municipal complex, which he said will significantly raise the Town's debt but the people were not given a voice in the decision. Again, Mayor Alvarez asked everyone to mind their tone and be respectful to one another; to serve the argument with dignity.

c. Review of Councilman Cohn's vote for hundreds of apartments for the Southgate development. (Item requested by Councilman Daniels)

Upon query from Councilman Daniels, Councilman Cohn explained why he voted for the Southgate Development project, a Planned Unit Development (PUD) which includes a mix of single-family and multifamily residences as well as some commercial uses. He said that unlike other projects that included apartments citizens from neighboring properties did not voice objections to the Southgate project. Additionally, as noted in the November 12, 2013 Town Council Meeting Minutes the developer said if the property were not annexed into Indian Trail the previously approved project would be built regardless; they would either incorporate to Monroe or build-as incorporated, Union County.

The back-and-forth discussion of the matter continued between Councilmen Daniels and Cohn. Mayor Alvarez grew tired of requesting that the members remain respectful to one another. At one point Mayor Alvarez felt that Councilman Daniels was disrespecting the Chair and stated that the "Discussion" portion of the agenda was concluded unless the Council voted for it to continue. *Councilman Daniels moved to continue the Discussion of Item 10c of the agenda; the motion died with four (4) members voting in the opposition and Councilman Daniels being the only vote in favor of the motion.*

MANAGER'S REPORT

Mr. Fivas had nothing to report.

COUNCIL COMMENTS

Councilman Savoie: thanked everyone for attending this evening; staff for their hard work and Sheriff Cathey for all that he does.

Councilman Cohn: thanked everyone for coming out this evening and for Sheriff Cathey attending. He said he would not read the statement he had prepared but if anyone wanted to know why he voted for Southgate development go to the Town's Website and listen to the minutes of November 12, 2013 specifically, at 1-hour, 26-minutes of the recording the developer states that if the project would not be annexed into Indian Trail, they would seek an annexation from Monroe or build the project in the unincorporated area of Union County. He said that he is not saying that he did not vote for a tax increase; he did vote for a tax increase but the people had a vote on the parks. He said it is the same people that were pushing for the parks that are now criticizing him. He was humbled by all the people that stood up and spoke on his behalf this evening.

Mayor Alvarez: thanked everyone for coming. He is seeking professionalism from the Council. He noted that the Mayor is the presiding officer. He urged the Council that takes seat after the November election to read-up, attend provided classes and be respectful and professional at all times for the sake of the Town. He truly believes that each member of the current Council cares about the Town and serves for the right reason. The most respectful thing members could do for the taxpayers is to keep arguments to Town business and be respectful in your arguments. Fight for what you believe in, vote and move on; there is no reason to get personal and start slinging at one another. The items on tonight's agenda were disgraceful. He wouldn't put this on any Mayor of any town to have to deal with a personal argument in a public meeting where the perception of making the argument public is for campaigning. We have wasted taxpayer's money to sit here and argue about a campaign. Mayor Alvarez apologized to the audience. He also apologized to Sheriff Cathey for any mistakes he may have made in the past that hurt their relationship; they were mistakes. Again, Mayor Alvarez noted that Councilman Daniels said he incorrectly worded the agenda items that he had placed on the agenda; everyone makes mistakes. However, if a pattern of behavior is consistent then a person is not sorry for what they have done it is intentional. Everyone should learn from their mistakes and make efforts to see that they are not repeated.

Councilman King had no comments.

Councilman Daniels said that Mr. Ross (Southgate) is a developer that would've approached Monroe about an annexation but Monroe doesn't have an ordinance for apartments; they didn't have one then, they don't have one today and there is not such an ordinance in the works. He thanked everyone for coming and wished everyone safe travels home.

Councilman Drehs reminded everyone of the wonderful job the Union County Sheriff's Office does throughout the County; he recently had jury duty and the bailiffs did a fantastic job.

CLOSED SESSION

Councilman Savoie moved to enter Closed Session pursuant to NC G.S 143-318.11(a)(3)—to protect the attorney-client privilege; and Pursuant to NC G.S 143-318.11(a)(6)—to consider the qualifications

competence, performance, condition of appointment of a public officer or employee or prospective public officer or employee. The motion carried unanimously.

After the Closed Session concluded, Councilman Daniels moved that Council enter Regular/Open Session; the motion carried by a unanimous vote.

ADJOURN

Councilman King moved to adjourn the meeting and the motion carried unanimously.

APPROVED: _____

Michael L. Alvarez, Mayor

ATTEST: _____

Kelley Southward, Town Clerk

DRAFT



**Town of Indian Trail
Town Council Special/Called Meeting
Monday, October 19, 2015
Civic Building
9:00 AM**

MINUTES

The following members of the governing body were present:

Mayor: Michael L. Alvarez

Council Members: David Cohn, Gordon B. Daniels, David W. Drehs, Christopher King, and Gary M. Savoie; all members were present.

Staff Members: Town Manager Joe Fivas, Town Attorney Keith Merritt and Town Clerk Kelley Southward

CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Alvarez called the Meeting to order at 9:00 AM and led the Pledge of Allegiance to the Flag.

MOTION TO APPROVE THE AGENDA

Councilman Savoie moved to approve the agenda, as presented; the motion carried unanimously.

MOTION TO ENTER CLOSED SESSION

Councilman Savoie moved that Council enter Closed Session pursuant to NC G.S 143-318.11(a)(3)—to protect the attorney-client privilege; and pursuant to NC G.S 143-318.11(a)(6)—to consider the qualifications competence, performance, condition of appointment of a public officer or employee or prospective public officer or employee.

MOTIN TO ENTER OPEN SESSION

Upon conclusion of the Closed Session, Councilman Drehs moved that the Council enter Regular/Open Session; the motion carried by a unanimous vote.

ACTION AS A RESULT OF CLOSED SESSION DISCUSSIONS

Mr. Merritt, Town Attorney, noted that no action would be necessary at this time.

ADJOURN

Councilman Savoie moved to adjourn and the motion carried by way of a unanimous vote.

APPROVED:

Michael L. Alvarez, Mayor

ATTEST:

Kelley Southward, Town Clerk



TO: Mayor and Town Council
FROM: Joe Fivas
CC: Tracee Karlsson
DATE: November 10, 2015
SUBJECT: Budget Amendments for November 10th Meeting

Please find attached budget amendments processed through October 31, 2015.

Please feel free to call, email, come in or ask any questions you may have regarding these matters.

7d

Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Joe Fivas
CC: Tracee Karlsson, Alicia Massey
DATE: November 10, 2015
SUBJECT: Month End October 2015



According to GS 105-350(7) it is the duty of the revenue 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 October 2015 collections. The revenue 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				Penalty	Total
		Arrears/Other	2015	2016	Future		
Billing	32073	0.00	7,280,439.13	0.00	0.00		7,280,439.13
Payments	5028	1,057.31-	1,041,499.43-	0.00	0.00	0.00	1,042,556.74-
Reversals	2	0.00	369.75	0.00	0.00	0.00	369.75
Adjustments	1493	0.00	2,268.14-	0.00	0.00	0.00	2,268.14-
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	0					0.00	0.00
Totals	<u>38596</u>	<u>1,057.31-</u>	<u>6,237,041.31</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>6,235,984.00</u>

Te

Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Joe Fivas
CC: Tracee Karlsson, Alicia Massey
DATE: November 10, 2015
SUBJECT: Large Refunds of Overpaid Taxes



Please see the below list of tax refund(s) for overpayment of taxes greater than \$500.00

1. Anthony & Jean Prete - \$557.52 refunded to escrow holder as it was previously paid by an attorney.

If you need any clarification on any of these items, please feel free to contact Alicia Massey at (704) 821.5401.



TO: Mayor and Town Council

FROM: Jason Tryon, Parks & Recreation Director

DATE: November 5, 2015

SUBJECT: Park hours of operation

With the approval of this agenda item, Town staff will set the following Hours of Operation for all Town Parks from December 1st through February 29th:

Playground/Walking Trails: Open at Dawn and Close at Dusk 7 days a week

Square Area: Open at Dawn and Close at Dusk 7 days a week

Athletic Fields: Closed (Maintenance)

Park Restrooms: Closed (Winterized)

Dog Park Area: Open at Dawn and Close at Dusk 7 days a week

With the approval of this agenda item, Town staff will set the following Hours of Operation for all Town Parks from March 1st through November 30th:

Playground/Walking Trails: Open at Dawn and Close at Dusk 7 days a week

Square Area: Open at Dawn and Close at Dusk 7 days a week

Athletic Fields: Open 7 days a week from early morning to evening

Park Restrooms: Open 7 days a week from early morning to evening

Dog Park Area: Open at Dawn and Close at Dusk 7 days a week

79



TO: Mayor & Town Council
FROM: Joe Fivas, Town Manager
CC: Kelley Southward, Town Clerk
DATE: November 10, 2015
SUBJECT: NC DOT Speed Limit Changes

NC DOT would like to change the speed limits on 8 streets that they own in the Crismark subdivision to 25 MPH. NC DOT requires the Town Council approve the changes since the streets are located within the municipal limits even though the streets are owned by NC DOT. Please see the NC DOT letter of October 7, 2015 for details including the names of the affected streets.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

716 WEST MAIN STREET, ALBEMARLE, NC, 28001

NICHOLAS J. TENNYSON
SECRETARY

October 7, 2015

Ms. Peggy Piontek
Town of Indian Trail
PO Box 2430
Indian Trail, NC 28079

Dear Ms. Piontek:

Attached are Municipal Speed Limit Ordinances enacting a speed zone on the following roads in the Crismark subdivision in Indian Trail: Cornflower Ln (SR 3079), Early Rise Ave (SR 3080), Moonstone Ln (SR 3073), Tiger Eye Ave (SR 3072), Fine Robe Dr (SR 3075), Joyful Noise Ln (SR 3077), Gold Nugget Dr (SR 3071), and Peacemaker Dr (SR 3074).

If you are in agreement please have the ordinances executed by the proper city officials and returned to this office for further handling. PLEASE DO NOT ALTER OR ADD TO THIS ORDINANCE.

If you have any questions or concerns, please contact Mohamed Elnagheeb at 704-983-4419.

Sincerely,


Louis L. Mitchell, PE
Division Engineer

LLM/lhj

Cc: Sean Epperson, PE

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1069824

Division: 10 **County:** UNION

Municipality: INDIAN TRAIL

Type: Municipal Speed Zones

Road: SR 3074

Car: 25 MPH

Truck: 25 MPH

Description: (Peacemaker Ln) between SR 3075 (Fine Robe Dr) and SR 3070 (Crismark Dr).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

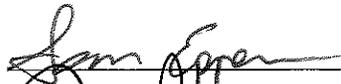
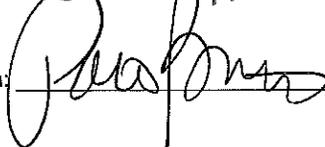
Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: <u></u>	Title: <u>DTE</u>	Date: <u>9/30/15</u>
Region: <u></u>	Title: <u>BTE</u>	Date: <u>9/30/15</u>

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1069823

Division: 10 **County:** UNION

Municipality: INDIAN TRAIL

Type: Municipal Speed Zones

Road: SR 3071

Car: 25 MPH

Truck: 25 MPH

Description: (Gold Nugget Dr) between SR 3070 (Crismark Dr) and SR 3072 (Tiger Eye Ave).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my hand and the municipal seal this _____ day of _____, 20____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: Am Egan

Title: DTE

Date: 9/30/15

Region: Paul Jones

Title: RTE

Date: 9/30/15

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1069822

Division: 10 **County:** UNION

Municipality: INDIAN TRAIL

Type: Municipal Speed Zones

Road: SR 3077

Car: 25 MPH

Truck: 25 MPH

Description: (Joyful Noise Ln) between SR 3075 (Fine Robe Dr) and 0.127 miles northeast of SR 3075 (Fine Robe Dr).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: Adam Eppm

Title: DTE

Date: 9/30/15

Region: Paulson

Title: PTC

Date: 9/30/15

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1069821

Division: 10 **County:** UNION

Municipality: INDIAN TRAIL

Type: Municipal Speed Zones

Road: SR 3075

Car: 25 MPH

Truck: 25 MPH

Description: (Fine Robe Dr) between 0.16 miles southeast of SR 3077 (Joyful Noise Ln) and 0.21 miles northwest of SR 3077 (Joyful Noise Ln).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my hand and the municipal seal this _____ day of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: Sam Egan

Title: DTE

Date: 9/30/15

Region: John Brown

Title: RCE

Date: 9/30/15

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1069820

Division: 10 **County:** UNION

Municipality: INDIAN TRAIL

Type: Municipal Speed Zones

Road: SR 3072

Car: 25 MPH

Truck: 25 MPH

Description: (Tiger Eye Ave) between SR 3071 (Gold Nugget Dr) and SR 3073 (Moonstone Ln).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my hand and the municipal seal this _____ day of _____, 20____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: Sam Egan

Title: DTB

Date: 9/30/15

Region: Paula Fournier

Title: RTU

Date: 9/30/15

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1069819

Division: 10 **County:** UNION

Municipality: INDIAN TRAIL

Type: Municipal Speed Zones

Road: SR 3073

Car: 25 MPH

Truck: 25 MPH

Description: (Moonstone Ln) between 383 feet southwest of SR 3072 (Tiger Eye Ave) and 240 feet northeast of SR 3072 (Tiger Eye Ave).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20_____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my
hand and the municipal seal this _____ day
of _____, 20_____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: 

Title: DTE

Date: 9/30/15

Region: 

Title: RTE

Date: 9/30/15

**Certification of Municipal Declaration
To Enact Speed Limits and Request for Concurrence**

Concurring State Ordinance Number: 1069817

Division: 10 **County:** UNION

Municipality: INDIAN TRAIL

Type: Municipal Speed Zones

Road: SR 3079

Car: 25 MPH

Truck: 25 MPH

Description: (Cornflower Ln) between SR 3070 (Crismark Dr) and SR 3080 (Early Rise Ave).

Municipal Certification

I, _____, Clerk of _____, do hereby certify that the municipal governing body, pursuant to the authority granted by G.S. 20-141(f), determined upon the basis of an engineering and traffic investigation and duly declared, on the _____ day of _____, 20____, the speed limits as set forth above on the designated portion of the State Highway System, which shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The said municipal declaration is recorded as follows:

Minute Book: _____ Page: _____ Ordinance/Resolution Number: _____

In witness whereof, I have hereunto set my hand and the municipal seal this _____ day of _____, 20____.

(signature)

(municipal seal)

Department of Transportation Approval

Division: *Sam Epp*
Region: *John P. ...*

Title: *OTB*
Title: *RTE*

Date: *9/20/15*
Date: *9/20/15*

7h



TO: Mayor and Town Council
FROM: Joe Fivas
CC: Tracee Karlsson
DATE: November 10, 2015
SUBJECT: Additional Signatories on Town Bank Accounts

As required by the Local Government Budget and Fiscal Control Act Section 159-24(b) "Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer ..."

The Town would like to recommend the following additions to the Deputy Finance Officers designation:

Tracee Karlsson – Assistant Finance Director
Kelley Southward – Town Clerk
Rox Burhans – Planning Director



TO: Mayor and Town Council

FROM: Joseph A. Fivas, Town Manager

DATE: November 10th, 2015

SUBJECT: Parks & Recreation Organizational Chart

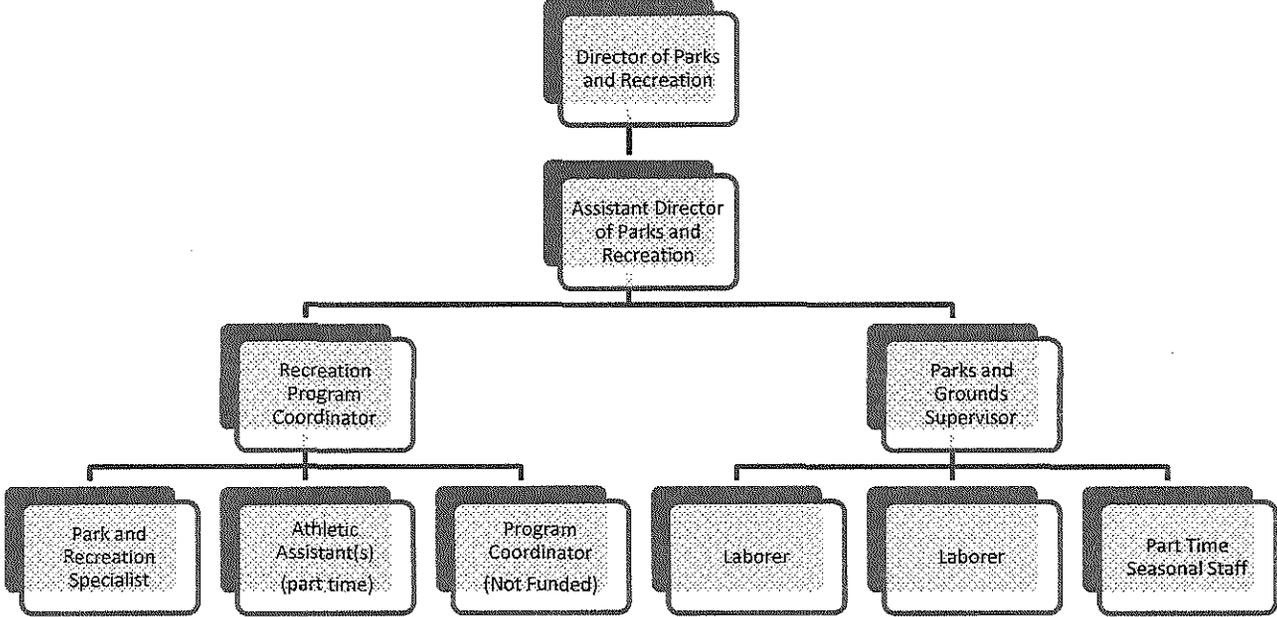
This is an updated organization chart for the Parks and Recreation Department. The key addition is a title change for an already authorized FTE position from Administrative Assistant to Parks and Recreation Specialist. The positions are very similar in terms of the scope of the position, but the name will assist in attracting qualified Parks & Recreation staff.

Staff Recommendation:

Staff recommends to approve this new updated Parks and Recreation Organizational Chart.

jaf

Parks and Recreation



9a



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: November 10, 2015

SUBJECT: Chestnut Square Park Irrigation/Well Up-Fits Contract Approval

General Information:

Engineering Staff held an informal bid opening for the Chestnut Square Park Irrigation/Well Up-Fit Contract on Tuesday, October 6, 2015. One (1) bid was submitted in the amount of \$111,621.40. Following verification, staff recommends James E. Harris Construction Company, Inc. with a bid of \$111,621.40 as the lowest responsive, responsible bidder.

Required Action:

Award of Contract

Attachments:

Contract



PROJECT MANUAL FOR

Chestnut Square Park Irrigation/Well Up-Fit Contract

PROJECT NUMBER:

505-2015-004

TOWN OF INDIAN TRAIL, NORTH CAROLINA

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

A handwritten signature in black ink, appearing to be 'S. Kaufhold', located to the right of the printed name.

TABLE OF CONTENTS

I.	ADVERTISEMENT FOR BIDS.....	5
II.	INSTRUCTIONS TO BIDDERS.....	7
	PROJECT NAME:.....	8
	CONTRACT DOCUMENTS:.....	8
	MANDATORY PRE-BID MEETING:	8
	BID DEADLINE:	8
	CONTENT OF BID:	8
	BID BOND:.....	9
	BIDS ARE FIRM OFFERS:.....	9
	BID PHASE CONTACT:	9
	ADDENDA:	9
	SELECTION CRITERIA:	9
	ONLY ONE BID PER ENTITY:.....	9
	CONTRACT AWARD:	9
II.	BID DOCUMENTS.....	10
	ACKNOWLEDGEMENT OF ADDENDA.....	11
	ITEMIZED BID FORM	12
	REPRESENTATIVE PROJECTS FORM.....	14
	EXECUTION OF BID FORM.....	15
	BID BOND.....	16
IV.	AGREEMENT.....	17
	AGREEMENT FOR CONSTRUCTION.....	18
	SIGNATURE SHEET.....	20
	PERFORMANCE BOND.....	22
	PAYMENT BOND.....	23
	CERTIFICATE OF INSURANCE	24
V.	SUPPLEMENTARY GENERAL CONDITIONS.....	25
1.	SCOPE OF WORK	26
	1.1 ALTERATION OF WORK AND QUANTITIES.....	26
	1.2 MAINTENANCE OF TRAFFIC.....	26
	1.3 FINAL CLEANING UP.....	26
	1.4 ACCESS TO THE WORK.....	26
	1.5 MAINTENANCE DURING CONSTRUCTION.....	26
2.	CONTROL OF WORK.....	28
	2.1 CONFORMITY WITH PLANS AND SPECIFICATIONS.....	28
	2.2 COOPERATION OF CONTRACTOR.....	28
	2.3 COOPERATION BETWEEN CONTRACTORS.....	28
	2.4 AUTHORITY AND DUTIES OF INSPECTORS.....	29
	2.5 INSPECTION OF THE WORK.....	29
	2.6 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK.....	29
	2.7 LOAD RESTRICTIONS.....	30
	2.8 RETEST OF WORK.....	30
	2.9 CHARACTER OF WORKERS, METHODS AND EQUIPMENT.....	30
	2.10 FIRE PREVENTION.....	30
	2.11 PUMPING AND DRAINAGE.....	31
	2.12 DUST CONTROL.....	31
	2.13 WATER POLLUTION.....	31
	2.14 ILLUMINATION.....	31

2.15	HAZARDOUS MATERIAL.....	31
2.16	EROSION CONTROL.....	31
3.	PROSECUTION AND PROGRESS.....	33
3.1	PRE-CONSTRUCTION MEETING.....	33
3.2	NOTICE TO PROCEED.....	33
3.3	PROSECUTION AND PROGRESS.....	33
3.4	TEMPORARY SUSPENSION OF THE WORK.....	33
3.5	ADJUSTMENT OF CONTRACT TIME.....	34
3.6	FAILURE TO COMPLETE PUNCH LIST ON TIME.....	35
3.7	DEFAULT AND TERMINATION OF CONTRACT.....	35
3.8	TERMINATION FOR CONVENIENCE.....	36
3.9	ACTIONS UPON TERMINATION OR TERMINATION FOR CONVENIENCE.....	36
3.10	PAYMENT UPON TERMINATION.....	36
3.11	PARTIAL ACCEPTANCE.....	37
3.12	FINAL ACCEPTANCE.....	37
4.	MEASUREMENT AND PAYMENT.....	38
4.1	MEASUREMENT OF QUANTITIES.....	38
4.2	COMPENSATION FOR ACTUAL QUANTITIES.....	40
4.3	PARTIAL PAYMENT/RETAINAGE.....	40
4.4	ACCEPTANCE AND FINAL PAYMENT.....	40
4.5	LIENS.....	40
4.6	CLAIMS FOR ADJUSTMENT AND DISPUTES.....	41
4.7	CORRECTION OF WORK AFTER FINAL PAYMENT.....	41
4.8	SUBSURFACE INVESTIGATION.....	42
4.9	EXISTING UNDERGROUND UTILITIES/FACILITIES.....	42
4.10	MATERIALS TICKETS.....	43
5.	MISCELLANEOUS.....	44
5.1	VENUE.....	44
5.2	INDEPENDENT CONTRACTOR.....	44
5.3	LAWS AND REGULATIONS.....	44
5.4	INDEMNITY.....	44
5.5	INSURANCE.....	44
5.6	CONTRACT MEETINGS.....	45
5.7	SUCCESSORS, ASSIGNEES AND ASSIGNMENT.....	45
5.8	AUDIT RIGHTS.....	45
5.9	OSHA REQUIREMENTS.....	45
5.10	TAX STATEMENT SUBMITTAL.....	45
5.11	PROJECT CLOSEOUT SUBMITTALS.....	46
	CONTRACTOR'S AFFIDAVIT RELEASE AND WAIVER OF CLAIM.....	47
	STATE/COUNTY SALES/USE TAX STATEMENT.....	48
VI.	DISPUTE RESOLUTION REQUIREMENTS.....	49
VII.	SPECIFICATIONS.....	52
7.1	ASPHALT.....	53
7.2	CONCRETE.....	53
7.3	EROSION AND SEDIMENTATION CONTROL MEASURES.....	55
7.4	FULL DEPTH STREET REPAIRS.....	55
7.5	SAWING EXISTING PAVEMENT.....	55
7.6	SEEDING AND MULCHING.....	55
7.7	CONSTRUCTION STAKES, LINES, AND GRADES.....	55
VIII.	PROJECT SPECIAL PROVISIONS.....	57
	SP1 – MOBILIZATION.....	58
	SP2 – GRADING/EROSION CONTROL.....	58

SP3 – SITE ELECTRICAL 59
SP4 – IRRIGATION MAIN TIE-INS AND CONNECTIONS ABANDONMENT..... 59
VIII. APPENDIX..... 61
APPENDIX A: CONSTRUCTION PLANS..... 62

1. ADVERTISEMENT FOR BIDS

Chestnut Square Park Irrigation/Well Up-Fit Contract

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

PROJECT NAME: Chestnut Square Park Irrigation/Well Up-Fit Contract
PROJECT NUMBER: 505-2015-004
MANDATORY PRE-BID: Tuesday, September 22, 2015 at 3:00 pm
BID DUE DATE & TIME: Tuesday, October 6, 2015 at 3:00 p.m.

SCOPE OF WORK: The purpose of the project is to provide wet well water supply for the existing irrigation system at Chestnut Square Park. Work includes the installation of two 6" submersible well pumps (into existing drilled shafts) with all necessary above ground components, electrical service lines, wall mounted pump control panel, and waterline connections. The (2) existing drilled shafts were installed by McCall Brothers, Inc.

Construction must begin no later than November 2, 2015.

Interested bidders must obtain an official bid package in order to bid. Contract Documents are available for a nonrefundable charge of \$68.00 at the following:

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

One copy of the Contract Documents will be available for reference at the Town of Indian Trail Engineering Department, 130 Blythe Drive, Indian Trail, NC 28079. A digital bid tab is available upon request by email at vbw@engineering.indiantrail.org.

A Mandatory Pre-Bid Meeting will be held at 3:00 p.m. on Tuesday, September 22, 2015 in the Town of Indian Trail Civic Building at 100 Navajo Trail, Indian Trail, NC 28079. Attendance at this meeting is required in order to bid on this project. The meeting will begin promptly at 3:00 p.m. Late attendees will not be admitted and will not be allowed to bid on the project.

Bidders must be properly licensed under North Carolina state law to perform the work. Each Bid shall be accompanied by a bid bond or a certified check in the amount not less than 5% of the total amount of the Bid.

Bids must be received no later than **3:00 p.m. on Tuesday, October 6, 2015**. Return bid package to:

Town of Indian Trail Engineering Department
PO Box 2430 (mail)
130 Blythe Drive (delivery)
Indian Trail, NC 28079

For more project information, contact Vicky Watts, Engineering Contract Analyst, at 704-821-1314 or email at vbw@engineering.indiantrail.org.

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

II. INSTRUCTIONS TO BIDDERS

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

PROJECT NAME:

Chestnut Square Park Irrigation/Well Up-Fit Contract

PROJECT NUMBER:

505-2015-004

SCOPE OF WORK: The purpose of the project is to provide wet well water supply for the existing irrigation system at Chestnut Square Park. Work includes the installation of two 6" submersible well pumps (into existing drilled shafts) with all necessary above ground components, electrical service lines, wall mounted pump control panel, and waterline connections. The two (2) existing drilled shafts were installed by McCall Brothers, Inc.

CONTRACT DOCUMENTS:

The Contract Documents include this Project Manual (which contains the Advertisement, Instructions to Bidders, Bid Documents, Agreement, Supplementary General Conditions, Special Conditions and Specifications), the Plans & Drawings, and any addenda. Contract Documents are available at a charge of \$68.00 (non-refundable) and can be obtained at the following:

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

A current email address **must** be provided at the time of contract purchase.

MANDATORY PRE-BID MEETING:

A Mandatory Pre-Bid Meeting will be held at 3:00 p.m. on Tuesday, September 22, 2015 in the Civic Building at 100 Navajo Trail, Indian Trail, NC. Attendance at this meeting is required in order to bid on this project. The meeting will begin promptly at 3:00 p.m. Late attendees will not be admitted and will not be allowed to bid on the project.

BID DEADLINE:

Bids must be received by the Town of Indian Trail Engineering Department at 130 Blythe Drive no later than 3:00 p.m. on Tuesday, October 6, 2015.

CONTENT OF BID:

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

- a) Acknowledgement of Addenda (page 11 of this Project Manual)
- b) Itemized Bid Form (page 12 of this Project Manual)
- c) Representative Projects Form (page 14 of this Project Manual)
- d) Execution of Bid Form (page 15 of this Project Manual)
- e) Bid Bond (page 16 of this Project Manual)

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

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

BID BOND:

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

BIDS ARE FIRM OFFERS:

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

BID PHASE CONTACT:

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

ADDENDA:

Addenda will be sent by email to all persons who have received Contract Documents. The Bidder shall be responsible for inquiring if Addenda have been issued.

SELECTION CRITERIA:

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

ONLY ONE BID PER ENTITY:

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

CONTRACT AWARD:

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

END OF INSTRUCTIONS TO BIDDERS

II. BID DOCUMENTS

ACKNOWLEDGEMENT OF ADDENDA

PROJECT NAME: Chestnut Square Park Irrigation/Well Up-Fit Contract

PROJECT NUMBER: 505-2015-004

ACKNOWLEDGMENT OF ADDENDA

The Bidder hereby acknowledges receipt of any addenda

NUMBER: _____ DATE: _____ INITIAL: _____

Contractor Name: _____

ITEMIZED BID FORM



TOWN OF INDIAN TRAIL
 CHESTNUT SQUARE PARK IRRIGATION/WELL UP-FIT
 505-2015-004

Contractor: _____

Line Item	Item Type	Item Description	Quantity	Unit	Unit Price	Amount
1	SP1	Mobilization	1	LS		
2	SP2	Grading/Erosion Control	1	LS		
3	1-1.0	Pump Control Panel (see approved plans)	1	LS		
4	1-1.0	All Wet Well Components including filters (see approved plans)	1	LS		
5	SP3	Site Electrical (all work necessary to provide power to two wells)	1	LS		
6	SP4	Irrigation Main Tie-ins and Connections Abandonment	1	LS	\$10,000.00	\$10,000.00
					Subtotal	
					Contingency 10%	
					Total	

REPRESENTATIVE PROJECTS FORM

1. Project: _____
Owner: _____
Contract Price: _____
Date Completed: _____
Owner Contact: _____

2. Project: _____
Owner: _____
Contract Price: _____
Date Completed: _____
Owner Contact: _____

3. Project: _____
Owner: _____
Contract Price: _____
Date Completed: _____
Owner Contact: _____

Contractor Name: _____

EXECUTION OF BID FORM

PROJECT NAME: Chestnut Square Park Irrigation/Well Up-Fit Contract
PROJECT NUMBER: 505-2015-004

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

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

Type of Bidder: Sole Proprietor Partnership Limited Liability Company Corporation Joint Venture
(Check appropriate box)

BIDDER #1

Name _____
Address _____

Phone _____
Email _____
Printed Name _____
SIGNATURE _____
Title _____
NC General Contractor's License Number _____
Classification _____
Limits _____

Subscribed and sworn before me this
the ____ day of _____, 20__.

Signature of Notary Public
of _____ County
State of _____
My Commission Expires: _____

NOTARY SEAL

BID BOND

(Attach Bond and Power of Attorney to this sheet)

IV. AGREEMENT

AGREEMENT FOR CONSTRUCTION

THIS AGREEMENT ("Agreement"), made and entered into on or about _____, 2015 by and between the Town of Indian Trail, North Carolina, hereinafter called "Owner" and _____, hereinafter called "Contractor" (collectively, "Parties"),

WITNESSETH

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

1. **PROJECT:** Chestnut Square Park Irrigation/Well Up-Fit Contract, 505-2015-004
2. **COMPLETION OF WORK:** For the Contract Price, Contractor shall furnish all materials, labor, tools, equipment, and supervision for the construction of the Project and all expense, direct or indirect, connected with the proper execution of the same and of maintaining the same, until it is accepted by the Owner (the "Work"). All Work shall be performed and completed in an efficient and workmanlike manner, in accordance with the Contract Documents and in compliance with all applicable federal, local and state regulatory agencies.
3. **CONTRACT DOCUMENTS**
 - a. Advertisement
 - b. Instructions to Bidders
 - c. Bid Documents (Acknowledgment of Addenda, Itemized Bid Form, Representative Projects, Execution of Bid Form and Bid Bond)
 - d. This Agreement
 - e. Supplementary General Conditions
 - f. Dispute Resolution Requirements
 - g. Specifications
 - h. Plans & Drawings
 - i. Addenda

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

The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. In the event the Contractor discovers an error or discrepancy, it shall immediately inform the Owner.
4. **E-VERIFY:** In performing this Contract, Contractor will comply with the requirements of Article 2 of Chapter 64 of the General Statutes, and will require that its subcontractors comply with Article 2 of Chapter 64 of the General Statutes.
5. **CONTRACT PRICE:** This is a unit price contract. The Contract Price shall be the unit price for each pay item multiplied by the actual units of each pay item certified by Contractor on a pay request as described below and approved by the Owner as satisfactorily completed in accordance with the Contract. The pay items and their unit prices are set forth in the Itemized Bid Form. Change orders must be approved in writing prior to commencing work by both the Owner and the Contractor. The final Contract Price shall not be determined until the completion and acceptance by the Owner of the Work and shall be the sum of the approved amounts of all pay items.

6. **CONTRACT TIME:** The Contractor shall achieve Completion of the Work no later than 60 calendar days from the date of commencement stated in the written Notice to Proceed. No extensions will be approved except as authorized by Article 108-10 of the *Standard Specifications*.

No work will take place on Town designated holidays.

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

8. **PAYMENTS:** Partial payments will be made upon receipt of Contractor invoice at least once each month as the Work progresses. Said payments will be based upon estimates, prepared by the Contractor and approved by Owner, of the value of the Work performed and materials complete in place in accordance with the Contract Documents.

Each invoice shall include the Contractor's Affidavit Release and Waiver of Claim, the Sales and Use Tax Certification Statement.

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

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

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

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

The successful bidder shall provide the Town with a contract payment bond in an amount equal to 100 percent of the estimated Contract Price (as determined by the Town) and a contract performance bond in an amount equal to 100 percent of the estimated Contract Price (as determined by the Town) within 10 calendar days (or such other time as designated by Town) from the date of notice of selection. All bonds shall be in conformance with G.S. 44A-33. The corporate surety furnishing the bonds shall be authorized to do business in the State.

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

END OF AGREEMENT FOR CONSTRUCTION

SIGNATURE SHEET

**Chestnut Square Park Irrigation/Well Up-Fit Contract
505-2015-004**

CONTRACTOR FIRM NAME: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

Address: _____

FEDERAL TAX ID NUMBER: _____

CONTRACT AWARD: \$ _____

TOWN OF INDIAN TRAIL

By: _____
Joseph A. Fivas, Town Manager

Date

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

By: _____
Marsha Sutton, Finance Director

Date

SURETY COMPANY CONTACTS

PAYMENT BOND NO.:

Surety Name:

Address:

Contact Person:

Title:

Phone No.:

PERFORMANCE BOND NO.:

Surety Name:

Address:

Contact Person:

Title:

Phone No.:

SURETY AGENCY/AGENT:

Agency Name:

Address:

Contact Person:

Title:

Phone No.:

PERFORMANCE BOND

(Attach Performance Bond to this sheet.)

PAYMENT BOND

(Attach Payment Bond to this sheet.)

CERTIFICATE OF INSURANCE

(Attach Certificate of Insurance to this sheet.)

V. **SUPPLEMENTARY GENERAL CONDITIONS**

1. SCOPE OF WORK

1.1 ALTERATION OF WORK AND QUANTITIES

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

1.2 MAINTENANCE OF TRAFFIC

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

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

1.3 FINAL CLEANING UP

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

1.4 ACCESS TO THE WORK

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

1.5 MAINTENANCE DURING CONSTRUCTION

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

END OF SCOPE OF WORK

2. CONTROL OF WORK

2.1 CONFORMITY WITH PLANS AND SPECIFICATIONS

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

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

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

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

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

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

2.2 COOPERATION OF CONTRACTOR

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

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

2.3 COOPERATION BETWEEN CONTRACTORS

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

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

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

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

2.4 AUTHORITY AND DUTIES OF INSPECTORS

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

2.5 INSPECTION OF THE WORK

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

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

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

2.6 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

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

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

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

2.7 LOAD RESTRICTIONS

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

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

2.8 RETEST OF WORK

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

2.9 CHARACTER OF WORKERS, METHODS AND EQUIPMENT

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

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

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

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

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

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

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

2.10 FIRE PREVENTION

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

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

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

2.11 PUMPING AND DRAINAGE

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

2.12 DUST CONTROL

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

2.13 WATER POLLUTION

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

2.14 ILLUMINATION

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

2.15 HAZARDOUS MATERIAL

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

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

2.16 EROSION CONTROL

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

2.17 ADDITIONAL WORK

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

END OF CONTROL OF WORK

3. PROSECUTION AND PROGRESS

3.1 PRE-CONSTRUCTION MEETING

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

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

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

3.2 NOTICE TO PROCEED

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

3.3 PROSECUTION AND PROGRESS

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

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

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

3.4 TEMPORARY SUSPENSION OF THE WORK

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

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

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

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

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

3.5 ADJUSTMENT OF CONTRACT TIME

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

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

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

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

3.6 FAILURE TO COMPLETE PUNCH LIST ON TIME

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

3.7 DEFAULT AND TERMINATION OF CONTRACT

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

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

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

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

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

3.8 TERMINATION FOR CONVENIENCE

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

3.9 ACTIONS UPON TERMINATION OR TERMINATION FOR CONVENIENCE

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

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

3.10 PAYMENT UPON TERMINATION

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

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

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

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

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

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

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

3.11 PARTIAL ACCEPTANCE

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

3.12 FINAL ACCEPTANCE

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

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

END OF PROSECUTION AND PROGRESS

4. MEASUREMENT AND PAYMENT

4.1 MEASUREMENT OF QUANTITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

Cement will be measured by the ton or hundredweight.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2 COMPENSATION FOR ACTUAL QUANTITIES

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

4.3 PARTIAL PAYMENT/RETAINAGE

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

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

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

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

4.4 ACCEPTANCE AND FINAL PAYMENT

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

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

4.5 LIENS

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

4.6 CLAIMS FOR ADJUSTMENT AND DISPUTES

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

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

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

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

4.7 CORRECTION OF WORK AFTER FINAL PAYMENT

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

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

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

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

4.8 SUBSURFACE INVESTIGATION

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

4.9 EXISTING UNDERGROUND UTILITIES/FACILITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

4.10 MATERIALS TICKETS

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

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

END OF MEASUREMENT AND PAYMENT

5. MISCELLANEOUS

5.1 VENUE

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

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

5.2 INDEPENDENT CONTRACTOR

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

5.3 LAWS AND REGULATIONS

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

5.4 INDEMNITY

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

5.5 INSURANCE

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

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

5.6 CONTRACT MEETINGS

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

5.7 SUCCESSORS, ASSIGNEES AND ASSIGNMENT

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

5.8 AUDIT RIGHTS

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

5.9 OSHA REQUIREMENTS

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

5.10 TAX STATEMENT SUBMITTAL

- A. All tax statement bodies and all signatures must be original. Photocopies of blank forms may be used, provided the document containing the information is original.
- B. All tax statements must be signed by the Contractor/Subcontractor's company officer submitting the statement and certified by a Notary Public. All tax statements must list in detail taxes paid by individual invoice. No lump sum, running total, or copies of previously reported statements will be accepted. Tax statements shall show North Carolina tax and County tax paid.

- C. A tax statement showing detailed amounts with “amounts previously reported” noted on the face will be accepted if they are original. This is the equivalent of a statement indicating “no taxes paid this period.” All subcontractors for whom tax statements are included must be certified as such on the face of the Contractor’s tax statement.
- D. Tax statements (the State/County Sales/Use Tax Statement form) must always accompany a payment request for the related project. All final construction payment requests must have a final tax statement regardless of whether any taxes have been paid during the period in question. If no taxes have been paid, the detail page should simply state “0”, “None”, or “No taxes paid this period.”

5.11 PROJECT CLOSEOUT SUBMITTALS

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

- A. Final Application and Certificate for Payment with Sales and Use Tax Certification Statement.
- B. Contractor’s Affidavit Release and Waiver of Claim
- C. Consent of Surety to Final Payment (contracts equal to or exceeding \$100,000) (AIA Document G707).
- D. Guarantees, Warranties, and Test Results required by the Contract Documents.
- E. Operation and Maintenance Manuals and spare parts or materials (as required).
- F. MBE Documentation for Contract Payments (MBE Form 6, page 39).

END OF MISCELLANEOUS

CONTRACTOR'S AFFIDAVIT RELEASE AND WAIVER OF CLAIM

STATE OF _____ COUNTY OF _____

_____, of
(Name) (Title)

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

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

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

Project: _____ Project No.: _____

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

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

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

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

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

By: _____

Title: _____

Date: _____

Subscribed and sworn before me this
the ____ day of _____, 20__.

Signature of Notary Public

of _____ County

State of _____

My Commission Expires: _____

NOTARY SEAL

VI. DISPUTE RESOLUTION REQUIREMENTS

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

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

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

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

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

END OF DISPUTE RESOLUTION REQUIREMENTS

VII. SPECIFICATIONS

7.1 ASPHALT

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

There will be no adjustment in price for Asphalt Binder for Plant Mix.

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

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

7.2 CONCRETE

A. Compressive Strength

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

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

B. Slump

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

C. Air Content

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

D. Acceptance and Testing Standards

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

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

E. Concrete Finishes

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

F. Compressive Strength Quality Assurance for Incidental Concrete

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

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

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

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

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

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

7.3 EROSION AND SEDIMENTATION CONTROL MEASURES

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

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

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

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

7.4 FULL DEPTH STREET REPAIRS

Unless otherwise shown in the plans or stated by the Engineer in the field, all full depth street repairs will consist of digging out a five-inch depth specified area and replacing it with intermediate base course (I 19.0 B) or an approved equal. If the repaired area is not sealed off with an appropriate layer of asphalt surface mix in a suitable time frame, the area in question will be inspected again and if found to be unsuitable the Contractor will replace the area at no cost to the Town.

7.5 SAWING EXISTING PAVEMENT

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

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

The cost of sawing asphalt or concrete shall be considered incidental to the removal operation and shall be included in the proper unit price bid line items.

7.6 SEEDING AND MULCHING

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

7.7 CONSTRUCTION STAKES, LINES, AND GRADES

The Contractor will set construction stakes establishing lines, slopes and continuous profile-grade in road work, and centerline and benchmark for culvert work, protective and accessory structures, and appurtenances which require the use of a surveyor's level and transit. The Contractor will locate and mark right-of-way limits and construction easements within the work area. In addition, the Contractor will be responsible for all commutations and information relating to stakes, lines and grades. Contractor shall also reestablish all property irons disturbed by the construction. All construction staking and establishment of property irons at their correct locations shall be performed under the responsible charge of a North Carolina Registered Land Surveyor.

The Contractor shall also conform to the requirements described in Section 801 "Construction Stakes, Lines and Grade"; Sub-Article 801-2 "Construction Methods"; Section (A), "General" of the Standard Specifications.

Contractor will be responsible for reestablishing all property irons and monuments that are disturbed by the construction.

The Contractor is responsible for providing storm drain and water quality/detention as-built drawings performed by a NC Registered Land Surveyor.

END OF SPECIFICATIONS

VIII. PROJECT SPECIAL PROVISIONS

SP1 – MOBILIZATION

Description: Work covered by this special provision consists of preparatory work and operations which must be performed or for costs incurred prior to beginning work on the Contract. All required permits, fees, and testing to get the job started and finished in a satisfactory manner; that is not covered in other contract line items, shall be incurred in this special provision.

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

Payment will be made under:

MOBILIZATION LS

SP2 – GRADING/EROSION CONTROL

Description: The work covered by this special provision consists of but not limited to removal and proper disposal of any all construction debris and unused materials, general clean up of the project site, erosion control, and work listed below as items A through E.

- A. Any construction staking needed in order to perform all work involved in this project.
- B. Leveling/Grading all disturbed areas of construction to a seedbed-like finish in order to promote a healthy growing surface.
- C. The installation and maintenance of all erosion control devices needed during the duration of the project. Possible items needed may be silt bags in catch basins, inlet protection, rock check dams, erosion control matting, or silt fence. The Contractor shall be responsible for removing any and all required erosion control devices as directed by the Engineer.
- D. Due to project schedule; all disturbed areas shall be reestablished with a tall fescue seed, fertilizer, limestone, and seed sown with straw or coconut matting used to cover the entire repaired area. Any existing plantings in the immediate area of the work shall be mulched with a minimum of four (4) loosely placed inches of new, clean, hardwood mulch matching existing product.

Contractor will have to come back in the start of spring and aerate/seed disturbed areas with a type of Bermuda seed (Sunstar or an approved equal).

- E. Any existing asphalt or concrete that needs to be repaired around park area due to being damaged by the Contractor or subcontractors while performing the work. All work shall conform to Indian Trail Land Development Standards and all concrete and asphalt material shall conform to requirements set forth in the Specifications section of this Contract.

Payment: The entire lump sum price for the item of "Grading/Erosion Control" will be made when the work has been completed and accepted.

Payment will be made under:

GRADING/EROSION CONTROL.....LS

SP3 – SITE ELECTRICAL

Description: The work covered by this special provision includes furnishing all materials and appurtenances necessary in the installation of required electrical items at locations designated on the approved plans. All required permits, fees, and testing shall be included in this line item.

The disconnecting and abandonment of any electrical connections at the power sources or irrigation system’s connection points shall also be included in this special provision.

All trenching and excavating will be compacted back to a satisfactory manner to prevent settling areas in the park.

No painting is required for items installed in the storage room.

Items installed in the storage room can be mounted in any location as long as it’s within industry standards and codes.

Payment: The entire lump sum price for the item of “Site Electrical” will be made when the work has been completed and accepted.

Payment will be made under:

SITE ELECTRICAL. LS

SP4 – IRRIGATION MAIN TIE-INS AND CONNECTIONS ABANDONMENT

Description: The work covered by this special provision will cover cutting and plugging existing water supply connections from the two existing water meters. It will also cover connecting new supply lines from the wet wells to irrigation main at locations designated on the approved plans. This work shall also include, but is not limited to, the following:

1. Piping, valves, tees and bends, fittings, and anchorages
2. Concrete blocking
3. Dewatering (if needed)
4. Required inspections and testing (if needed)
5. All necessary components in order to complete the work in a satisfactory manner

All work will be performed by previous irrigation installer (Ingle & Son Landscaping, Inc.) due to comprising existing warranty of the system.

Company Information:

Ingle & Son Landscaping, Inc.
205 11th Street South
Conover, NC 28613
Office: 1-828-464-5306

This irrigation contractor will be responsible for depressurizing and pressurizing the water supply.

All work and materials shall conform to the approved design specified on construction drawings.

All trenching and excavating will be compacted back to a satisfactory manner to prevent settling areas in the park.

Payment: An allotted amount of funds will be shown on the Itemized Bid Form of this Contract. The Town will use this fund source to pay for this specified work. The Contractor shall submit one invoice received by the Ingle & Son Landscaping, Inc. with their monthly partial payment request. It will be the responsibility of the Contractor to pay this invoice submitted by Ingle & Son Landscaping, Inc. before acceptance and final payment can be issued as stated under Subarticle 4.4 "Acceptance and Final Payment", Section 4 "Measurement and Payment" of this Contract.

Payment will be made under:

IRRIGATION MAIN TIE-INS AND CONNECTIONS ABANDONMENT.....LS

END OF SPECIAL PROVISIONS

VIII. APPENDIX

APPENDIX A: CONSTRUCTION PLANS
(Separate sheets)

9b



Town of Indian Trail

Memo

TO: Mayor and Town Council

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

COUNCIL DATE: November 10, 2015

SUBJECT: Stormwater Outfall Inventory & Dry Weather Screening Contract

General Information:

The Town of Indian Trail, North Carolina was issued a second cycle National Pollutant Discharge Elimination System (NPDES), Phase II, Municipal Separate Storm Sewer System (MS4) Permit on December 1, 2011. Indian Trail's Permit No. NCS000453 expires on November 30, 2016.

Stormwater Outfall Inventory & Dry Weather Screening is a requirement of the Part II, Section D.2., subparts (b), (c), (d), (e) of the Town of Indian Trail, North Carolina NPDES MS4 permit. Under the Town's Master Service Agreement with Woolpert, Inc., staff recommends issuing a Task Order in the amount of \$185,460.00 to fulfill this requirement.

Required Action:

Award of Contract

Attachments:

Task Order No. 1



Task Order to Master Professional Service Agreement between Woolpert North Carolina, PLLC and Town of Indian Trail

Task Order # 1

Section 1. General

THIS TASK ORDER, made and entered into this ____ day of ____ 2015, by and between Woolpert North Carolina, PLLC, whose address is 11301 Carmel Commons Boulevard, Suite 300, Charlotte, NC 28226 (hereinafter referred to as "Woolpert") and the "Client" identified herein, provides for Services under the Master Professional Service Agreement dated ____, 2015 such Services described under Section 2 of this Task Order.

- Client: Town of Indian Trail
- Project Number: TBD
- Project Title: Master Professional Service Agreement, or the "Project"
- Task Order Title: Storm Drainage System Outfall Inventory Updates and Dry Weather Screening Activities - 2015

Section 2. General Description of Project and Project Area

The Client's Project is described as follows:

The Town of Indian Trail, North Carolina was issued a second cycle National Pollutant Discharge Elimination System (NPDES), Phase II, Municipal Separate Storm Sewer System (MS4) Permit on December 1, 2011. Indian Trail's Permit No. NCS000453 expires on November 30, 2016.

The purpose of this project is to fulfill the requirements of Part II, Section D.2., subparts (b), (c), (d), (e) of the Town of Indian Trail, North Carolina NPDES MS4 permit as follows:

- (b) The permittee shall maintain a current map showing major outfalls and receiving streams;
- (c) The permittee shall develop and implement a program for conducting dry weather flow field observations in accordance with a written procedure for detecting and removing the sources of illicit discharges;
- (d) The permittee shall maintain and evaluate annually, written procedures for conducting investigations of identified illicit discharges; and
- (e) The permittee shall track all investigations and document the date(s) the illicit discharge was observed; the results of the investigation; any follow-up of the investigations; and the date the investigation was closed.

This scope outlines activities that concentrate on the critical illicit discharge tracking and elimination components of the City's storm water management program and focuses on activities, that when completed, will meet the requirements of the City's Phase II MS4 permit. Woolpert conducted a town-wide outfall inventory in 2008. The data collected during that project will become the basis of the dataset that will be updated during the activities outlined within this scope of services.



The project area for this Project is described as follows (including the city, township, or county and state): The municipal boundaries of the Town of Indian Trail, NC.

Section 3. General Description of Professional Services

Services to be provided by Woolpert are identified below and, if attached, are more fully described in Attachment A to this Task Order, which is incorporated by this reference: SEE ATTACHMENT A: Scope of Services

Section 4. Compensation to Be Paid to Woolpert

Compensation to be paid to Woolpert for providing the requested Services for this specific Project shall be as follows:

- Unit Cost/Hourly Fee, plus reimbursable expenses in accordance with the Master Professional Service Agreement

Reimbursable expenses include direct expenses including but not limited to travel, lodging, meals, telephone and fax, copies, shipping/overnight delivery, and prints, times a multiple of 1.10. The compensation to be paid to Consultant does not include any sales or service tax that may be required to be imposed. The Client shall be responsible for the payment of any such taxes that may be imposed. If the Client fails to execute this Agreement, or any Task Order within 30 days of the date it is sent to the Client, Woolpert shall have the right to revise fees or revoke any proposal related to the services.

Section 5. Schedule for Services

Woolpert will commence Services upon receipt of a fully executed copy of this Task Order. This Task Order shall remain in effect until completed, unless terminated as provided in the Master Agreement or extended by mutual agreement in writing.

IN WITNESS WHEREOF, this Task Order which is subject to the terms and conditions of Sections 1 through 4, Attachment(s), and the aforementioned Master Agreement, is accepted as of the date first written above.

Town of Indian Trail, NC

Woolpert North Carolina, PLLC

Signed

Signed

Printed Name

Dudley C. Smith III

Printed Name

Title

Senior Associate

Title

Date

Date