



**COUNCIL MEETING
MARCH 17, 2025
6:30 P.M.**

ORDER OF BUSINESS

- 1. PLEDGE TO FLAG**
- 2. INVOCATION**
- 3. APPROVAL OF AGENDA**
- 4. APPROVAL OF MINUTES**
 - a. Regular Town Council Meeting - February 17, 2025
 - b. Closed Session Minutes - February 17, 2025
 - c. Work Session Meeting Minutes - February 24, 2025
- 5. PUBLIC HEARING**
 - a. Special Use Permit - 33 Swift Creek Road - Parcel ID 17K080080
- 6. 1st OPEN FORUM**
- 7. REGULAR BUSINESS:**
 - a. MAYOR FLETA BYRD
 - b. TOWN ADMINISTRATOR'S REPORT - Leighanna Worley
 - i. **ORDINANCE** Allowing Limited Alcohol Sales and Consumption on Town Property
 - ii. Review of Contract for Chamber Upfit – Calvin Davenport, Inc.
 - c. COUNCILMEMBER COMMENTS
- 8. 2nd OPEN FORUM**
- 9. ADJOURNMENT**

TOWN OF WILSON'S MILLS
TOWN COUNCIL MEETING
February 17, 2025

PRESENT: Mayor Fleta Byrd, Mayor Pro-tem JC Triplett, Councilmembers David McGowan, Carolyn Dobbin, Tim Brown, and Randy Jernigan.

OTHERS PRESENT: Town Administrator Leighanna Worley, Town Clerk Emily Matthews, and Town Attorney Gabriel Du Sablon.

CONVOCATION: Mayor Byrd declared a quorum present and called the meeting to order at 6:30pm.

PLEDGE Mayor Byrd led the pledge of allegiance to the flag.

INVOCATION: Jim Uzzle gave the invocation.

APPROVAL OF AGENDA: Mayor Byrd asked for approval of the agenda.

A motion was made by Councilmember David McGowan and seconded by Councilmember Tim Brown to approve the agenda as presented. Motion carried unanimously.

APPROVAL OF MINUTES: Mayor Byrd asked for any comments or corrections to the minutes for the Regular Town Council Meeting for December 16, 2024.

Regular Town Council Meeting- December 16, 2024: A motion was made by Councilmember Tim Brown and seconded by Councilmember Carolyn Dobbin to approve the Regular Town Council Meeting Minutes for December 16, 2024, as presented. Motion carried unanimously.

Work Session Minutes - January 27, 2025: Mayor Byrd asked for any comments or corrections to the minutes for the Work Session for January 27, 2025.

A motion was made by Councilmember Carolyn Dobbin and seconded by Councilmember Tim Brown to approve the Work Session Minutes for January 27, 2025, as presented. Motion carried unanimously.

Regular Town Council Meeting - January 29, 2025: Mayor Byrd asked for any comments or corrections to the minutes for the Regular Town Council Meeting for January 29, 2025.

A motion was made by Councilmember Randy Jernigan and seconded by Councilmember Carolyn Dobbin to approve the Regular Town Council Meeting Minutes for January 29, 2025.

Public Hearing: Attorney Du Sablon explained to Council that this Public Hearing is a quasi-judicial hearing meaning the Council must decide based on substantial and factual information presented by the applicants under oath. He also said there are due process considerations and it is imperative that no one on Council should vote if they have a fixed opinion on the matter or have had any conversations prior to the hearing or have a familiar relationship or financial interest in the matter. Attorney Du Sablon said the vote will require a simple majority and the Mayor will only vote in the event of a tie. He also stated all evidence has to be factual.

Mayor Byrd opened the Public Hearing at 6:35pm.

Planning Director Oldham introduced the applicant, Consuelo Valdez and her daughter Maria Armendarez. Town Clerk Emily Matthews swore in all parties. Mrs. Oldham explained the applicants have applied in order to keep domestic livestock on their property. She said the applicant's daughter has mental health concerns and the animals help her.

Mrs. Oldham reviewed the findings of fact and the background on the Request for Action in Council's packets. She also referenced the letters of support from neighbors as well as photos of the living area.

Ms. Valdez testified about her daughter's mental health journey and how the animals help her.

Councilmember David McGowan commended Ms. Valdez for being a great mother and helping her daughter with this.

Councilmember David McGowan asked how Ms. Valdez intends to keep the livestock to limited numbers and Ms. Valdez said she plans to sell any additional animals if the number of animals grow.

Mayor Byrd asked if the animals are ever allowed outside their designated areas and if the pens are big enough for movement and shelter. Ms. Valdez said the animals are contained and the pens give plenty of room to move around in their pens.

Councilmember Brown asked what the property is currently zoned as and what our current policy is on owning chickens in town. Mrs. Oldham said it is currently zoned as agriculture and the current policy states residents can own up to 10 chickens but no roosters.

Councilmember Brown asked if the special use permit is approved tonight will Council be bound to approve special use permits with similar requests in the future. Attorney Du Sablon said each request would be considered on a case-by-case basis and different decisions would be made.

Councilmember McGowan and Councilmember Brown both said they view the animals as service animals as they help Ms. Armendarez with her mental health concerns.

Attorney Du Sablon said state and federal law require that accommodations be made for those with disabilities in application of a zoning ordinance.

Councilmember McGowan asked if Ms. Armendarez sees a physician on a regular basis and said to talk to the physician and try to get a letter saying goats can act as service animals for her. Ms. Valdez said the animals help Ms. Armendarez more than the medications she has been on in the past.

Councilmember Randy Jernigan said Council should go ahead and approve the special use permit. He said the applicant's medical history is not relevant or the business of council. He said special use permits are determined on a case by case basis.

With no other comments or questions from Council, Mayor Byrd closed the public hearing at 7:24pm

Attorney Du Sablon stated Council must vote on each of the findings of fact

listed on the special use permit application and the vote should be determined on if the applicant has tendered substantial, competent, and material evidence in support of each of those standards.

A motion was made by Councilmember David McGowan and seconded by Councilmember Randy Jernigan to approve finding of fact 1 “that the use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.” Motion carried unanimously.

A motion was made by Councilmember Randy Jernigan and seconded by Councilmember Carolyn Dobbin to approve finding of fact 2 “that the use or development complies with all required regulations and standards of the Wilson’s Mills Development Ordinance and with all other applicable regulations.” Motion carried unanimously.

A motion was made by Councilmember Randy Jernigan and seconded by Councilmember Carolyn Dobbin to approve finding of fact 3 “that the use or development is located, designed, and proposed to be operated so as not to substantially injure the value of the adjoining or abutting property, or that the use or development is a public necessity.” Motion carried unanimously.

A motion was made by Councilmember Randy Jernigan and seconded by Councilmember David McGowan to approve finding of fact 4 “that the use or development will be in harmony with the area in which it is to be located and conforms to the general plans for the land use and development of Town of Wilson’s Mills and its environs.” Motion carried unanimously.

Attorney Du Sablon said now that all findings of fact have been approved the Council is obligated to approve the Special Use Permit but they are allowed to add additional standards as they see fit.

A motion was made by Councilmember Tim Brown to approve the Special Use Permit for 330 Twin Creek Drive to allow for domestic and service goats on the subject property and not to exceed the existing number of 2 goats on the property.

After further discussion with Attorney Du Sablon on the interpretation of the UDO, Councilmember Brown rescinded his previous motion.

A motion was made by Councilmember Tim Brown to approve the Special Use Permit for 330 Twin Creek Drive to allow for domestic livestock on the subject property. Motion carried unanimously.

1st OPEN FORUM

Mayor Byrd opened the 1st Public Forum at 7:33pm.

With no one wishing to speak, Mayor Byrd closed the 1st Open Forum at 7:34pm.

REGULAR BUSINESS

MAYOR FLETA BYRD:

Mayor Byrd said she attended the Mayors meeting in Micro recently and she and Town Administrator Worley also attended a presentation at the Triangle Chamber where they learned about how the Chamber can help us with upcoming projects in town.

**TOWN
ADMINISTRATOR'S
REPORT – Leighanna
Worley:**

**Resolution to Adopt
and Allocate Funds
for an Outdoor
Fitness Court:**

Mayor Byrd said the launch for the new town logo will be this Sunday at the park and welcomed everyone to attend.

Ms. Worley said the discussion of the outdoor fitness court at the park was brought to Council a couple months ago and we received a grant from National Fitness Campaign for a total of \$30,000 to help with the cost. She said the overall cost would be paid for through different types of grant money including money from the Winston Family Foundation, Johnston County Visitors Bureau, and the NC Accessible Parks Grant. She said if the town were to budget funds as well it would possibly increase our chances of receiving grants.

Ms. Worley said the resolution in Council's packets is giving the town permission to move forward with the process of the National Fitness Campaign looking at the property and where the fitness court would be placed at the park. She said we also have open space funds and funds for the park and we can discuss how much we want to budget based on how much we receive in grant funds.

Councilmember McGowan asked where the fitness court would go and Ms. Worley said that would be planned by the National Fitness Campaign after they look at the property. She said it would be a 2 sided fitness court, one side would have different equipment for the public to use, and the other side is open space for classes such as Zumba or yoga.

Councilmember McGowan asked if this is something we need in town and Councilmember Jernigan said we need to cater more to older kids and adults at the park. Ms. Worley said we often get calls for where the public can hold Zumba and yoga classes. Councilmember McGowan asked how much upkeep the area would take and Ms. Worley said the surface area is low maintenance and the fitness court as a whole would be under warranty.

A motion was made by Councilmember Tim Brown and seconded by Councilmember David McGowan to adopt the following Resolution to Adopt and Allocate Funds for an Outdoor Fitness Court. Motion carried unanimously.

**RESOLUTION TO ADOPT AND ALLOCATE FUNDS FOR AN
OUTDOOR FITNESS COURT® AS PART OF THE FISCAL YEAR 2025-
2026
NATIONAL FITNESS CAMPAIGN**

At a meeting of the Wilson's Mills Town Council held on February 17, 2025, the following action was taken:

WHEREAS, the Town of Wilson's Mills has submitted a Grant Application to National Fitness Campaign (NFC) for participation in their Fiscal Year 2025-2026 initiative to install and activate outdoor Fitness Courts® in over 1000 municipalities and schools across the country; and

WHEREAS, the Town of Wilson's Mills will accept a \$30,000.00 National Grant from the NFC Grant Committee and Statewide Partners, and endeavor to provide a local match in the amount of \$50,000.00 from budgeted or internal funds within Fiscal Year 2025-2026 to promote and implement a free-to-the-public outdoor Fitness Court®; and

WHEREAS, the Town of Wilson's Mills will endeavor to secure supplemental funding within 120 days from the NFC notice of award as needed through

community sponsors, which will be made available and committed to this program for the purchase of the outdoor Fitness Court®; and

WHEREAS, the Town of Wilson's Mills will endeavor to provide a local funding confirmation in the amount designated on the quote detailing the remaining funds for participation, provided by the National Fitness Campaign no later than July 1, 2025, as identified on the official Grant Program Requirement document.

WHEREAS, the Wilson's Mills Town Council believes joining the National Fitness Campaign is an important step in building a healthier community, commits to funding/fundraising to participate in NFC's Fiscal Year 2025-2026 Campaign, and will earn local and regional recognition as a leader in providing accessible health and wellness infrastructure and programs.

NOW THEREFORE BE IT RESOLVED, that the Wilson's Mills Town Council will collaborate with NFC to join the National Fitness Campaign, implement the outdoor Fitness Court® program, and make fitness free for community residents and visitors.

**Award Bid for Fence
for the Dog Park:**

Ms. Worley referenced the bids for the fence for the dog park in Council's packets. Councilmember Tim Brown asked to be recused from the vote due to his company, Tebco Fencing, being one of the bidders.

A motion was made by Councilmember David McGowan to recuse Councilmember Brown from voting to award the bid for the fence at the dog park.

Attorney Du Sablon said Councilmember Brown should also be recused from the discussion of the bid award as well according to N.C.G.S. 14-234 D1.

A motion was made by Councilmember David McGowan and seconded by Councilmember Randy Jernigan to recuse Councilmember Brown from voting on and discussing awarding the bid for the fence at the dog park. Motion carried unanimously.

Ms. Worley said 3 companies were contacted and all 3 companies sent back bids for the project. She said Tebco Fencing sent in a bid for \$16,500, MC Built sent in a bid for \$20,660, and Evans Fencing's bid was for \$22,025.

A motion was made by Councilmember David McGowan and seconded by Councilmember Randy Jernigan to award the bid for the fence at the dog park to Tebco Fencing in the amount of \$16,500. Motion carried unanimously.

Ms. Worley said the dog park will be paid for by the grant received from Johnston County and the grant funds will cover the cost entirely.

**Resolution
Prohibiting Viewing
of Pornography on
Town Networks and
Devices:**

Ms. Worley said the Municipal Personnel Policy already addresses the viewing of inappropriate materials on town networks and devices, but this will add more detail to the policy due to the new passing of the House Bill.

Attorney Du Sablon said this will also apply to elected officials and appointees which is why there is both a resolution and a policy amendment addressing the matter.

A motion was made by Councilmember Tim Brown and seconded by

Councilmember Randy Jernigan to adopt the following Resolution Prohibiting Viewing of Pornography on Town Networks and Devices. Motion carried unanimously.

**RESOLUTION PROHIBITING VIEWING OF PORNOGRAPHY ON
TOWN NETWORKS AND DEVICES**

WHEREAS, House Bill 971 / North Carolina General Statute §143-805 requires all public agencies to adopt a policy governing the use of its network and devices owned, leased, maintained, or otherwise controlled by the Town of Wilson's Mills; and

WHEREAS, the Town of Wilson's Mills prohibits the viewing of pornography by its employees on the Town's network or devices owned or maintained by the Town.

NOW, THEREFORE, be it resolved that the following policies shall apply in the Town of Wilson's Mills:

1. No employees, elected officials, or appointees of the Town of Wilson's Mills (hereinafter the "Town") shall view pornography on any computer network owned, leased, maintained, or otherwise controlled by the Town, whether on a Town owned and maintained device, or a privately owned or controlled device.
2. No employee, elected official, or appointee of the Town shall view pornography on a device owned, leased, or maintained or otherwise controlled by the Town.
3. Each year, and no later than August 1, the Town shall, as required by NCGS §143-805, report to the State Chief Information Officer the number of incidences, if any, of unauthorized viewing or attempted viewing of pornography on the Town's network whether or not the unauthorized viewing was by an employee, elected official, or appointee of the Town and whether or not any unauthorized viewing was on a device owned, leased, maintained, or otherwise controlled by the Town.
4. This policy shall not apply to investigation, law enforcement training, or actions related to law enforcement purpose; identifying potential security or cyber security threats, establishing, testing, and maintaining firewalls, protocols, and otherwise implementation of this policy; or other exceptions as specifically set forth in NCGS §143-805(d).
5. The terms used herein shall be defined as set forth in NCGS §143-805(g).
6. Any employee, elected official, or appointee of the Town who has saved pornography to a device owned, leased, maintained or otherwise controlled by the Town prior to the adoption of this resolution shall immediately remove, delete or uninstall said pornography.
7. Any employee of the Town who violates any provision of this policy shall be subject to disciplinary action under the Town's personnel policy.
8. Any appointee of the Town who violates the provision of this policy shall be subject to removal by the Town Council.
9. Any elected official who violates any provision of this policy shall be subject to censure proceedings.
10. The Municipal Personnel Policy of The Town of Wilson's Mills shall be amended to comport with the provisions hereof.

BE IT FURTHER RESOLVED that this Resolution shall become effective as of January 1, 2025.

**Municipal Personnel
Policy Amendment –
Article V. Section
21. Computer and
Internet Policy:**

Attorney Du Sablon clarified at the discussion of this topic is not due to any recent concerns within the staff of the Town. He said this House Bill was passed in late 2024 and is just now being passed by municipalities.

Ms. Worley referenced the amendment to the Municipal Personnel Policy and asked if there were any questions.

A motion was made by Councilmember Tim Brown and seconded by Councilmember Carolyn Dobbin to amend the Municipal Personnel Policy Article V Section 21: Computer and Internet Policy. Motion carried unanimously.

OTHER:

Ms. Worley reminded Council of the branding and logo event on Sunday and said she would like elected officials to attend the event.

Ms. Worley said a press release was recently sent out to county departments and utility companies as well as the Fire Department and Police Department about the address changes in Wilson's Mills. She said letters will go out to residents in the next couple weeks. She said these changes will result in the addresses in town having Wilson's Mills listed as the city rather than Smithfield or Clayton but the zip code at each residence will stay the same.

**POLICE DEPARTMENT
– Chief AZ Williams**

Chief Williams referenced the Policy Amendment and asked if there were any questions. He said the policy changes are in reference to personal grooming.

**Policy Amendment –
General Order #200-
12- Uniforms and
Equipment:**

Councilmember McGowan asked if female officers are still required to have their hair up and Chief said yes.

A motion was made by Councilmember Tim Brown and seconded by Councilmember Carolyn Dobbin to approve the Policy Amendment to General Order #200-12: Uniforms and Equipment. Motion carried unanimously.

**PLANNING AND
ZONING REPORT –
Wendy Oldham**

Planning Director Oldham said the Planning Department has received an application for a Special Use Permit for the property located at 33 Swift Creek Road. She said Council will need to call a public hearing for next month to discuss the Special Use Permit.

**Call Public Hearing
– Special Use Permit
for Parcel ID
17K080080:**

A motion was made by Councilmember Tim Brown and seconded by Councilmember Randy Jernigan to call a Public Hearing to discuss the Special Use Permit for 33 Swift Creek Road on Monday, March 17, 2025 at 6:30pm in the Wilson's Mills Elementary School Cafeteria. Motion carried unanimously.

**COUNCILMEMBER
COMMENTS:**

Councilmember Tim Brown commented on the awarding of the bid for the fence at the dog park and said any projects with TEBCO that involve the town he makes sure he is not involved in the process.

2nd OPEN FORUM

Mayor Byrd opened the 2nd Public Forum at 8:07pm.

With no one wishing to speak, Mayor Byrd closed the 2nd Open Forum at 8:08pm.

**MOTION TO GO INTO
CLOSED SESSION:**

A motion was made by Councilmember David McGowan and seconded by Councilmember Tim Brown to go into Closed Session at 8:08pm pursuant to N.C.G.S. 143-318.11(a)(3) "consult with attorney..." Motion carried unanimously.

**MOTION TO COME
OUT OF CLOSED
SESSION:**

A motion was made by Councilmember Tim Brown and seconded by Councilmember Carolyn Dobbin to come out of closed session at 8:22pm. Motion carried unanimously.

ADJOURN:

A motion was made by Councilmember Tim Brown and seconded by Councilmember Carolyn Dobbin to adjourn. Motion carried unanimously.

The meeting adjourned at 8:23pm.

FLETA A. BYRD, Mayor

ATTEST:

EMILY MATTHEWS, CMC
Town Clerk

TOWN OF WILSON'S MILLS
WORK SESSION MEETING
February 24, 2025

PRESENT: Mayor Fleta Byrd, Councilmembers David McGowan, Tim Brown, Randy Jernigan and Carolyn Dobbin.

OTHERS PRESENT: Town Administrator Leighanna Worley, Town Clerk Emily Matthews, Finance Officer Sherry Hudson, Public Works Director Patrick Moore, Planning Director Wendy Oldham, and Police Chief AZ Williams.

ABSENT: Mayor Pro-tem JC Triplett

CONVOCATION: Mayor Byrd declared a quorum present and called the meeting to order at 5:01pm.

ADDITIONS TO AGENDA: Town Administrator Worley added the following items to the agenda: Review of Final Version of Utility Plans from TRC and Resolution Supporting the NC Division of Parks and Recreations Accessible Parks Grant.

Departmental Reports

Events Coordinator Emily Matthews said the flyers for the Food Truck Rodeo have been approved by the Events Committee and they will be going to the elementary school and daycares in early April. Councilmember Brown mentioned having live music at events as well as looking into an ice-skating rink.

Councilmember McGowan asked if the fence has been put up at The Cottages subdivision and Planning Director Wendy Oldham stated the fence has been put up and we are waiting on stormwater flushing to be completed and for the pond to be cleaned out. Councilmember McGowan said that children have been swimming in the pond and Mrs. Oldham said the HOA in The Cottages have planned to put up signs near the pond and they have reached out to residents about the consequences of anyone swimming in the pond.

Councilmember Brown asked for updates on Midtown and Mrs. Oldham said that she reached out to the head developer today because she had not heard back from the contact she was previously speaking to.

Councilmember McGowan said he has gotten calls from residents regarding the poor lighting near the Swift Creek Road exit off Highway 70 east. Town Administrator Worley said at the last Highway 70 commission meeting they talked about the lighting at the two interchanges, but there is another meeting on March 20 and she will mention the issue again. Council also discussed the need for signage stating Wilson's Mills for the exits. Councilman McGowan asked how many violations are in Tralee subdivision and Mrs. Oldham said she is not sure but there are several residents in Tralee that have been unaware that they are in the ETJ of Wilson's Mills.

Councilmember McGowan applauded the Public Works Department for their work on the gator. Councilmember Brown said heat needs to be put in the Public Works building and that needs to be discussed to be included in the budget for the upcoming fiscal year.

Chief reviewed the Police Department Annual Report as well as his monthly report. Councilmember McGowan asked about the high number of traffic violations and asked how we compare to the national average. Chief said there seems to be the same issues in surrounding towns.

Town Administrator Project Updates:
Review of Final Version of Utility Plans from TRC:

Ethan Gartin from TRC presented an update to the utility study that was presented to Council last month at their work session. He said there has not been much change since last month but he looked into the elements that Council asked to be reviewed. He said he also looked at how many customers we would need to have in order to be competitive with Johnston County and we would need around 6,000 customers. He said it would be difficult to have a utility department in Wilson's Mills that would be able to compete with Johnston County. He said it does not seem to be possible within the next decade. Councilmember McGowan asked for clarification on the number of residents listed in the report and Ms. Worley said the numbers were pulled from the census, but the numbers are incorrect. Councilmember Brown said he feels the study is flawed if the number of residents are not correct. Mrs. Oldham said she can send Mr. Gartin the numbers of rooftops that are projected to come into town. Councilmember McGowan asked for a more condensed rundown of the changes in between updates from TRC. Mr. Gartin said he can run the numbers again based on the numbers he gets from Mrs. Oldham. He said he will also work with Ms. Worley and summarize the information presented to Council moving forward.

Arrival of Councilmember:

Councilmember Randy Jernigan arrived at 6:07pm.

Resolution Supporting the NC Division of Parks and Recreation's Accessible Parks Grant:

Town Administrator Worley said this is the grant that was discussed at Council's meeting last week and this resolution is allowing staff to move forward and apply for the grant. It is also saying that if we apply and receive the grant, we will accept it.

A motion was made by Councilmember Tim Brown and seconded by Councilmember David McGowan to adopt the following Resolution Supporting The NC Division of Parks and Recreation Accessible Parks Grant. Motion carried unanimously.

RESOLUTION SUPPORTING THE NC DIVISION OF PARKS AND RECREATION ACCESSIBLE PARKS GRANT

WHEREAS, the North Carolina Division of Parks and Recreation has put a call out for 2025 grant applications; and

WHEREAS, the Town of Wilson's Mills is intending to submit an application to help fund the National Fitness Campaign Fitness Studio at Phillip R. Wright Community Park, with at least \$1 of local funds for every \$5 in grant funds; and

WHEREAS, the Town Council of the Town of Wilson's Mills wishes to go on record supporting the grant application.

NOW, THEREFORE, BE IT RESOLVED, that the Wilson's Mills Town Council does hereby endorse the Town's grant application and urges the North Carolina Division of Parks and Recreation to fund this important initiative.

Budget Discussions for Fiscal Year 2025-2026

Ms. Worley said we got some numbers back from the Johnston County Tax Office and our values were at \$274,918,000 in 2024 and as of 2025 our values are at \$531,109,000. She said she would not recommend being revenue neutral in the upcoming fiscal year.

Mayor Byrd said with the growth coming into town residents will expect services to be provided to them. She also said we need equipment in the Public Works Department and more staffing in Town Hall and the Police Department.

Councilmember Brown said we do not have services that other towns do so he feels we need to reinvest our tax dollars to benefit our citizens. Councilmember McGowan suggested speaking with the citizens about what they would like to see in town and

also suggested sending updates out via mail. Ms. Worley said last year we were sending out mailers quarterly but there was little to no feedback on the information that was presented.

Ms. Worley said the League of Municipalities will be closing their Health Benefits Services pool in the upcoming fiscal year and we are now in the process of shopping for new health benefits for our employees.

ADJOURN:

A motion was made by Councilmember David McGowan and seconded by Councilmember Carolyn Dobbin to adjourn. Motion carried unanimously.

The meeting adjourned at 6:35pm.

FLETA A. BYRD, Mayor

ATTEST:

EMILY MATTHEWS, CMC
Town Clerk

Request for Council Action

Agenda Item 5a

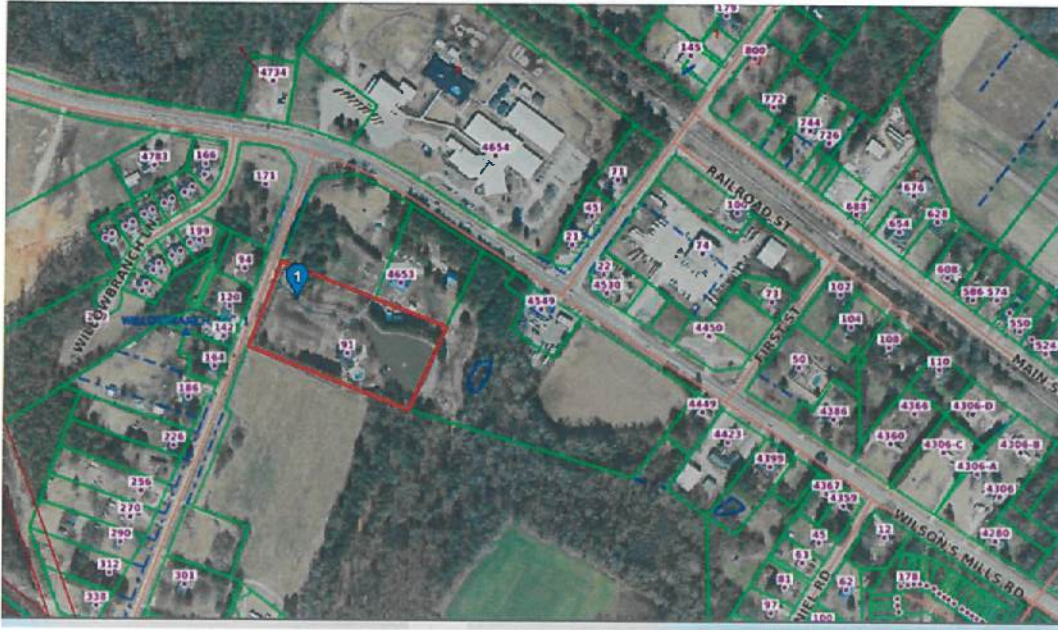
TO: Mayor Fleta Byrd and Town Council Members
FROM: Wendy Oldham, CZO
DATE: March 17, 2025
FILE: SUP-01-2025
REQUEST: SPECIAL USE PERMIT TO ALLOW A RESIDENTIAL RECOVERY PROGRAM FACILITY IN TOWN LIMITS.

REQUEST SUMMARY	
CASE #:	SUP-01-2025
Applicant/Owner:	David DeYoung
LOCATION:	Listed at 33 Swift Creek Road (IN THE PROCESS OF BEING CORRECTED ON GIS TO 91 SWIFT CREEK ROAD)
TAX ID:	17K08008Q
SITE ACREAGE:	4.670
ZONING:	MU
CURRENT USE:	Residential
REQUEST:	To allow a Residential Recovery Program Facility in Town Limits

SITE LOCATION



ORTHOPHOTO



RELEVANT CODE INFORMATION

10.2.8 Group Care Facility.

A. Zoning Districts where the standards appearing below apply: See Article 8 – Table of Permitted Uses.

B. Standards

1. No such facility shall be located within one-half (1/2) mile of an existing group care facility unless located within the Civic (CIV) district and/or specifically approved within a Traditional Neighborhood Development Overlay (TNDO) district.
2. The facility shall be limited to no more than thirty (30) persons.

BACKGROUND

The owner has requested a Special Use Permit to allow a Residential Recovery Program Facility with the following voluntary conditions in place:

1. The proposed Hope Center shall be limited to women in recovery only. The recovery program for men will not be offered at this location.
2. The proposed Hope Center shall house no more than 30 women in the recovery program at one time.

Additionally, the program will provide 24-hour supervision, 7 days a week, for all residents. The goal of the program is to offer a faith-based recovery initiative that not only helps women overcome their addiction but also introduces them to Christ, helping them maintain a healthy and productive life as followers of Jesus Christ and reunite them with their families.

STANDARDS FOR APPROVAL

Recommendation to the Town Council will be based on the findings of facts listed below:

FINDINGS OF FACT

1. That the use of development is located, designed and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

Applicant's Statement:

The property on which the Hope Center is proposed to be located was carefully selected with input from the Town Staff, Town Leadership, and the Church community to garner the necessary support needed for success, and to ensure that the public health, safety, and general welfare are not just maintained, but enhanced through the benefits of the program on the community at large. With a strong understanding that substance abuse is destroying the lives of countless individuals and their families, the Hope Center promotes public health through a tested program which helps individuals navigate the pathway to true freedom over addiction.

2. That the use or development complies with all required regulations and standards of the Town of Wilson's Mills Development Ordinance and with all other applicable regulations.

Applicant's Statement:

The Hope Center use complies with all applicable the standards of the Town of Wilson's Mills Development Ordinance, subject to the approval of the requested Special Use Permit. All required modifications necessary to comply with applicable building code requirements, the Americans with Disabilities Act, or other applicable regulations will be made to ensure compliance.

3. That the use of development is located, designed and proposed to be operated so as to not substantially injure the value of adjoining or abutting property, or that the use or development is a public necessity.

Applicant's Statement:

The Hope Center is proposed to be located on a 4.674-acre property generally located just southwest of the intersection of Swift Creek Road and Wilson's Mills Road. It is currently bound by Swift Creek Road on the west and is surrounded by existing agricultural land/uses to the north, south, and east. Due to the size of the property and the proposed low-intensity residential use, the use of the property as a Hope Center will not injure the value of adjoining or abutting property. It is the intent of the Hope Center to maintain and enhance the

existing residential character of the property to the benefit of its residents, employees, and the surrounding property owners.

4. That the use or development will be in harmony with the area in which it is to be located and conforms to the general plans for the land use and development of the Town of Wilson's Mills and its environs.

Applicant's Statement:

As stated above, the subject property is bound by Swift Creek Road to the west and agricultural land/uses on all other sides. These existing uses are compatible with the proposed use of a residential recov facility. Additionally the property, as well as the surrounding properties to the north, south, and east all have a Commercial Future Land Use Designation and an existing Zoning Designation of MU-2 (Mixed-Use), which are compatible land use and zoning categories. The proposed use is also consistent with Future Land Use Goal 2: "Plan for Growth". Specifically, strategy 1, which states: "Encourage development first in areas where existing infrastructure and convenient proximity to Town services are already provided". The subject property is consistent with this strategy due to its location within the town limits of Wilson's Mills, and convenient access to exiting public infrastructure, the roadway network, and Town services. Lastly, with approval of the requested Special Use Permit, the proposed use will be consistent with the development standards of the Town of Wilson's Mills.

STAFF RECOMMENDATION

Staff recommendation is for approval of the Special Use Permit as the applicant has met all conditions and has sufficiently addressed the findings of fact.

PLANNING BOARD RECOMMENDATION

The Planning Board heard the case on January 27, 2025, and recommends approval of the Special Use Permit for 33 Swift Creek Road (in the process of being corrected in GIS to 91 Swift Creek Road).

TOWN COUNCIL ACTION OPTIONS FOR SPECIAL USE PERMIT SUP-01-2025

1. OPTION TO APPROVE:

I make a motion to **approve** SUP-01-2025 for Parcel ID: 17K08008O at 33 Swift Creek Road to allow a Residential Recovery Program Facility in Town limits with the aforementioned conditions.

2. OPTION TO TABLE:

I make a motion to **table** SUP-01-2025 for Parcel ID: 17K08008O, pending the receipt of more information. Information requested:

3. OPTION TO DENY:

I make a motion to **deny** SUP-01-2025 for Parcel ID: 17K08008O to allow a Residential Recovery Program Facility in Town Limits for the following reason(s):

Attachments:

- Special Use Permit Application
- Pictures of the property posting
- Presentation Material from Hope Ministries



TOWN OF WILSON'S MILLS
**SPECIAL USE PERMIT
APPLICATION**

Planning Department
PO Box 448, Wilson's Mills, NC 27593
Phone: (919) 938-3885 Fax: (919) 938-1121

PROCESS INFORMATION:

Submission Requirement: An application for a Special Use Permit shall be filed with the Planning, Zoning & Subdivision Administrator. Such applications shall contain all the information required on this form and must be determined to be complete by the Planning, Zoning & Subdivision Administrator prior to advancing it through the approval process.

Public Notification: This is a quasi-judicial process that requires a public hearing.

Review Process: Special Use Permits are for certain land uses that, because of unique characteristic or potential impacts on adjacent land uses, are not permitted in zoning districts as a matter of right. These uses may be permitted through the issuance of a Special Use Permit (SUP) after ensuring that the use complies with the SUP approval criteria. No inherent right exists to receive a SUP. Such authorization must be approved under a specific set of circumstances and conditions. Each application and situation is unique and may be subject to specific requirements to mitigate the impacts of the proposed use. A Special Use Permit must be granted in accordance with the procedures set forth in Article 7 of the Wilson's Mills Development Ordinance (WMDO). For a detailed list of uses requiring a Special Use Permit, please refer to Article 10.2 of the WMDO.

FILING INSTRUCTIONS:

- ☒ Every applicant for a Special Use Permit is required to meet with the Planning, Zoning & Subdivision Administrator in a pre-application conference prior to the submittal of a formal application. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
- ☒ A petitioner must complete this application in full. This application will not be processed unless all information requested is provided.
- ☒ Submission of associated fees with completed SUP Application, in the amount of \$500.00.

GENERAL INFORMATION:

Project Address/Location: 33 Swift Creek Road

Zoning District: MU-2 Size of Property (acres): 4.674 acres

Johnston Co. Tax PIN #: 17K080080 Proposed Building Square Footage: 4,739 SF

Town Jurisdiction: ☒ Town Limits ☐ BTJ

Existing land use/zoning on adjoining properties:

North: Agriculture / MU-2

South: Agriculture / MU-2

East: Agriculture / MU-2

West: Single Family Residential / SFR-3

APPLICANT INFORMATION:

Applicant: David DeYoung, RiverWILD Development

Address: 114 W. Main Street

City: Clayton

State: NC

Zip: 27520

Phone: (919) 901-3178

Email: David@StayWILD.com

Property Owner (if different from applicant):

Name: Hope Center Ministries, Inc.

Address: 1510 Clydeton Road

City: Waverly

State: TN

Zip: 37185

Phone: (919) 210-4421

Email: M.Hall@HopeCM.com

SPECIAL USE PERMIT REQUEST:

Special Use Request (Proposed Land Use and Description):

See Attached Request.

Proposed Conditions Offered by Applicant:

See Attached Proposed Conditions.

Findings of Fact:

Article 7.8 of the WMDO require the compliance of specific findings of fact in order to grant a Special Use Permit. The applicant shall submit the following statements of justification, presenting factual information, supporting each and all the required findings as they relate to the proposed Special Use Permit:

1. That the use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

Statement by applicant:

See Attached Findings of Fact.

2. That the use or development complies with all required regulations and standards of the Wilson's Mills Development Ordinance and with all other applicable regulations.

Statement by applicant:

See Attached Findings of Fact.

3. That the use or development is located, designed, and proposed to be operated so as not to substantially injure the value of adjoining or abutting property, or that the use or development is a public necessity.

Statement by applicant:

See Attached Findings of Fact.

4. That the use or development will be in harmony with the area in which it is to be located and conforms to the general plans for the land use and development of Town of Wilson's Mills and its environs.

Statement by applicant:

See Attached Findings of Fact.

APPLICANT SIGNATURE:

I do hereby make application and petition to the Town of Wilson's Mills to approve the subject Special Use. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Town of Wilson's Mills and will not be returned. I understand that this application will not be processed unless it is complete, including required fees paid. I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge.

David DeYoung, RiverWILD Dev.
Applicant Printed Name


Applicant Signature

01/03/2025
Date

OWNER'S SIGNATURE:

I, Mark Hall, Hope Center Ministries, Inc., owner of subject property, do hereby give consent to David DeYoung / RiverWILD Development (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify that I have full knowledge that the property I have an ownership interest in is the subject of this application. I understand that any false, inaccurate, or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I acknowledge that additional information may be required to process this application. I further consent to the Town of Wilson's Mills to publish, copy, or reproduce any copyrighted document submitted as a part of this application for any third party. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

I hereby certify the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Town of Wilson's Mills and will not be returned.

Mark Hall, Vice President of Hope Center Ministries, Inc.
Printed Name of Owner


Signature of Owner

01/03/2025
Date

FOR TOWN USE ONLY

Date Received: 1-3-2025 Case #: SUP-1-2025
Payment Amount: 500.00 Date Paid: 1-3-2025
Application Received By: Cynthia Paul
PB Date: 1-27-2025 Recommended _____ Denied _____
TC Date: _____ Approved _____ Denied _____

RECEIVED
1-3-2025

**Hope Center Ministries - Wilson's Mills
Special Use Permit Request
Application Materials**

Special Use Request (Proposed Land Use and Description):

Hope Center Ministries is requesting a Special Use Permit on a 4.674-acre property located at 33 Swift Creek Road, within Wilson's Mills Town Limits. The purpose of the application is to allow a residential recovery program facility designed to assist women who are in post substance abuse recovery continue their road to recovery and overcome addiction. No change is necessary to the subject site's Future Land Use Designation of Commercial or it's current Zoning Designation of MU-2 to accommodate the Special Use Permit.

It is the intent of Hope Center Ministries to use the existing 4,739 square foot house and associated improvements to help up to 30 women continue their road to substance abuse recovery. These women will have supervision 24 hours a day, 7 days a week while in recovery at the facility.

The women in the recovery program will take part in a faith-based program to guide them to true freedom over addiction. The program combines biblical principles along with a spiritual 12-step – 12-month program to prepare them for an encounter with Christ and introduce them into a life free from the bondage of addiction. Once graduated, our program gives them the purpose and independence necessary to maintain a healthy and productive life as faithful followers of Jesus Christ.

Proposed Conditions Offered by Applicant:

Voluntary Condition #1: The proposed Hope Center shall be limited to women in recovery only. The recovery program for men will not be offered at this location.

Voluntary Condition #2: The proposed Hope Center shall house no more than 30 women in the recovery program at one time.

Findings of Fact:

- 1. That the use of development is located, designed and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.**

The property on which the Hope Center is proposed to be located was carefully selected with input from Town staff, Town leadership, and the church community to garner the necessary support needed for success, and to ensure that the public health, safety and general welfare are not just maintained, but enhanced through the benefits of the program on the community at large. With a strong understanding that substance abuse is destroying the lives of countless individuals and their families,

the Hope Center promotes public health through a tested program which helps individuals navigate the pathway to true freedom over addiction.

- 2. That the use or development complies with all required regulations and standards of the Town of Wilson's Mills Development Ordinance and with all other applicable regulations.**

The Hope Center use complies with all applicable the standards of the Town of Wilson's Mills Development Ordinance, subject to the approval of the requested Special Use Permit. All required modifications necessary to comply with applicable building code requirements, the Americans with Disabilities Act, or other applicable regulations will be made to ensure compliance.

- 3. That the use of development is located, designed and proposed to be operated so as to not substantially injure the value of adjoining or abutting property, or that the use or development is a public necessity.**

The Hope Center is proposed to be located on a 4.674-acre property generally located just southwest of the intersection of Swift Creek Road and Wilson's Mills Road. It is currently bound by Swift Creek Road on the west and is surrounded by existing agricultural land/uses to the north, south, and east. Due to the size of the property and the proposed low-intensity residential use, the use of the property as a Hope Center will not injure the value of adjoining or abutting property. It is the intent of the Hope Center to maintain and enhance the existing residential character of the property to the benefit of its residents, employees, and the surrounding property owners.

- 4. That the use or development will be in harmony with the area in which it is to be located and conforms to the general plans for the land use and development of the Town of Wilson's Mills and its environs.**

As stated above, the subject property is bound by Swift Creek Road to the west and agricultural land/uses on all other sides. These existing uses are compatible with the proposed use of a residential recov facility. Additionally, the property, as well as the surrounding properties to the north, south, and east all have a Commercial Future Land Use Designation and an existing Zoning Designation of MU-2 (Mixed Use), which are compatible land use and zoning categories. The proposed use is also consistent with Future Land Use Goal 2: *"Plan for Growth"*. Specifically, Strategy 1, which states: *"Encourage development first in areas where existing infrastructure and convenient proximity to Town services are already provided"*. The subject property is consistent with this strategy due to its location within the Town Limits of Wilson's Mills, and convenient access to exiting public infrastructure, the roadway network, and Town services. Lastly, with approval of the requested Special Use Permit, the proposed use will be consistent with the development standards of the Town of Wilson's Mills.

3-6-2025



3-6-2025



HC

**HOPE CENTER
MINISTRIES**

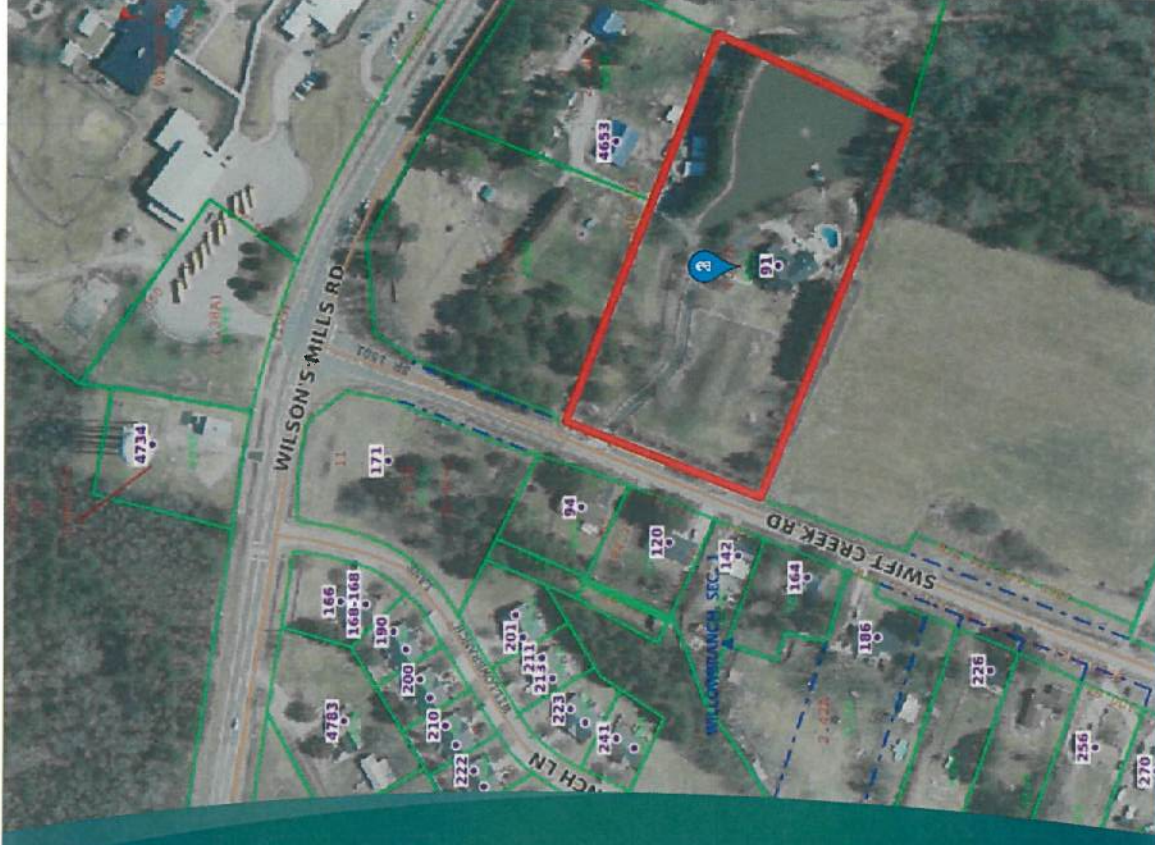


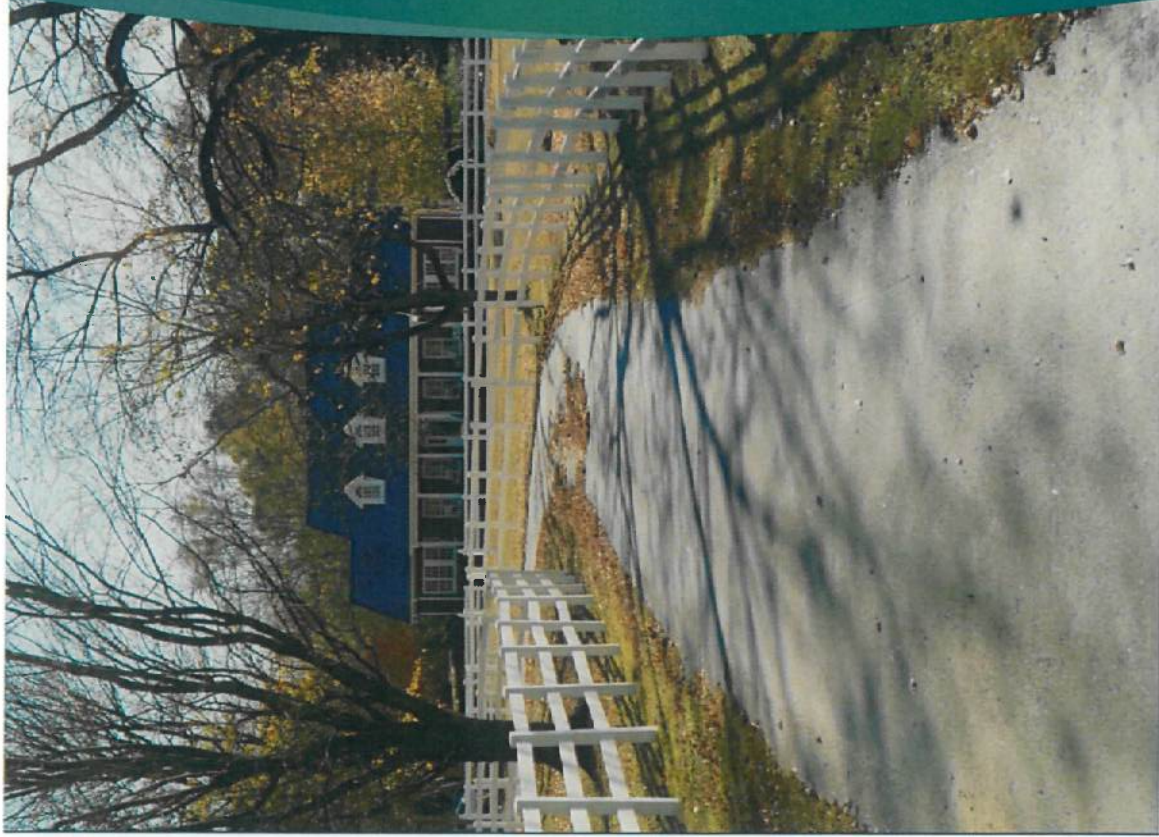
**HOPE CENTER - WILSON'S MILLS
SPECIAL USE PERMIT**

MARCH 17th, 2025

PROJECT LOCATION & REQUEST

- ▶ The subject property is 4.764 acres and is located just Southeast of the intersection of Wilson's Mills Road and Swift Creek Road in Wilson's Mills.
- ▶ Requesting a Special Use Permit (SUP) In accordance with Article 7, Section 7.8 of the Town's Development Code to allow a Hope Ministries Residential Recovery Program Facility.





PROPOSED USE

- ▶ It is the intent of Hope Center Ministries to use the existing 4,739 square foot home and associated improvements on the subject property to help up to 30 women continue their road to substance abuse recovery during the 12 month program.
- ▶ Residents will have supervision 24 hours a day, 7 days a week while in recovery at the facility.

Voluntary Conditions of Approval

- ▶ Voluntary Condition #1: The proposed Hope Center shall be limited to women in recovery only. The recovery program for men will not be offered at this location.

- ▶ Voluntary Condition #2: The proposed Hope Center shall house no more than 30 women in the recovery program at one time.



FINDINGS OF FACT

1. That the use of development is located, designed and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

The property on which the Hope Center is proposed to be located was carefully selected with input from Town staff, Town leadership, and the church community to garner the necessary support needed for success, and to ensure that the public health, safety and general welfare are not just maintained, but enhanced through the benefits of the program on the community at large. With a strong understanding that substance abuse is destroying the lives of countless individuals and their families, the Hope Center promotes public health through a tested program which helps individuals navigate the pathway to true freedom over addiction.

FINDINGS OF FACT

2. That the use or development complies with all required regulations and standards of the Town of Wilson's Mills Development Ordinance and with all other applicable regulations.

The Hope Center use complies with all applicable the standards of the Town of Wilson's Mills Development Ordinance, subject to the approval of the requested Special Use Permit. All required modifications necessary to comply with applicable building code requirements, the Americans with Disabilities Act, or other applicable regulations will be made to ensure compliance.

FINDINGS OF FACT

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FINDINGS OF FACT

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As stated above, the subject property is bound by Swift Creek Road to the west and agricultural land/uses on all other sides. These existing uses are compatible with the proposed use of a residential recovery facility. Additionally, the property, as well as the surrounding properties to the north, south, and east all have a Commercial Future Land Use Designation and an existing Zoning Designation of MU-2 (Mixed Use), which are compatible land use and zoning categories. The proposed use is also consistent with Future Land Use Goal 2: "Plan for Growth". Specifically, Strategy 1, which states: "Encourage development first in areas where existing infrastructure and convenient proximity to Town services are already provided". The subject property is consistent with this strategy due to its location within the Town Limits of Wilson's Mills, and convenient access to existing public infrastructure, the roadway network, and Town services. Lastly, with approval of the requested Special Use Permit, the proposed use will be consistent with the development standards of the Town of Wilson's Mills.

THE PROGRAM

▶ How do you get into the Program?

- Applications/Referral
- Well Vetted
- Post moment of crisis

▶ Program Details

- 12 Month Faith-Based Recovery Program
- Vocational / Life Skills Training
- Family Reunification
- Community Ties & Resources
- Post Hope Center Sustainable Pathway



RECOVERY PROGRAM DETAILS

12 Month, 3 Phase Residential Program

PHASE 1:

- Resident Evaluation & Program Engagement



RESTORING LIVES
RESTORING FAMILIES
RESTORING COMMUNITIES

HOPE CENTER

COMMUNITY SUPPORT & ENGAGEMENT



ONE  COMPASSION

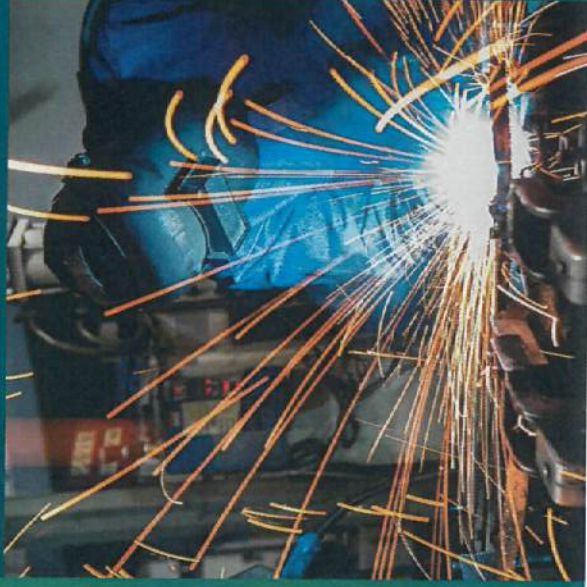


RECOVERY PROGRAM DETAILS

PHASE 2:

- ▶ Full-time Vocational Training
- ▶ Community Involvement
- ▶ Relationship Building

RESTORING LIVES
RESTORING FAMILIES
RESTORING COMMUNITIES



RECOVERY PROGRAM DETAILS

PHASE 3:

- ▶ Full-time Employment
- ▶ Financial Stability & Stewardship
- ▶ Path to Program Completion
- ▶ Strong Foundation for Long-term Success

RESTORING LIVES
RESTORING FAMILIES
RESTORING COMMUNITIES



EXISTING FACILITIES



QUESTIONS?



Request for Council Action

Agenda Item 7b(i)

TO: Mayor Fleta Byrd and Town Council Members
FROM: Leighanna Worley, Town Administrator
DATE: March 17, 2025
RE: Alcohol Sales and Consumption on Town Property

Attached for your consideration is an Ordinance Allowing Limited Alcohol Sales and Consumption on Town Property. This ordinance mainly applies to rugby games held at the park. The Rugby Club has asked several times for us to have an ordinance in place so they can have alcohol sales and consumption at their games.

ATTACHMENTS:

Ordinance Allowing Limited Alcohol Sales and Consumption on Town Property in the Town of Wilson's Mills

ACTION REQUESTED:

Vote to approve, deny, or table the Ordinance Allowing Limited Alcohol Sales and Consumption on Town Property in the Town of Wilson's Mills

**ORDINANCE ALLOWING LIMITED ALCOHOL SALES AND CONSUMPTION ON TOWN
PROPERTY IN THE TOWN OF WILSON'S MILLS**

WHEREAS, pursuant to Town Ordinance, consumption of alcoholic beverages is strictly prohibited on Town property; and

WHEREAS, the Town Council of the Town of Wilson's Mills finds that allowing limited alcohol sales and consumption to occur on Town property in connection with special events or athletic contests pursuant to the rules and regulations prescribed herein would facilitate interest and attendance at such special events and athletic contests and benefit the economic well-being of the Town; and

WHEREAS, the Town Council of the Town of Wilson's Mills desires to amend its Code of Ordinances to allow limited sales of certain alcoholic beverages on Town property, in accordance with the rules and regulations of the NC Alcohol Beverage Control Commission as set forth in Chapter 18B of the North Carolina General Statutes, and the Town rules and regulations set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WILSON'S MILLS THAT:

SECTION 1: Section 20-53 of the Town of Wilson's Mills Code of Ordinances is amended and rewritten to read as follows:

Sec. 20-53. – Consumption of alcoholic beverages prohibited on municipal property.

- (a) It shall be unlawful for any person to possess or consume any beer, wine or other intoxicating beverage at any time or event in any municipal building or on any municipal property.
- (b) The terms "intoxicating liquor," "malt beverages," and "wine," fortified or unfortified, shall be defined as in Chapter 18B of the N.C. General Statutes (G.S. Ch. 18B).
- (c) Except as otherwise allowed in section (d) hereof, it shall be unlawful for any person to drink, to consume or to possess open containers of malt beverages, fortified or unfortified wine, or any intoxicating liquor on public streets, parking lots or other publicly owned property.
- (d) The possession and consumption of open containers of unfortified wine or malt beverages may be permitted on property owned by the Town in connection with a Town-sponsored event, or for a private event, if approved by the Town Council or its designee, the Town Administrator, in accordance with the regulations set out below:
 - (1) Any such event involving the consumption or possession of alcoholic beverages may be permitted by the Town Council or its designee only after the following are complied with:
 - a. The business serving the alcoholic beverages is a participant in the event;
 - b. Such business obtains all required ABC licenses and permits;
 - c. Such business adheres to the North Carolina General Statutes in Chapter 18B, Regulation of Alcoholic Beverages, and the North Carolina Dram Shop Liability Act;
 - d. Such business serving alcoholic beverages serves it within an area designated by the Town Administrator, or in the absence of a specifically defined area, within the boundaries of the municipal property hosting the special event;
 - e. Such business serving the alcoholic beverages must agree to provide and pay for appropriate security measures during the time of the event in which the business serves alcoholic beverages as deemed necessary by the Town Administrator and Police Chief; and
 - f. Such business complies with any additional Town requirements as approved by the Town

Council or its designee, the Town Administrator.

(2) Factors which the Town Administrator shall consider when permitting the sale, service, possession, or consumption of unfortified wine and malt beverages as may be allowed by state law and the ABC Commission pursuant to this subsection include but are not limited to:

- a. That an applicable ABC permit for the special event has been issued by the ABC Commission and the other requirements of section (d)(1) have been satisfied.
- b. The Town's previous experience with the special event organizer and/or the special event.
- c. That the location and time for the special event is appropriate.
- d. That the special event organizer's plans regarding crowd control, cleanup, and other public safety and welfare matters are adequate.

(3) The possession and consumption of open containers of malt beverages and unfortified wine authorized by this section only applies to malt beverages and unfortified wine purchased onsite, during the special event, from businesses which have been approved by the Town Council or Town Administrator pursuant to the section. Under no circumstances are alcoholic beverages purchased or acquired off-site permitted to be possessed or consumed on Town property. Any malt beverage or unfortified wine purchased pursuant to this section can only be consumed on-site during the special event, and taking any such alcoholic beverage off-site is prohibited.

SECTION 2. If any section, phrase, sentence or portion of this ordinance is held void, invalid, unconstitutional or unenforceable for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3. This ordinance shall become effective upon adoption.

SECTION 4. That all ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

DULY ADOPTED this the 17th day of March, 2025.

Fleta Byrd, Mayor

ATTEST:

Emily Matthews, CMC, Town Clerk

Approved as to Form:

Town Attorney

Request for Council Action

Agenda Item 7b(ii)

TO: Mayor Fleta Byrd and Town Council Members
FROM: Leighanna Worley, Town Administrator
DATE: March 17, 2025
RE: Review of Contract for Chamber Upfit

At your January meeting you awarded the bid for the Council Chamber upfit to Calvin Davenport Inc. Attached is the contract for the chamber upfit. Attorney Du Sablon as well as representatives from Calvin Davenport and Studio 310 will be at your meeting to discuss the contract with you.

ATTACHMENTS:

Contract for Chamber Upfit from Calvin Davenport Inc.

ACTION REQUESTED:

Vote to approve, deny, or table the Contract for Chamber Upfit from Calvin Davenport Inc.



AIA Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of _____ in the year 2025
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Town of Wilson's Mills
4083 A Wilson's Mills Rd.
Wilson's Mills, NC 27577

and the Contractor:

(Name, legal status, address and other information)

Calvin Davenport, Inc.
3540 Hunter Hill Road
Rocky Mount, NC 27804

for the following Project:

(Name, location and detailed description)

Renovations for Wilson's Mills Town Council
4083A Wilson's Mills Road
Wilson's Mills, NC 27577
STUDIO 310 #24004

The Architect:

(Name, legal status, address and other information)

Studio 310, PA
302 Jefferson St., Suite 250
Raleigh, NC 27605
919-838-9310

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement.

AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner. April 15, 2025
- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

- ☒ Not later than (180) calendar days from the date of commencement of the Work.

☐ By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
N/A	N/A

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$). subject to additions and deductions as provided in the Contract Documents. 1,938,650.00 One Million, Nine hundred and thirty-eight thousand, Six hundred and Fifty Dollars and Zero cents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum: Accepted Alternates: Total 5 taken (See attached Exhibit)

Item	Price	Item	Price
Alternate A-8 (Add)	\$39,500.00	Alternate M-4 (Deduct)	-15,000.00
Alternate C-7 (Deduct)	-7,000.00	Alternate E-4 (Deduct)	-1,000.00
Alternate S-4 (Deduct)	-5,000.00		

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
N/A	N/A	N/A

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
Owners Contingency	\$100,000.00

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A	N/A	N/A

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The contractor agrees to pay \$500.00 per day liquidated damages to the owner for each calendar day the Contractor shall be default.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

VE Options (see attached also)		Deduct Copper	-2,800.00
Delete Electrical Survey -3500		Deduct Cable Dampers - HVAC	-5000
		Change Diffusers	-1,000.00
Change Tile	-600.00	Change Canopy soffit to Aluminum Longboard Panels	-219,000
Deduct Insulation	-4,150.00	Change Curb and Gutter to 16" from 24"	-800.00

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 15th day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (25) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

N/A

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

1.5 % Monthly

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/a

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2017

☒ Litigation in a court of competent jurisdiction

☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

Both Parties reaching a mutual agreement on materials, labor, and fees in place.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Leighanna Worley
Town Administrator
4083 A Wilsons Mills Rd
Wilsons Mills, NC 27577

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Richard Davenport
Calvin Davenport, Inc.
3540 Hunter Hill Road
Rocky Mount, NC 27804
Telephone: 252-443-0923
email: richard@calvindavenport.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

N/A

§ 8.7 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

Note:

- 1 This form
- 2 Remove. Bonding
- Company supplies
- once contract is
- executed to be signed
- forms from spec book
- under Other (before
- renumbering) #9
- 3 printed From Spec.
- Book
- 4 remove
- 5 adjust
- 6 adjust
- 7 adjust
- 8 remove
- 9 adjust

- 1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- 2 ~~AIA Document A101™-2017, Exhibit A, Insurance and Bonds~~
- 3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- X ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below;~~
~~(Insert the date of the E203-2013 incorporated into this Agreement.)~~

5 Drawings

See Index on Drawings dated 11-22-2024

Number	Title	Date
--------	-------	------

6 Specifications

See Table of Contents

Section	Title	Date	Pages
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7 Addenda, if any:

Number	Date	Pages
Addendum #1	December 20, 2024	2 pages
Addendum #2	January 6, 2025	4 pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below.
(Insert the date of the E204-2017 incorporated into this Agreement.)

Init.

☐ ~~The Sustainability Plan~~-----

Title-----Date-----Pages-----

☐ ~~Supplementary and other Conditions of the Contract~~-----

Document-----Title-----Date-----Pages-----

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Performance & Payment Bond

Certification by the Office of State Budget and Management

Form of Proposal (Bid)

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

Certificate of Insurance

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

*****Note: you will have an Addition and Deletions report once you create the document. It will show paragraphs deleted, lines edited and how edited and added items if any.

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Renovations for Wilson's Mills Town Council

THE OWNER:

(Name, legal status and address)

Town of Wilson's Mills
4083 A Wilsons Mills Rd.
Wilsons Mills NC 27577

THE ARCHITECT:

(Name, legal status and address)

Studio 310, PA
302 Jefferson St, Suite 250
Raleigh, NC 27605

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

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obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

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§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional,

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whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work,

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provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;

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- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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Renovations for Wilson's Mills Town Council

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Town of Wilsons's Mills
4083 A Wilsons Mills Rd.
Wilsons Mills NC 27577

...

Studio 310. PA
302 Jefferson St. Suite 250
Raleigh, NC 27605

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FOR REFERENCE ONLY (IN LC)

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11/22/24



RENOVATIONS FOR
WILSON'S MILLS TOWN COUNCIL

4083A WILSON'S MILLS RD
WILSON'S MILLS, NC 27577

PROJECT #		24004
DATE:		11.22.2024
DRAWN BY:		ICM
CHECKED BY:		RMC
NO.	REVISION	DATE

COVER SHEET

G1.01

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Renovations for Wilson's Mills Town Council
Studio 310 #24004

Date: 11/22/2024

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310 Architecture + Interiors

ADDENDUM #1

Date: December 20, 2024

Project: Renovations for Wilson's Mills Town Council Chambers

Location: Wilson's Mills Town Hall
4083A Wilson's Mills Rd.
Wilson's Mills, NC 27577

310ai Project #: 24004

This Addendum shall modify the Contract documents for the referenced project, as described below. The Bidder shall incorporate all items into the Bid amount and shall acknowledge receipt and inclusion in the appropriate location on the Form of Proposal.

General

1. Pre-Bid Meeting Notes and Pre-Bid Sign-In Sheet are attached and shall be considered part of this addendum.
2. Pre-Engineered Metal Building Drawings are attached. It is assumed X-Bracing has been omitted between column lines 2 & 3 on plan north and south facades and are to be added as part of the bid scope per structural drawings.
3. Product specifications are listed within the drawing sheets for each trade.
4. At this time, we understand that Certified Payroll is not required.
5. Audio Visual wiring and system will be bid by the awarded GC at a later date. Refer to AV drawings for full Audio Visual scope.
6. Fire Hydrant on the property will need to be turned to face the building as part of the GC construction scope.

Architectural

Drawings:

1. **Q:** Is there an equivalent to the ACM panels?
A: See Specifications Section 07 42 13 23 for equivalents.
2. **Q:** Provide more information on the framing at the canopies. Does the ACM system attach to metal studs and/or vertical member channel?
A: Per detail 02/A2.22 the composite metal panel is mounted using a concealed clip system to 4" metal studs. The phenolic panel is referred to in the detail 01/A2.22. The typical phenolic panel is mounted to 1-5/8" metal structure, which is suspended from the deck above.
3. **Q:** Will the existing double doors in the chamber space need to remain during construction for egress?
A: Yes, protect egress doors in place during construction and provide clear, level path of travel until new doors are installed.

Electrical:

1. GC to include circuit(s) for future canopy lighting in the event canopy deduct(s) are taken.

Audio Visual:

1. **Q:** FB3 is specified as a junction box in the equipment schedule but called out as a floor box. Please advise.
A: FB3 will not be a junction box and will be the same model of floor outlet box as FB2 in the AV equipment schedule.

ADDENDUM #2

Date: January 6, 2025

Project: Renovations for Wilson's Mills Town Council Chambers

Location: Wilson's Mills Town Hall
4083A Wilson's Mills Rd.
Wilson's Mills, NC 27577

310ai Project #: 24004

This Addendum shall modify the Contract documents for the referenced project, as described below. The Bidder shall incorporate all items into the Bid amount and shall acknowledge receipt and inclusion in the appropriate location on the Form of Proposal.

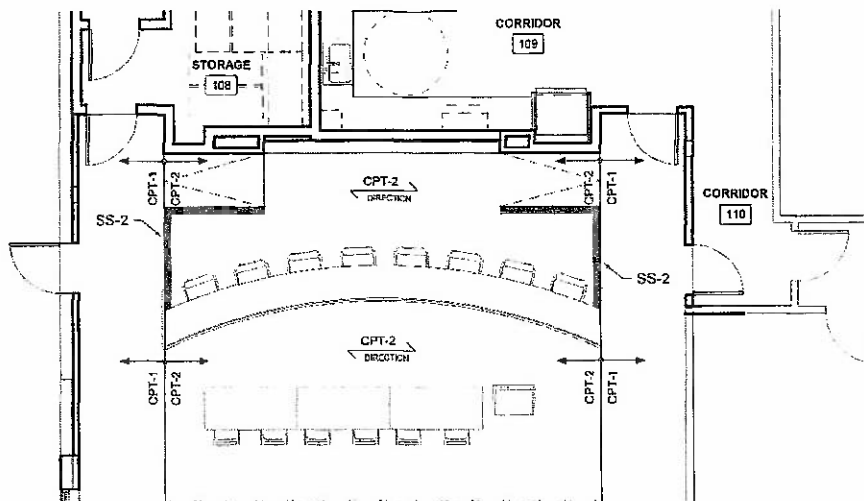
General

1. Pre-Bid Meeting Notes, Pre-Bid Sign-In Sheet, and Subcontractor Walkthrough Sign-In Sheet are attached and shall be considered part of this addendum. Addendum #1 is also attached for reference.
2. The Wilson's Mills Town Hall office area will be occupied during construction. Phasing is not defined at this time and will be negotiated with the selected contractor.

Architectural

Drawings:

1. Q: Will existing tile in the break room and restrooms to be demolished as part of the scope?
A: Yes, existing tile in these rooms will also be demolished.
2. Q: Is the solid surface material to be 3cm or ½"?
A: Solid surface material SS-1 and SS-2 to be ½" and built up to a 1-1/2" countertop edge, see cabinetry sections.
3. Q: Is the SS-2 solid surface material to wrap around knee wall locations at elevation 06/A8.05?
A: Yes, SS-2 material to wrap all knee wall locations adjacent to ramps at dais. All exposed sides to be finished with SS-2 where highlighted below. See below sketch. See 03/A8.02 for SS-2 base at dais wall.



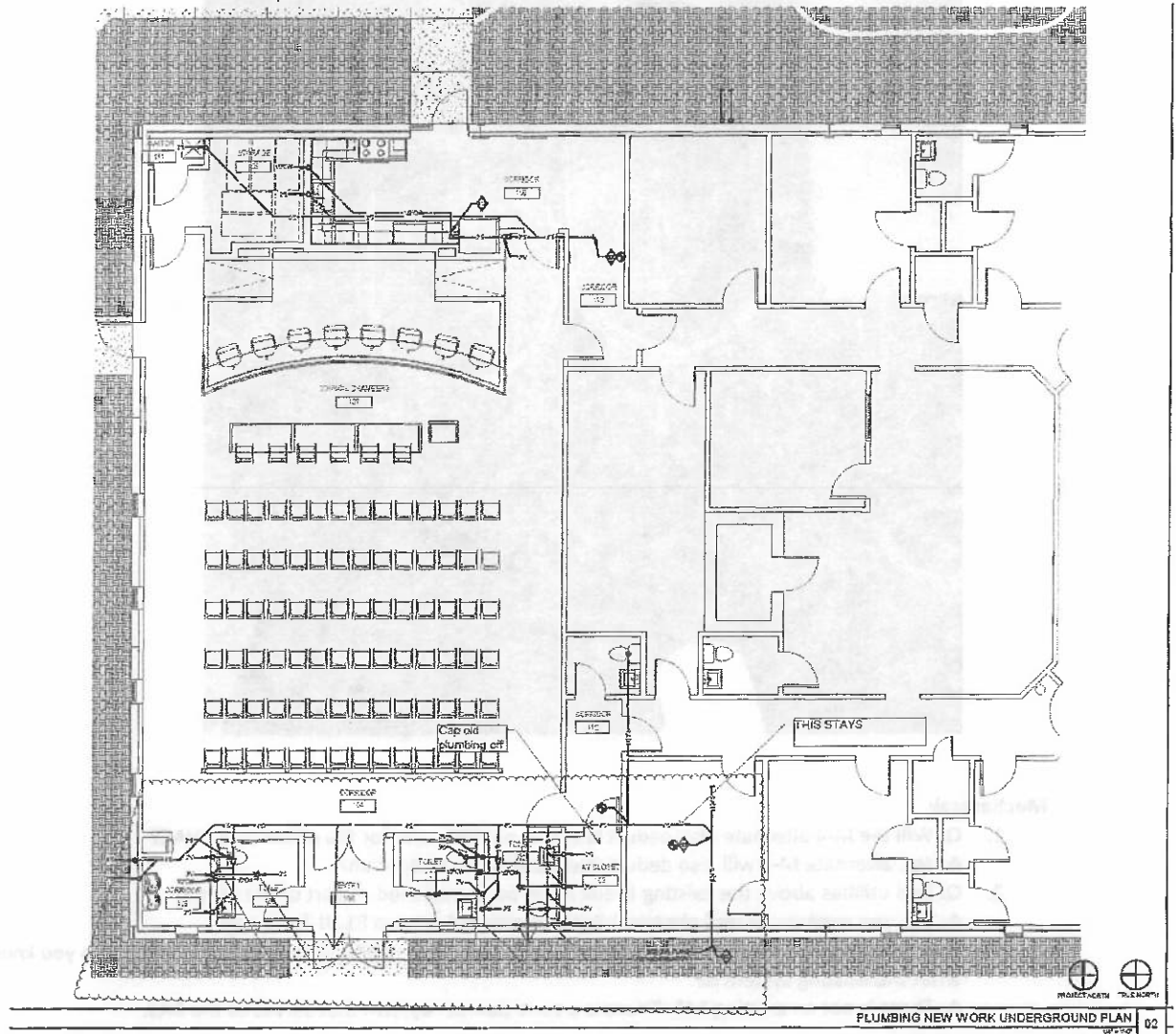
310 Architecture + Interiors

Structural:

1. **Q:** What is the thickness of the existing slab?
A: Thickness of the existing slab is unknown.

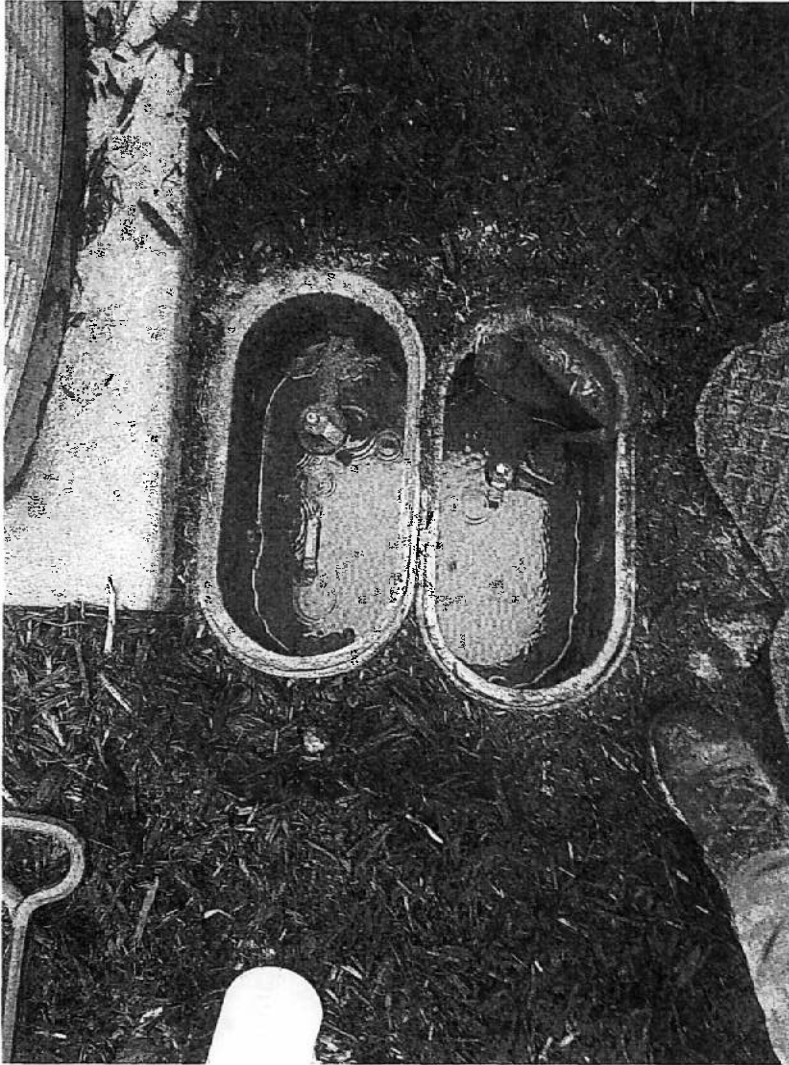
Plumbing:

1. **Q:** Can the EOR provide direction for the routing of the roof drains?
A: The intent is to have the roof drain piping connect to RD-1 and routed directly down next to structural columns to under slab. From there it would connect to civil underground storm with minimal amount of horizontal run.
2. **Q:** Please reference P2.02. Note B under insulation states all domestic water piping will be insulated, but all existing piping is uninsulated. How should we interpret this note?
A: Only new piping is to be insulated within the GC base bid. Please provide a separate price to insulate existing piping.
3. **Q:** Are we able to tie into existing sanitary outside of the building for new restrooms and abandon the utilities in the restroom to be demolished? See below proposed sketch.
A: This solution will be acceptable.



310 Architecture + Interiors

4. **Q:** Confirm that there is a 2" water line running to the building. Plumbing plans call for a 2" water line.
5. **A:** There is a 2" water line in place outside of the building (see blue lever in meter box below). Internal water line is to be replaced with 2". We understand the reducer in the right of the photo below has been abandoned and is to be removed. Old ¾" water line into the building will need to be sawcut to be replaced with 2" line.



Mechanical:

1. **Q:** Will the M-4 alternate also deduct the new outdoor unit for the office area HVAC?
A: Yes, alternate M-4 will also deduct the associated outdoor unit.
2. **Q:** Will utilities above the existing break room be demolished as part of the scope?
A: Yes, see mechanical and electrical demo sheets M1.01 and E1.01 for scope.
3. **Q:** The mechanical details of the project mention an existing BAS system for the building. Do you know what the existing system is?
A: There is not an existing BAS. There is a zone damper system that serves as the BAS.

310 Architecture + Interiors

Electrical:

1. **Q:** The alternate E-3 on the electrical sheet E3.01 do not match up with the alternates on the bid sheet.
A: This has been updated to alternate E-5. See attached updated front end specs and form of proposal.

END OF ADDENDUM #2

Copy: Town of Wilson's Mills, Bidders of record, Bolton & Menk, Walter P Moore, EXP
File

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project _____

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

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

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

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

Executed in _____ counterparts.

Witness:

Contractor: (Trade or Corporate Name)

(Proprietorship or Partnership)

By: _____

Attest: (Corporation)

Title: _____
(Owner, Partner, or Corp. Pres. or Vice
Pres. only)

By: _____

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

(Corporate Seal)

(Surety Company)

Witness:

By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

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

FORM OF PAYMENT BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of Contracting
Body: _____

Amount of Bond: _____

Project _____

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

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

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

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

Executed in _____ counterparts.

Witness:

(Proprietorship or Partnership)

Attest: (Corporation)

By: _____

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

(Corporate Seal)

Contractor: (Trade or Corporate Name)

By: _____

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

Witness:

Countersigned:

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

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

(Surety Company)

By: _____

Title: _____
(Attorney in Fact)

(Surety Corporate Seal)

**CERTIFICATION BY THE OFFICE OF STATE
BUDGET AND MANAGEMENT**

Provision for the payment of money to fall due and payable by the

under this agreement has been provided for by allocation made and is
available for the purpose of carrying out this agreement.

This _____ day of _____ 20____.

Signed _____
Budget Officer

Low 2

Bid Tab	Cost Estimate	Calculated	Calculated	Calculated
Bidder Name	Palace	GC-1	option	option
License#		0056		
Contract		1/8/2015		
Time Received		3:57 PM		
In attendance (Y/N)		Y		
50% Bid Bond?		Y		
Form of Proposal		Y		
Form of Bid Bond		Y		
Form of Construction Contract		No		
Form of Performance Bond		No		
Form of Payment Bond		No		
Contractors Affidavit of Payment		No		
Contractors Certification		No		
Identification of HUB Certified/Minority Business		Y A.S.		
State of NC Sales & Use Tax Form		No		
Insurance Ind.		Y		
Base Bid	\$2,189,380.00	Y	\$2,064,000.00	Y
Alternate A-1 (Deduct)	-\$42,217.00	n	-\$295,000.00	n
Alternate A-2 (Deduct)	-\$31,154.00	n	-\$27,000.00	n
Alternate A-3 (Deduct)	-\$25,085.00	n	-\$205,000.00	n
Alternate A-5 (Add)	\$35,428.00	Y	\$18,000.00	Y
Alternate A-8 (Add)	\$55,164.00	Y	\$15,500.00	Y
Alternate A-9 (Deduct)	-\$63,010.00	n	-\$5,500.00	n
Alternate A-10 (Add)	\$18,478.00	n	\$45,500.00	n
Alternate A-11 (Add)	\$26,412.00	n	\$29,000.00	n
Alternate C-1 (Deduct)	-\$19,684.00	n	-\$15,000.00	n
Alternate C-4 (Deduct)	\$0.00	n	-\$20,000.00	n
Alternate C-7 (Deduct)	-\$15,419.00	n	-\$7,000.00	n
Alternate L-1 (Deduct)	-\$37,749.00	n	-\$5,000.00	n
Alternate S-1 (Deduct)	-\$55,162.00	n	-\$65,000.00	n
Alternate S-2 (Deduct)	-\$5,782.00	n	-\$20,000.00	n
Alternate S-3 (Deduct)	-\$37,366.00	n	-\$45,000.00	n
Alternate S-4 (Deduct)	-\$4,857.00	n	-\$5,000.00	n
Alternate S-9 (Deduct)	\$0.00	n	-\$3,000.00	n
Alternate M-4 (Deduct)	-\$72,211.00	n	-\$15,000.00	n
Alternate E-1 (Deduct)	-\$8,262.00	n	-\$9,000.00	n
Alternate E-3 (Deduct)	-\$7,337.00	n	-\$5,000.00	n
Alternate E-4 (Deduct)	-\$3,895.00	n	-\$1,000.00	n
Alternate E-5 (Deduct)	\$0.00	Y	-\$2,500.00	n
Alternate P-1 (Add)	\$0.00	Y	\$4,500.00	n
Total:	\$2,915,397.00		\$2,075,500.00	
Owner Contingency			\$100,000.00	Y
Owner Supplied				
AV Equipment	\$140,000.00		\$140,000.00	n
Data Cabling	\$13,209.00		\$13,209.00	n
Furniture	\$10,206.00		\$10,206.00	n
Total			\$2,175,500.00	Y

Alternate A-1: Deduct to omit canopy at plan east building entrance. See also C-1, L-1, S-1, and E-1 alternates.

Alternate A-2: Deduct to omit facade and vestibule demolition/new work at plan east building entrance. See also S-2 alternate.

Alternate A-3: Deduct to omit canopy at plan south building entrance. See also C-3, L-3, S-3, and E-3 alternates.

Alternate A-5: Add to paint existing building metal panels, trim soffit fascia, downspouts, and storefront framing per specifications to match existing.

Alternate A-8: Add to Demolish Existing and Provide new aluminum storefront system, glazing (Low E/Tinted), doors and hardware at plan east building facade. (Length Approx. 68'-0")

Alternate A-9: Deduct siding work and window relocation associated with added X-Bracing plan north and south. See also S-9 alternate.

Alternate A-10: Add to provide interior signage including room signs and town seal signage per supplementary signage bid package

Alternate A-11: Add to provide exterior signage including monument signage, wayfinding signage, and vinyl lettering on exterior doors per supplementary signage bid package.

Alternate C-1: Deduct to omit site work at plan east building entrance. See civil drawings for extents.

Alternate C-4: Deduct to omit site work at plan south building entrance. See civil drawings for extents.

Alternate C-7: Deduct to omit work at flume drain area, see civil drawings for extents.

Alternate L-1: Deduct to omit landscaping at plan east building entrance. See landscape drawing for extents.

Alternate S-1: Deduct to omit canopy structure and footings at plan east building entrance.

Alternate S-2: Deduct to omit facade structural demolition and new work at plan east building entrance

Alternate S-3: Deduct to omit canopy structure and footings at plan south building entrance.

Alternate S-4: Deduct to omit platform for new air handler in plan east office space.

Alternate S-9: Deduct to omit X-Bracing plan north and south walls.

Alternate M-4: Deduct to omit new air handler and associated ductwork in plan east office space. Remove zone bypass and rebalance.

Alternate E-1: Deduct to omit lighting at plan east building canopy and landscape lighting at plan east building entrance. See electrical drawings for extents.

Alternate E-3: Deduct to omit integrated lighting at plan south canopy.

Alternate E-4: Deduct to omit associated electrical work for new air handler in plan east office space.

Alternate E-5: Deduct to omit flood lighting on Sheet E3.01

Alternate P-1: Add to insulate existing piping in existing area of work

VE Options				
		-\$1,000.00	Y	
		-\$600.00	Y	
		-\$4,150.00	Y	
		-\$2,800.00	Y	
		-\$5,000.00	Y	
		-\$1,000.00	Y	
		-\$115,000.00	Y	

Sidewalk - stone?
Change flooring in Corridor to LVT
Change Tile
Deduct Insulation
Deduct Copper
Deduct Cable Dampers - HVAC
Change Diffusers
Change to aluminum panels on soffit canopies
15" curb & gutter?

\$1,948,950.00

FORM OF PROPOSAL

Renovations for Wilson's Mills Town Council

4083A Wilson's Mills Rd.

Wilson's Mills, NC 27577

Contract: _____

Bidder: Calvin Davidson, Inc.

Date: 1-8-2025

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The bidder further declares that he and his subcontractors have fully complied with NCGS 64, Article 2 in regards to E-Verification as required by Section 2.(c) of Session Law 2013-418, codified as N.C. Gen. Stat. § 143-129(j).

The Bidder proposes and agrees if this proposal is accepted to contract with the

Town of Wilson's Mills

in the form of contract specified below, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of

Renovations for Wilson's Mills Town Council

Located at Wilson's Mills Town Hall Campus

in full in complete accordance with the plans, specifications and contract documents, to the full and entire satisfaction of the State of North Carolina, and the

Town of Wilson's Mills and Studio 310, PA

with a definite understanding that no money will be allowed for extra work except as set forth in the General Conditions and the contract documents, for the sum of:

SINGLE PRIME CONTRACT:

General Contractor Base Bid:

Two million Eighty-Four Thousand & 00/100 Dollars (\$) 2,064,000.⁰⁰

Site/Grading Subcontractor: CDI License: 4056

Plumbing Subcontractor: Hyde Plumbing License: 31064

Mechanical Subcontractor: Comfort Shield License: 32187

Electrical Subcontractor: ALCO, Inc License: 2063

GS143-128(d) requires all single prime bidders to identify their subcontractors for the above subdivisions of work. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except (i) if the listed subcontractor's bid is later determined by the contractor to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or (ii) with the approval of the awarding authority for good cause shown by the contractor.

ALTERNATES:

Should any of the alternates as described in the contract documents be accepted, the amount written below shall be the amount to be "added to or removed from" the base bid.

GENERAL CONTRACT:

Alternate A-1 Deduct to omit canopy at plan east building entrance. (See also C-1, L-1, S-1, and E-1 alternates.)

(Deduct) ~~Two Hundred Thousand~~ Sixty-Five Thousand $\frac{NO}{100}$ Dollars (\$) 265,000.00

Alternate A-2 Deduct to omit façade and vestibule demolition/new work at plan east building entrance. (See also S-2 alternate).

(Deduct) Twenty-two thousand $\frac{NO}{100}$ Dollars (\$) 22,000.00

Alternate A-3 Deduct to omit canopy at plan south building entrance. See also C-3, L-3, S-3, and E-3 alternates).

(Deduct) Two Hundred thousand $\frac{NO}{100}$ Dollars (\$) 205,000.00

Alternate A-4 Not Used

Alternate A-5 Add to Paint existing building metal panels, trim soffit fascia, downspouts, and storefront framing per specifications to match existing.

(Add) Fifteen thousand $\frac{NO}{100}$ Dollars (\$) 18,000.00

Alternate A-6, A-7: (Not Used)

Alternate A-8 Add to Demolish Existing and Provide new aluminum storefront system, glazing (LowE/Tinted), doors and hardware at plan east building façade. (Length Approx. 68'-0")

Forty Nine Thousand Five Hundred $\frac{NO}{100}$ Dollars (\$) 39,500.00

Alternate A-9 Deduct to omit siding work and window relocation associated with added X-Bracing plan north and south. (See also S-9 alternate)

(Deduct) Sixty-Five Hundred $\frac{NO}{100}$ Dollars (\$) 6,500.00

Alternate A-10 Add to Provide interior signage including room signs and town seal signage per supplementary signage bid package.

(Add) Fifty Five thousand Five Hundred $\frac{NO}{100}$ Dollars (\$) 45,500.00

Alternate A-11 Add to Provide exterior signage including monument signage, wayfinding signage, and vinyl lettering on exterior doors per supplementary signage bid package.

(Add) ~~Twenty Nine thousand~~ Twenty Nine thousand $\frac{NO}{100}$ Dollars (\$) 29,000.00

Alternate E-1 Deduct to omit lighting at plan east building canopy and landscape lighting at plan east building entrance. See electrical drawings for extents.

(Deduct) Nine thousand & ^{NO}/₁₀₀ Dollars (\$) 9,000.

Alternate E-2 (Not Used)

Alternate E-3 Deduct to omit integrated lighting at plan south canopy.

(Deduct) Five thousand & ^{NO}/₁₀₀ Dollars (\$) 5,000.

Alternate E-4 Deduct to omit associated electrical work for new air handler in plan east office space. See mechanical drawings for extents.

(Deduct) One thousand & ^{NO}/₁₀₀ Dollars (\$) 1,000.

Alternate E-5 Deduct to omit flood lighting where noted on sheet E3.01.

(Deduct) Two thousand Five Hundred & ^{NO}/₁₀₀ Dollars (\$) 2,500.

Alternate P-1 Add to insulate existing piping within area of work.

(Add) Forty-Five Hundred & ^{NO}/₁₀₀ Dollars (\$) 4,500.

The bidder further proposes and agrees hereby to commence work under this contract on a date to be specified in a written order of the designer and shall fully complete all work thereunder within the time specified in the Supplementary General Conditions. Applicable liquidated damages amount is also stated in the Supplementary General Conditions.

MINORITY BUSINESS PARTICIPATION REQUIREMENTS

Provide with the bid - Under GS 143-128.2(c) the undersigned bidder shall identify on its bid (Identification of Minority Business Participation Form) the minority businesses that it will use on the project with the total dollar value of the bids that will be performed by the minority businesses. Also list the good faith efforts (Affidavit A) made to solicit minority participation in the bid effort.

NOTE: A contractor that performs all of the work with its own workforce may submit an Affidavit (B) to that effect in lieu of Affidavit (A) required above. The MB Participation Form must still be submitted even if there is zero participation.

After the bid opening - The Owner will consider all bids and alternates and determine the lowest responsible, responsive bidder. Upon notification of being the apparent low bidder, the bidder shall then file within 72 hours of the notification of being the apparent lowest bidder, the following:

An Affidavit (C) that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the 10% goal established. This affidavit shall give rise to the presumption that the bidder has made the required good faith effort and Affidavit D is not necessary;

*** OR ***

If less than the 10% goal, Affidavit (D) of its good faith effort to meet the goal shall be provided. The document must include evidence of all good faith efforts that were implemented, including any advertisements, solicitations and other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.

Note: Bidders must always submit with their bid the Identification of Minority Business Participation Form listing all MB contractors, vendors and suppliers that will be used. If there is no MB participation, then enter none or zero on the form. Affidavit A or Affidavit B, as applicable, also must be submitted with the bid. Failure to file a required affidavit or documentation with the bid or after being notified apparent low bidder is grounds for rejection of the bid.

Proposal Signature Page

The undersigned further agrees that in the case of failure on his part to execute the said contract and the bonds within ten (10) consecutive calendar days after being given written notice of the award of contract, the certified check, cash or bid bond accompanying this bid shall be paid into the funds of the owner's account set aside for the project, as liquidated damages for such failure; otherwise the certified check, cash or bid bond accompanying this proposal shall be returned to the undersigned.

Respectfully submitted this day of January 8th - 2025

Calvin Davenport Inc

(Name of firm or corporation making bid)

WITNESS:

By: [Signature]

Signature

Name: Richard Davenport

Print or type

Title: President

(Owner/Partner/Pres./V.Pres)

Address 3540 Hunter 1691 Rd

Rocky Mount, NC 27804

License No. 4056

Federal I.D. No. 56-0814302

ATTEST:

By: Nell D. Davenport

Title: [Signature]

(Corp. Sec. or Asst. Sec. only)

Email Address: richard@calvindavenport.com

(CORPORATE SEAL)

Addendum received and used in computing bid:

Addendum No. 1 Addendum No. 3 _____ Addendum No. 5 _____ Addendum No. 6 _____

Addendum No. 2 _____ Addendum No. 4 _____ Addendum No. 6 _____ Addendum No. 7 _____

do hereby certify that on this project, we will use the following HUB Certified/ minority business as construction subcontractors, vendors, suppliers or providers of professional services.

**HUB
Certified
(Y/N)

[illegible]

**** HUB Certification with the state HUB Office required to be counted toward state participation goals.**

MBForms 2002-Revised July 2010

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid
State of North Carolina AFFIDAVIT A - Listing of Good Faith Efforts

County of Nash

Affidavit of Calvin O. Davenport, Inc (Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

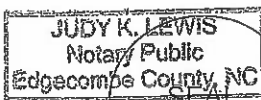
Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- ☒ 1 - (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☒ 2 - (10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☒ 3 - (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☒ 4 - (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☒ 5 - (10 pts) Attended prebid meetings scheduled by the public owner.
- ☐ 6 - (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ 7 - (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☐ 8 - (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ 9 - (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☐ 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

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

Date: 1-8-2025 Name of Authorized Officer: Richard Davenport
Signature: [Signature]
Title: President



State of North Carolina, County of Nash
Subscribed and sworn to before me this 8 day of January 2025
Notary Public Judy K. Lewis
My commission expires November 9, 2026

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid

**State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract
with Own Workforce.**

County of Nash
Affidavit of Calvin Davenport, Inc
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the _____
_____ contract.
(Name of Project)

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

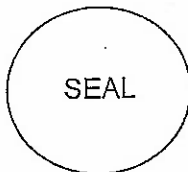
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement. The Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

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

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____



State of _____, County of _____
Subscribed and sworn to before me this _____ day of _____ 20____
Notary Public _____
My commission expires _____

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT _____

Calvin Davenport, Inc. as principal, and Philadelphia Indemnity Insurance Company, as surety, who is duly licensed to act as surety in North Carolina, are held and firmly bound unto the State of North Carolina* through Town of Wilson's Mills NC as obligee, in the penal sum of Five Percent of Attached Bid (5%) DOLLARS, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this 3rd day of January, 2025.

WHEREAS, the said principal is herewith submitting proposal for Renovations for Wilson's Mills Town Council and the principal desires to file this bid bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the principal shall be awarded the contract for which the bid is submitted and shall execute the contract and give bond for the faithful performance thereof within ten days after the award of same to the principal, then this obligation shall be null and void; but if the principal fails to so execute such contract and give performance bond as required by G.S. 143-129, the surety shall, upon demand, forthwith pay to the obligee the amount set forth in the first paragraph hereof. Provided further, that the bid may be withdrawn as provided by G.S. 143-129.1

Calvin Davenport, Inc.

 (SEAL)

Philadelphia Indemnity Insurance Company

Danny A. Quarella (SEAL)

Danny A. Quarella, Attorney-in-Fact

Philadelphia Indemnity Insurance Company
223 S West Street, STE 900
Raleigh, NC 27601
508-341-1500



PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Danny Quarella and Michael Quarella of Vigilant Insurance Partners, Raleigh NC, its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5TH DAY OF MARCH, 2021.

(Seal)



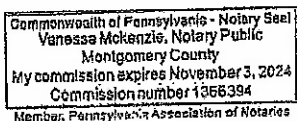
John Glomb

John Glomb, President & CEO
Philadelphia Indemnity Insurance Company

On this 5th day of March, 2021 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Notary Public:

Vanessa McKenzie



Member, Pennsylvania Association of Notaries

residing at:

Bala Cynwyd, PA

My commission expires:

November 3, 2024

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5th day March, 2021 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 3rd day of January, 2025

Edward Sayago

Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY



COI

Ins.

once we
get final
figures / contract /

Dates
