

AGENDA
www.townofvaldese.com

Town of Valdese Town Council
102 Massel Avenue SW, Valdese, NC

Monday, January 13, 2025
6:00 p.m., Valdese Town Hall, Council Chambers

The Town Council Meeting will be live-streamed on YouTube [@townofvaldese](https://www.youtube.com/@townofvaldese).

- 1. Call Meeting to Order**
- 2. Invocation** (Led by the Valdese PD Volunteer Chaplains)
- 3. Pledge of Allegiance**
- 4. Informational Items**
 - A. Communication Notes
 - B. Reading Material
- 5. Oath of Office: Melinda Zimmerman – Ward 2**
- 6. Open Forum/Public Comment**
- 7. Consent Agenda**

All items below are considered routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests. In which event, the item will be removed from the Consent Agenda and considered under Item 8.

 - A. Approval of Pre-Agenda Meeting Minutes of November 18, 2024
 - B. Approval of Regular Meeting Minutes of December 2, 2024
 - C. Approval of Closed Session Minutes of December 2, 2024
 - D. Approval of Special Called Meeting Minutes of December 11, 2024
 - E. Approval of Closed Session Minutes of December 11, 2024
 - F. Approval of Resolution Supporting House Bill 971 and Compliance with NCGS §143-805
 - G. Interim Manager to evaluate, develop a plan and report on the following:
 - i. Town's opportunity to participate in Federal Disaster Relief Funding;
 - ii. Town's need and opportunities for Additional Public Safety Building Funding;
 - iii. Town's participation in Patriot Relief program;
 - iv. Town's development of a high-level DOT Long-Range Street Resurfacing Program plan;
 - v. Town's water quality issues/complaints;
 - vi. Town's Employer Visitation Plan for 2025;

- H. Collaboration between Valdese Code Enforcement and WPCOG to evaluate, develop a plan, and report on the Town's current enforcement of abandoned, noncompliant and/or neglected properties and recommended improvements.
- I. Amendment to Date on Audit Contract

8. New Business

- A. Public Safety Facilities Update (*Council Discussion*)
 - i. Number of General Contractors sent RFQ
 - ii. Responses or Reactions to Date
 - iii. Next anticipated Action
- B. Appointment to Boards/Commissions/Committees (*Council Appointments*)
- C. Personnel Considerations Relative to Budget Planning (*Council Discussion*)
 - i. Compa-Pay Salary and Position Study RFP
 - ii. Review of Employee Benefits Program
 - iii. Staff Development Training Plan and Near-term Needs
 - Plan for Optimum Use of \$30,000 budgeted for FY 25
 - Needs Identified for FY 26 Planning
- D. Management Consulting RFP (*Council Discussion*)
 - i. Broad Analysis of Organization Structure and Staffing Needs
 - ii. In-depth Analysis of Operations
 - iii. Identify Town Control Documents (forms, contracts) for legal counsel review
- E. Status of Ongoing or Approved Projects (*Council Discussion*)
 - i. Strategic Planning: 2025 Citizens' Priorities Survey
 - ii. Rec Center ADA and Pool Cover Contracts
 - iii. Status of Pool Cover Capital Fund Drive
 - iv. Hoyle Creek Excavating and Trail Contract
 - v. Lovelady Road to Crescent Sidewalk
- F. Approval of Ordinance Declaring Road Closures for the Town of Valdese 2025 Annual Events (*Presented by Bo Weichel*)
- G. Approval of AIA Document Standard Form and General Condition Contract – Pool Structure (*Presented by Bo Weichel*)
- H. Capital Project Ordinance Amendment – Pool Structure (*Presented by Bo Weichel*)
- I. Municipal Agreement Approval – Lovelady Road Sidewalk Project (*Presented by Bo Weichel*)
- J. Capital Project Ordinance – Lovelady Road Sidewalk Project (*Presented by Bo Weichel*)

9. Interim Town Manager's Report

- A. Correction on Valdese Recreation Center pool availability on July 4th

- B.** Town Offices Closed Monday, January 20, 2025 in Observance of Martin Luther King Day
- C.** OCP Production: Willy Wonka Jr., Show Dates: January 23 - February 2, 2025, Thursdays, Fridays, Saturdays at 7:30 p.m. & Sundays 2:30 p.m.
Visit www.oldcolonyplayers.com for more information and to purchase tickets.
- D.** Next Agenda Review Council meeting is scheduled for Monday, January 27, 2025, 6:00 p.m., Council Chambers, Valdese Town Hall
- E.** Public Input Meeting – Parks & Rec Comprehensive Plan, Tuesday, January 28, 2025, 11:00 a.m. – 12:30 p.m., Splash Pad Multi-Purpose Room, 408 Hill St. SE, Valdese
- F.** Public Input Meeting – Parks & Rec Comprehensive Plan, Saturday, February 1, 2025, 10:00 a.m. – 11:30 a.m., Splash Pad Multi-Purpose Room, 408 Hill St. SE, Valdese
- G.** Next Regular Council meeting is scheduled for Monday, February 3, 2025, 6:00 p.m., Council Chambers, Valdese Town Hall
- H.** Bluegrass at the Rock welcomes Joe Mullins & The Radio Ramblers - February 8, 2025 at 7:30pm Old Rock School Auditorium - tickets available at visitvaldese.com

10. Mayor and Council Comments

11. Adjournment

The Town of Valdese holds all public meetings in accessible rooms. Special requests for accommodation should be submitted by individuals with disabilities at least 48 hours before the scheduled meeting time. Contact Town Hall at 828-879-2120 or TDD Phone Line (hearing impaired) 1-800-735-2962.

COMMUNICATION NOTES

To: Mayor Watts
Town Council

From: Town Clerk

Date: January 10, 2025

Subject: Monday, January 13, 2025, Regular Council Meeting

7. Consent Agenda

- A. Approval of Pre-Agenda Meeting Minutes of November 18, 2024**
- B. Approval of Regular Meeting Minutes of December 2, 2024**
- C. Approval of Closed Session Minutes of December 2, 2024**
- D. Approval of Special Called Meeting Minutes of December 11, 2024**
- E. Approval of Closed Session Minutes of December 11, 2024**
- F. Approval of Resolution Supporting House Bill 971 and Compliance with NCGS §143-805**

House Bill 971 and NCGS §143-805 mandate that public agencies adopt policies regulating network and device usage. The proposed policy prohibits employees, elected officials, and appointees from using Town-controlled devices and networks to access inappropriate content, including pornography.

- G. Interim Manager to evaluate, develop a plan and report on the following:**
 - i. Town's opportunity to participate in Federal Disaster Relief Funding;
 - ii. Town's need and opportunities for Additional Public Safety Building Funding;
 - iii. Town's participation in Patriot Relief program;
 - iv. Town's development of a high-level DOT Long-Range Street Resurfacing Program plan;
 - v. Town's water quality issues/complaints;
 - vi. Town's Employer Visitation Plan for 2025;
- H. Collaboration between Code Enforcement and WPCOG to evaluate, develop a plan, and report on the Town's current enforcement of abandoned, noncompliant and/or neglected properties and recommended improvements.**

I. Approval of amendment to Date on Audit Contract

Audit contract between the Town of Valdese and Lowdermilk Church & Co., L.L.P. has been updated to reflect a new submission deadline to the LGC, extended from October 31, 2024, to December 31, 2024.

8. New Business

A. Public Safety Facilities Update

Council will discuss the following:

- i. Number of General Contractors sent RFQ
- ii. Responses or Reactions to Date
- iii. Next anticipated Action

B. Appointment to Boards/Commissions/Committees

The Town Clerk received the following applications for open positions on the Planning Board and Facilities Review Committee. Applications are enclosed in the agenda packet.

- I. **Planning Board/Board of Adjustments** – One board seat and two alternate seats available.
Board – Mark Rostan
Alternate – Benton Brinkley and Jordan Greene

- II. **Facilities Review Committee** – Two seats available
Thomas Oxentine

C. Personnel Considerations Relative to Budget Planning

Council will discuss the following:

- i. Compa-Pay Salary and Position Study RFP
- ii. Review of Employee Benefits Program
- iii. Staff Development Training Plan and Near-term Needs
 - Plan for Optimum Use of \$30,000 budgeted for FY 25
 - Needs Identified for FY 26 Planning

D. Management Consulting RFP

Council will discuss the following:

- i. Broad Analysis of Organization Structure and Staffing Needs
- ii. In-depth Analysis of Operations
- iii. Identify Town Control Documents (forms, contracts) for legal counsel review;

E. Status of Ongoing or Approved Projects

Council will discuss the following:

- i. Strategic Planning: 2025 Citizens' Priorities Survey
- ii. Rec Center ADA and Pool Cover Contracts
- iii. Status of Pool Cover Capital Fund Drive

- iv. Hoyle Creek Excavating and Trail Contract
- v. Lovelady Road to Crescent Sidewalk

F. Approval of Ordinance Declaring Road Closures for the Town of Valdese 2025 Annual Events

Enclosed in the agenda packet is a request to close part of US 70/Main Street in Valdese for the Independence Day Celebration, Annual Waldensian Festival Events, Treats in the Streets, and Annual Christmas Parade. Dates and times are listed in the agenda packet.

G. Approval of AIA Document Standard Form and General Condition Contract – Pool Structure

At the December 2, 2024, Council meeting, Council voted to approve the permanent pool structure bid from Houck Contracting in the amount of \$1,793,930. The AIA Document Standard Form and General Condition Contract, developed by the American Institute of Architects (AIA), is a widely recognized industry-standard agreement that outlines the roles, responsibilities, and obligations of all parties involved in a construction project. This contract ensures a clear understanding of the scope of work, timelines, payment terms, and other key details to help mitigate potential disputes and streamline project management.

H. Capital Project Ordinance Amendment – Pool Structure

CPO Amendment #1-31 – Pool Structure, will amend the project budget to account for the revenue and expenditure associated with the construction.

I. Municipal Agreement Approval – Lovelady Road Sidewalk Project

At the June 3, 2024, Regular Council meeting, the Council authorized the Greater Hickory Metropolitan Planning Organization to submit a Surface Transportation Block Grant Program (STBG-DA) application for Phase 1 construction of a sidewalk along Lovelady Road, spanning from Laurel Street NE to Crescent Street NE. Following approval of the Local Agreement, WPCOG will initiate the process to secure federal funding for the project's design phase and commence the procurement of a design consultant.

J. Capital Project Ordinance – Lovelady Road Sidewalk Project

Establishment of a CPO to manage project funds for the Lovelady Road Sidewalk Project.

READING MATERIAL

**VALDESE FIRE DEPARTMENT
MONTHLY ACTIVITY REPORT
NOVEMBER 2024**



<u>FIRE DEPARTMENT ACTIVITY</u>	<u>ACTIVITY HOURS</u>
Station Duty	136 Hours
Vehicle Duty	38 Hours
Equipment Duty	33 Hours
On-Duty Emergency Responses	54 Hours
On-Duty Training	4 Hours
Fire Administration	56 Hours
Training Administration	5 Hours
Meetings	18 Hours
Fire Prevention Administration	77 Hours
Fire Prevention Inspections	19 Hours
Public Relations	2 Hours
Hydrant Maintenance	0 Hours
Safety Administration	20 Hours
Safe Kids Activities	3 Hours
Extra Duty Fires	22 Hours
Extra Duty Training	11 Hours
Extra Duty Fire & Medical Standby	3 Hours
Physical Training	3 Hours
Extra Duty Medical Responses	32 Hours
Part-Time Firefighter Training	16 Hours
Part-Time Emergency Responses	36 Hours
Total Training Hours	31 Hours
TOTAL MAN HOURS	588 Hours

<u>INSPECTION TYPE</u>	<u># OF INSPECTIONS</u>	<u>Violations</u>
Business	5	21
Mercantile	5	0
Storage	3	4
Re-inspection	4	0
TOTAL	17	25

**VALDESE FIRE DEPARTMENT
MONTHLY ACTIVITY REPORT
NOVEMBER 2024
EMERGENCY INCIDENTS**

Fire	2
Mobile Property (Vehicle) Fire	1
Fire Other	1
Rescue & Emergency Medical Incidents	41
Medical Assist	2
Emergency Medical Service (EMS) Incident	37
Lock In	1
Rescue, EMS Incident Other	1
Hazardous Condition	1
Combustible/Flammable Gas Spill & Leak	1
Service Calls	9
Cover Assignment, Standby, Move Up	7
Service Call Other	2
Good Intent Calls	3
Dispatched & Cancelled in Route	2
Wrong Location, No Emergency Found	1
False Alarm & False Calls	7
System or Detector Malfunction	2
Unintentional System/ Detector Operation	5
TOTAL EMERGENCY RESPONSES	63

Truman Walton, Chief
Valdese Fire Department

**VALDESE FIRE DEPARTMENT
MONTHLY ACTIVITY REPORT
DECEMBER 2024**



<u>FIRE DEPARTMENT ACTIVITY</u>	<u>ACTIVITY HOURS</u>
Station Duty	79 Hours
Vehicle Duty	81 Hours
Equipment Duty	26 Hours
On-Duty Emergency Responses	56 Hours
On-Duty Training	45 Hours
Fire Administration	81 Hours
Training Administration	7 Hours
Meetings	8 Hours
Fire Prevention Administration	61 Hours
Fire Prevention Inspections	12 Hours
Public Relations	14 Hours
Hydrant Maintenance	0 Hours
Safety Administration	26 Hours
Safe Kids Activities	2 Hours
Extra Duty Fires	16 Hours
Extra Duty Training	20 Hours
Extra Duty Fire & Medical Standby	4 Hours
Physical Training	10 Hours
Extra Duty Medical Responses	71 Hours
Part-Time Firefighter Training	30 Hours
Part-Time Emergency Responses	62 Hours
Total Training Hours	95 Hours
TOTAL MAN HOURS	711 Hours

<u>INSPECTION TYPE</u>	<u># OF INSPECTIONS</u>	<u>Violations</u>
Assembly	2	0
Business	4	2
Factory	2	0
Hazardous	1	2
Mercantile	1	12
Storage	3	6
Re-inspection	8	1
TOTAL	21	23

**VALDESE FIRE DEPARTMENT
MONTHLY ACTIVITY REPORT
DECEMBER 2024
EMERGENCY INCIDENTS**

Fire	1
Building Fire	1
Rescue & Emergency Medical Incidents	60
Medical Assist	1
Emergency Medical Service (EMS) Incident	59
Hazardous Condition	2
Chemical Release, Reaction, or Toxic Condition	1
Electrical Wiring/Equipment Problem	1
Service Calls	5
Service Call Other	5
Good Intent Calls	3
Dispatched & Cancelled in Route	1
Controlled Burning	2
False Alarm & False Calls	3
System or Detector Malfunction	1
Unintentional System/ Detector Operation	2
TOTAL EMERGENCY RESPONSES	74

Truman Walton, Chief
Valdese Fire Department

**VALDESE FIRE DEPARTMENT
ANNUAL ACTIVITY REPORT**

2024



<u>FIRE DEPARTMENT ACTIVITY</u>	<u>ACTIVITY HOURS</u>
Station Duty	1641 Hours
Vehicle Duty	1102 Hours
Equipment Duty	688 Hours
On-Duty Emergency Responses	1261 Hours
On-Duty Training	552 Hours
Fire Administration	1267 Hours
Training Administration	85 Hours
Meetings	310 Hours
Fire Prevention Administration	946 Hours
Fire Prevention Inspections	341 Hours
Public Relations	125 Hours
Hydrant Maintenance	291 Hours
Safety Administration	210 Hours
Safe Kids Activities	63 Hours
Extra Duty Fires	223 Hours
Extra Duty Training	195 Hours
Extra Duty Fire & Medical Standby	122 Hours
Physical Training	121 Hours
Extra Duty Medical Responses	419 Hours
Part-Time Firefighter Training	720 Hours
Part-Time Emergency Responses	837 Hours
Total Training Hours	1467 Hours
TOTAL MAN HOURS	11519 Hours

INSPECTIONS

TOTAL INSPECTIONS	269	TOTAL VIOLATIONS	420
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EMERGENCY INCIDENTS

Fire	28
Overpressure Rupture, Explosion, Overheat	1
Rescue & Emergency Medical Incidents	589
Hazardous Conditions	54
Service Calls	57
Good Intent Calls	51
False Alarm & False Calls	75
Severe Weather & Natural Disaster	0
Special Incident Type	0
TOTAL EMERGENCY RESPONSES	855

Community Affairs & Tourism Monthly Stats

December 2024

Tourism Statistics

visitvaldese.com views 6,930

townofvaldese.com views 8,786

Top 5 Pages Viewed (townofvaldese): Career Opportunities, Utilities, Recreation, Schedules & Fees, Water Dept

Facebook

of followers 19,774

Page Views (last 28 days) 377,620

Post Reach (last 28 days) 64,210

Facebook Reactions(last 28 days)

Interactions: 4,778 Link Clicks: 886

TOP FIVE AUDIENCE LOCATIONS (Cities): Morganton, Valdese, Hickory, Lenoir , Drexel

Approximate # of Visitors to the Tourism/CA Office 623

Community Affairs Stats

Old Rock School Rental Breakdown

AUDITORIUM	24
TEACHER'S COTTAGE	14
WALDENSIAN ROOM	13
CLASSROOMS	4
MAJOR EVENT (ENTIRE SCHOOL)	2

Major Events Held at the Old Rock School

Average Number of Attendees

Carolina Christmas Show, Burke Co. Schools Speech Contest, Miracle on 34th

Monthly Old Rock School Rentals 57

Old Rock School Total Attendance 7,960

CA Summary for December 2024

Holiday events were in full swing the first two weeks of December for Valdese Community Affairs. The second annual Hatley Memorial Tree Lighting took place December 3rd and hosted approximately 1,000 attendees, 300 of which were VES students who performed carols on the Old Rock School staircase. The Valdese Parade was a success with cold, but sunny weather for the lineup! The department added a new event to the holiday schedule in an effort to generate more downtown foot traffic with "PJs on Parade". Partnering with local businesses to host different Christmas stations, attendees explored downtown in their Christmas PJs as they visited some classic Christmas characters and received treats. The event was a hit among attendees and businesses alike and the department looks forward to bringing the event back in 2025. Finally, Mingle with Kringle was the last event of the year as Fire Department served their annual breakfast with Santa. All three sessions sold out within a few weeks of the tickets going on sale. Rentals remained steady throughout the month- with the Carolina Christmas Show and BCPS Speech Contest being two major events within the facility.

**TOWN OF VALDESE
TOWN COUNCIL PRE - AGENDA MEETING
NOVEMBER 18, 2024**

The Town of Valdese Town Council met on Monday, November 18, 2024, at 6:00 p.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The Council meeting was live-streamed on YouTube @townofvaldese. The following were present: Mayor Charles Watts, Mayor Pro Tem Gary Ogle, Councilwoman Rexanna Lowman, and Councilman Glenn Harvey. Also present were: Interim Town Manager Bo Weichel, Town Attorney Tim Swanson, Town Clerk Jessica Lail, and various Department Heads.

Absent: Councilwoman Heather Ward, Ward 2 Vacant Seat

A quorum was present.

Mayor Watts called the meeting to order at 6:00 p.m.

Tamika Garrison offered the invocation. Following the invocation, Mayor Watts led in the Pledge of Allegiance to the Flag.

REVIEW AND DISCUSSION OF DECEMBER 2, 2024 PRELIMINARY AGENDA:

UNDER NEW BUSINESS:

PUBLIC HEARING – VALDESE WEAVERS MILL HOUSING BONDS Luke Fowler, President of Northwestern Housing Enterprises presented an update on a proposed development project consisting of 60 new housing units, including 43 one-bedroom apartments. These units will include water, sewer, and parking costs in the rent. Target income levels were outlined, such as single-person households with incomes around \$32,820, which could encompass factory and hospital workers, seniors on fixed incomes, and single-parent households. Mr. Fowler highlighted the project's origins, noting it was initiated in collaboration with a charitable foundation, including Dogwood Health Trust, due to their expertise in nonprofit redevelopment and affordable housing. Significant progress has been made, including a \$2.5 million investment to address environmental cleanup under the state's Brownfields Program. The site is listed on the National Historic Register, and efforts are underway to preserve architectural features like old brickwork and arch windows. Mr. Fowler noted financial details included a projected bond issuance fee of approximately \$165,000 (1.5% of an estimated \$11 million budget). The development will add new utility accounts and contribute to downtown revitalization. Mr. Fowler emphasized the urgency of addressing housing needs, particularly following recent storms, and stated the project is shovel-ready.



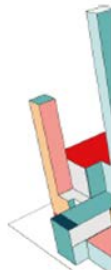
OVERVIEW

- 43 one-bedroom units - \$879/month
- 17 two-bedroom units - \$1054/month
- Includes utility allowance for water/sewer, power, trash, and parking
- 60% of Burke County AMI for a single person household is \$32,820
- 2 person Household is \$37,500, 3 person is \$42,180



YOUR CITIZENS THAT CAN APPLY

- Seniors on a fixed income
- Single parent households
- Part-time workers
- Many hospital, retail, and restaurant employees



WHY WE NEED YOUR HELP

In 2021, our Board of Directors voted to allow us to pursue this project outside of our 7-county region as we were approached by a charitable foundation because of our success as a nonprofit developer. If this were in our region, our affiliated Housing Authority would issue the bonds. Since then, our nonprofits have invested over \$2.5 million in this project.

NOVEMBER 18, 2024, MB#32

HOW WE CAN HELP YOU

- Issuance Fee: We are currently projecting \$11 million in bonds to support this redevelopment. We are offering the Town the maximum fee of 1.5% (Upwards of \$165,000).
- 61 new water and sewer accounts
- Getting rid of an eyesore in your community
- New housing units for your community members

LONG TERM COMMITMENT

We intend to own and operate this project for decades to come, and we are committed to the highest standards of property management. This not only includes upkeep, but tenant screening including credit and background checks.



OTHER SUCCESSFUL HISTORIC REHABILITATION



An example of our work in Jefferson, NC providing affordable housing to 46 seniors.



THANK YOU

Luke Fowler
828-264-6683
lukefowler@nwrha.com



Mr. Fowler noted that he purchased the property in 2001 and would have like to be completed by now, but they had to jump through some hurdles. Councilman Harvey asked if Mr. Fowler completed a market study indicating that there was a need for housing in Valdese. Mr. Fowler said, yes, a third party completed it.

Councilman Harvey asked if 80% of the houses could be market rate so that workers and young professional people can live in those and asked if Mr. Fowler has refused to do that. Mr. Fowler said the budget could not handle it because they only get the tax credit for a low-income unit. Councilman Harvey asked how much they would receive in tax credit. Mr. Fowler said \$11 million. Kristen Kirby, Partner with McGuireWoods LLP, explained the financing structure for a proposed \$18 million, 60-unit housing project. Ms. Kirby noted that the project would utilize tax-exempt bonds to qualify for 4% federal tax credits. These credits are calculated at 4% of the project basis per year over 15 years but are only applicable to affordable housing units. Developers sell the tax credits to investors at a rate of 85-90 cents per dollar, using the proceeds to finance the project. Ms. Kirby said if half of the units were market-rate, only the affordable units would be eligible for tax credits, significantly reducing available financing. The project cost is approximately \$300,000 per unit, and Northwest Housing Enterprises, a nonprofit affiliated with the regional housing authority, will oversee the project. The organization has experience with similar developments.

Councilman Harvey noted that the board was informed that the bond issuance for this project has increased from \$10 million to \$11 million. If the project were commercial, it would generate approximately \$75,000 annually in property taxes for the town, with additional taxes for Burke County. However, as a nonprofit-affiliated project, these taxes will be foregone.

Ms. Kirby provided an overview of the town's role in issuing tax-exempt bonds for the proposed affordable housing project. Under federal rules, these bonds must be issued by a governmental entity, but the Town would act only as a conduit issuer. She emphasized that the bonds are not a debt of the town, do not affect the Town's debt capacity, and the Town has no financial responsibility for their repayment. The borrower is solely responsible for repayment, and the bonds are cash-collateralized to minimize risk.

The developer has agreed to pay a 1.5% issuance fee to the town, cover all related costs, and make a payment in lieu of taxes (PILOT), as the property would otherwise not pay taxes. The bonds, which will be publicly sold, are short-term with a 2-3 year term, covering construction costs. Permanent financing will come from USDA Rural Development loans, low-income housing tax credits, a Dogwood Health Trust grant, and a sponsor loan from Northwestern Housing Enterprises.

The developer's goal is to close the transaction in 2025. To proceed, the council will need to adopt an inducement resolution signaling willingness to issue the bonds, pending necessary approvals. A public hearing, required under federal tax regulations (TEFRA), is planned for the December 2 meeting. Ms. Kirby noted the Town would receive annual compliance reports once the project is operational. Ms. Kirby

concluded by inviting questions from Council members regarding the bonds or the town's role in the process.

McGUIREWOODS

TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS

Kristen Kirby
McGuireWoods LLP
501 Fayetteville Street, Suite 500
Raleigh, North Carolina 27601
(919) 755-6574
kkirby@mcguirewoods.com

What are multifamily housing revenue bonds?

- Bonds must be issued by a governmental entity – state or local housing authority, county or city/town (the "Issuer")
- Under N.C.G.S. 160D-1311(b), the Town is authorized to exercise the powers of a housing authority, including acting as the Issuer of tax-exempt multifamily housing bonds
- Town would be acting as a conduit issuer and has no financial obligation with respect to the bonds

Role of the Issuer

- Bonds are not a debt of the Town or a pledge of its faith and credit or taxing power and do not affect the Town's debt ratio or legal debt limit
- Town has no financial responsibility for the bonds; the Borrower is solely responsible for repayment of principal and interest on the bonds
- Town would receive an issuance fee of 1.5% of the Bond amount and the PILOT
- Developer is responsible for paying all costs of issuance (including bond counsel and fees of Town Attorney related to the Bonds)

Project must meet Income Restrictions

- Either
- 20% of units must be set aside for individuals whose income is 50% or less of area median income ("AMI")
 - Or
 - 40% of units must be set aside for individuals whose income is 60% or less of AMI
- Income limits based on HUD guidelines; subject to family size
 - Income determination must be made at least annually
 - Restrictions apply for the longer of 15 years or life of bonds

Plan of Finance

- The Bonds will be sold in the public market and will be short-term cash-collateralized bonds with a term of approximately 2-3 years
- Permanent financing for the Project will be provided by USDA mortgage loan
- Other sources of funding for the Project – low-income housing tax credits, grant from Dupwood Health Trust and sponsor loan
- Anticipated closing in Q1 of 2025

Status and Steps Required

- Developer's application for bond volume cap and low-income housing tax credits approved by the North Carolina Housing Finance Agency
- Inducement resolution – indicates the Town's willingness to issue bonds if all necessary approvals are obtained
 - Previously had been done by Valdese Housing Authority in 2021 when they were the anticipated issuer
- Town Council holds a public hearing (also called the TEFRA hearing) as required under the federal tax code and approves the issuance of the bonds for purposes of satisfying TEFRA regulations
- Town Council adopts final approving resolution for the Bonds and authorizes the signing of the bond documents
- Sign documents at closing
- Post issuance: receive reports regarding project compliance

QUESTIONS?

Kristen M. Kirby
McGuireWoods LLP
501 Fayetteville Street, Suite 500
Raleigh, North Carolina 27601
(919) 755-6574
kkirby@mcguirewoods.com

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

NOVEMBER 18, 2024, MB#32

END OF YEAR COMMITTEE REPORTS Mayor Watts stated that committee reports will be presented during the regular meeting and may be provided as either written reports or verbal updates.

- I. Facilities Review Committee
- II. Drug & Homeless Task Force
- III. Merchants Advisory Committee

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

RESOLUTION ADOPTING 2025 TOWN COUNCIL MEETING CALENDAR Interim Town Manager Bo Weichel presented a draft schedule for the 2025 pre-agenda and regular meetings. Councilman Harvey proposed several adjustments, including postponing the January meeting by one week, removing the January 2026 pre-agenda meeting, and modifying the schedule for the final meetings of the year to account for the election and potential changes in Council members.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

COUNCIL APPOINTMENTS TO BOARDS/COMMISSIONS/COMMITTEES Mayor Watts announced openings on the Planning Board, Parks & Recreation Commission, and Facilities Review Committee. Councilman Harvey noted there is also five openings on the Efficiency Task Force, and Councilman Ogle added that he is currently working on the Efficiency Task Force and expects to have an update by January. Mayor Watts encouraged interested citizens to visit the Town's website to access application forms.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

WARD 2 VACANCY Mayor Watts reported that no applications have been received for the Ward 2 vacancy. Councilman Harvey encouraged residents to consider applying, while Councilwoman Lowman clarified that, despite ongoing discussions, no appointments can be made before January 6, 2025.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

CITIZEN SURVEY ON BUDGET PRIORITIES The Council discussed the possibility of conducting a citizen survey to gather input on budget priorities for the upcoming year. Councilwoman Lowman noted that similar input was collected earlier in the year during the strategic planning process, which included citizen surveys and meetings, and questioned the necessity of a new survey before achieving progress on the priorities identified in the strategic plan, such as hiring a Town Manager, addressing public safety issues, repairing the pool, and improving roads. Others expressed openness to obtaining additional input, emphasizing the value of citizen feedback for decision-making. It was suggested that the matter be revisited during the December 2 meeting to decide whether to move forward with the survey.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

ADOPTION OF DESIGN-BUILD ESTABLISHMENT OF CRITERIA Interim Town Manager Bo Weichel informed the Council that this document is a state-mandated requirement for adopting the design-build method for construction projects. He explained that the document outlines the rationale for selecting the design-build approach over the traditional method. Mr. Weichel highlighted that the document includes updates to reflect plans for a combined Police/Fire building and the renovation of the 215 Main Street building.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

APPROVAL OF RFQ DESIGN BUILD Interim Town Manager Bo Weichel presented the RFQ for design-build Police facility cost comparison and construction. Mr. Weichel said it was in a 2-phase contract. Mr. Weichel reviewed the following:

SCOPE OF SERVICES

The Design-Build services shall be completed in a two-phase approach utilizing DBIA 520 & 525 contracts.

Phase I:

This phase shall consist of a schematic design level (30%) comparison of the cost to either renovate the existing building at 215 E Main St. for police operations versus the cost to combine a police department into the future fire department as a combination facility with some shared spaces.

From these budgetary numbers, it is anticipated the Town Council will choose to proceed with either a renovation or combination building. One of those projects will transition into Phase II as outlined below.

Phase II:

The scope of work is to provide design and construction services for the project throughout preconstruction and construction phases

Design: Establish a Guaranteed Maximum Price (GMP) through further design stages including but not limited to, schematic design (from Phase I), design development, construction documents, coordination with other agencies, geotechnical engineering, surveying, cost opinions during design development, final design meeting State and local requirements, technical specifications, cost opinion at various stages of the project, obtaining all necessary permits, scheduling, cost control, project management, quality assurance and quality control of design.

Construction: Construction related activities, construction management, and completing project close-out activities. The contractor will be required to coordinate with other vendors hired by the Town to complete specific IT systems.

ESTIMATED PROJECT SCHEDULE

Electronic Statement of Qualifications due	January 27, 2025
Hard Copies Statement of Qualifications due	January 31, 2025
Review Statements of Qualification	February 3-11, 2025
Interview final selections	February 24-28, 2025
Selected firm notified and proposed	
Phase I contract delivered to the Town	March 3-14, 2025
Contract review by legal counsel	March 17-21, 2025
Phase I contract adoption by Town Council	April 7, 2025

Councilman Harvey proposed two additional considerations for Phase 1 regarding public safety facilities:

1. **Shoring up the Existing Building:**
Councilman Harvey suggested that the Council direct the general contractor to evaluate the cost-effective measures required to shore up the existing police and fire facility, making it safe for continued use over the next two years until permanent buildings are ready. He noted prior recommendations to vacate the building due to safety concerns but highlighted that a structural engineer had not been consulted, leaving room for further assessment.
2. **Adding a Permanent Police Department to Town Hall:**
Councilman Harvey recommended exploring the feasibility of expanding the Town Hall to house a permanent police department. This would include constructing necessary additions such as storage areas and a sally port.

Councilman Harvey emphasized the importance of developing solid cost estimates for three alternatives: the Mitchell Building renovation, a combined Police/Fire building on Massel Avenue, and the addition to Town Hall. These alternatives would give the Council a clearer understanding of options before moving forward.

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Mayor Watts asked what we would have to do to change the RFQ if we add these suggestions. Town Attorney Tim Swanson said the original motion could be amended at the next regular Council meeting.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

POOL STRUCTURE BIDS & CAPITAL CAMPAIGN DISCUSSION Interim Town Manager Bo Weichel presented the history of the pool structure project and the costs:

Pool Structure Cost

October 28th

Bid opening with one contractor submitting a bid.
 State laws require at least 3 bids on the first bid opening (projects > \$500k).
 Re-advertised the project for November 14th

November 14th

Bid opening again had one contractor submit a bid.
 No minimum rule for a re-advertised bid opening.
 Had a few interested GC's-due to workload and limited staff did not submit.

Pool Structure Cost

\$1,793,930	Houck Contracting bid price
(377,000)	GRANT- NC Parks & Recreation Trust Fund Accessible Parks (\$500k less the \$123k for ADA work per grant requirement)
(100,000)	GRANTMATCH (20% on \$500k) - Private Donation
(300,000)	Capital Campaign program as recommended by Parks & Rec Commission-will discuss at the 11/18 pre agenda meeting
\$1,016,930	Remaining balance of the contract with Houck
\$123,000	Cost of completing ADA compliant work
(123,000)	GRANT- NC Parks & Recreation Trust Fund Accessible Parks (portion of the \$500k grant) ADA work is required to meet grant compliance
\$0	Remaining balance for ADA work

Parks & Recreation Commission President Scott Compton requested Council's approval to initiate a capital campaign to raise \$300,000 through private donations and fundraising over a 12-month period beginning in December. Councilman Harvey expressed support, pledging to contribute 20% of the savings from his Valdese property taxes to the campaign.

During the discussion, Councilman Harvey inquired about the pool's winter usage. While Mr. Compton did not have specific numbers, he emphasized that resident's desire a year-round pool. Councilman Harvey also asked which high schools use the pool, to which Mr. Compton identified Draughn and East Burke High Schools. Additionally, Councilman Harvey suggested exploring potential contributions from Burke County

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Public Schools. Mr. Compton confirmed that the Commission has already reached out to Superintendent Swan regarding possible support for construction costs and is awaiting a response.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

N.C. PARKS & RECREATION TRUST FUND ACCESSIBLE PARKS PROJECT AGREEMENT Interim Town Manager Bo Weichel highlighted that the agreement aligns with the pool structure bid, should the bid be accepted. He explained that the project includes a \$500,000 grant recently awarded to the Town, contingent upon Council's approval. The grant, valid for three years, required demonstrating an ADA accessibility need. Mr. Weichel noted that the project would address this requirement by providing ADA-compliant access at the front of the building.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

AGREEMENT FOR ENGINEERING AND DESIGN SERVICES – HOYLE CREEK STREAM RESTORATION AND SIDEPATH TRAIL Interim Town Manager Bo Weichel provided an update on the ongoing Hoyle Creek stream restoration project, funded by a \$2.2 million grant from the State. The Town completed the RFQ process, receiving eight submittals and interviewing three firms. McGill Associates was selected as the most qualified firm due to their familiarity with the Town's water and sewer systems and the project's requirements.

The project involves stream restoration, walking paths, significant dirt work, and bridge construction within a floodplain, necessitating federal permits. The agreement with McGill Associates is for \$671,500, covering schematic phase services, survey and design, bidding, and contractor award. To manage costs, the agreement does not include construction management, which will be negotiated separately after the project award phase to avoid unnecessary fees. This phased approach aims to minimize costs by ensuring fees align with actual construction expenses.

RESULT: PLACED ON THE CONSENT AGENDA AT THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

BUDGET AMENDMENTS

- I. **Generator Docking Station** Interim Town Manager Bo Weichel explained that this budget amendment is for the docking station needed for the generator approved by Council at the previous meeting.
- II. **July 4, 2025 Independence Day Celebration** Interim Town Manager Bo Weichel provided an update on the budget amendment related to holding the July 4 celebration on the holiday itself, as approved at the last meeting. He noted that this change would incur additional costs, including securing contracts for the fireworks display and covering employee overtime. The previous budget was based on holding the event the Friday before July 4, which had lower associated expenses.

Mr. Weichel emphasized that the amendment is necessary to secure vendor contracts and account for higher staffing costs, including filling roles previously handled by contracted services. Council members requested detailed cost estimates and clarification on whether the additional expenses could be absorbed within the current budget. Mr. Weichel assured the Council that staff are working to finalize calculations and will provide the necessary figures.

RESULT: MOVED WITHOUT OBJECTION TO THE NEXT MEETING ON DECEMBER 2, 2024, AT 6:00 P.M.

INTERIM MANAGER'S REPORT: Interim Town Manager Bo Weichel will report at the December 2, 2024, meeting.

COUNCILMAN HARVEY MADE THE FOLLOWING VERBATIM REMARKS AND PROVIDED A COPY TO THE TOWN CLERK:

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"I will take just a few minutes to answer the question I have been asked several times recently. Whether from Valdese neighbors, old friends across the nation, or family members, the question is, "How can you sit there and endure those hateful and unfair attacks, month after month?"

My simplest analogy is how I sit in the backyard with my dog each evening with mosquitoes buzzing around me. As all dog lovers understand, mosquitoes are nothing compared to your dog's need for some end-of-day yard time. On the positive side, this brief introduction to public office has given me a new perspective on everyone who devotes their lives to public service in an elective office at any government level. I now have a new appreciation for their service and an understanding of how they ignore distractions.

While we bring opinions and knowledge from our life experiences, each of us is simply one vote in decisions made by the majority. Our "job satisfaction" comes solely from the small part each of us plays in our interactions with other council members and the manager we hire.

Councilwoman Ward, Councilman Ogle, and I answered the calls from numerous citizens who felt their needs were ignored and who were concerned about the 2023 tax hike and potential long-term debt.

Before being sworn in, we initiated meetings with the Western Piedmont Council of Governments to hire an interim manager and obtain a proposal for the town's first-ever citizen-based strategic plan. Both were adopted unanimously by the entire five-member council. In December, this council unanimously voted to cancel a project that had grown from \$6.5 million to over \$10 million with no end in sight. That eliminated a USDA loan that would have given Valdese the highest long-term debt of 85 similar-size NC towns.

This week at the Old Rock School "Rededication," the town will celebrate over \$1.6 million in renovations, of which only slightly over \$200,000 came from tax dollars. Nearly \$1.5 million was funded by grants made possible through the hard work of the staff who started applying for grants several years ago.

Another \$151,000 was raised through the creativity and hard work of the staff and donations by 124 generous citizens and businesses.

That fantastic accomplishment was partly enabled by a behind-the-scenes effort in which I had the pleasure of working with Councilman Paul Mears. As the result of a small ad hoc group we convened, the council approved the project in February with the assurance that it would not reduce the Town's reserve funds.

The most outstanding achievement of the 2024 council was our unanimous adoption of the fiscal year 24-25 annual budget, which gave all Valdese property owners a 20% tax cut. A few residents even criticized that, saying they didn't need it or that it was a mere "pennies a day." Yet, what greater reward can there be than the knowledge that many residents on fixed incomes needed that \$60, \$80, or \$100 to pay their medical bills?

My final example of "great satisfaction from a tiny role" came when we learned that our Public Works department needed a backup generator to operate essential equipment during a power outage. A local source quoted a solution costing over \$100,000 and taking over a year to deliver. A little research into the secondary market for this type of industrial equipment turned up a lead that Interim Manager Weichel diligently pursued. As a result of his responsiveness, a backup generator will be delivered shortly AND at a cost closer to \$30,000.

Individual council member roles in each of these examples were minimal. Yet the reward of knowing you had a small part in something that impacted many people makes it all worthwhile.

For example, while a savings of \$70,000 may seem insignificant to people accustomed to town budgets of \$7 million or school system budgets of \$20 million, it is very significant to taxpayers on fixed incomes. How many people would realize that \$70,000 is the equivalent of the total property taxes paid by 150 owners of the smallest homes in Valdese? – Yes, 150 property owners!

So, in answer to questions I get about a few adverse reactions – like pesky mosquito bites - they are nothing. Happy Thanksgiving Everyone!"

ADJOURNMENT: At 7:32 p.m., there being no further business to come before Council, Councilwoman Lowman made a motion to adjourn, seconded by Councilman Ogle. The vote was unanimous.

Town Clerk

Mayor

jl

DECEMBER 2, 2024, MB#32

**TOWN OF VALDESE
TOWN COUNCIL REGULAR MEETING
DECEMBER 2, 2024**

The Town of Valdese Town Council met on Monday, December 2, 2024, at 6:00 p.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The Council meeting was live-streamed on YouTube @townofvaldese. The following were present: Mayor Charles Watts, Mayor Pro Tem Gary Ogle, Councilwoman Rexanna Lowman, Councilwoman Heather Ward, and Councilman Glenn Harvey. Also present were: Interim Town Manager Bo Weichel, Town Attorney Tim Swanson, Town Clerk Jessica Lail, and various Department Heads.

Absent: Ward 2 Vacant Seat

A quorum was present.

Mayor Watts called the meeting to order at 6:00 p.m.

Pastor Bill Roberts from the First United Methodist Church of Valdese offered the invocation. Following the invocation, Mayor Watts led in the Pledge of Allegiance to the Flag.

OPEN FORUM/PUBLIC COMMENT:

Mayor Pro Tem Gary Ogle read the following open forum/public comment guidelines:

The council shall provide at least one period for public comment per month during a regular meeting, unless no regular meeting is held that month. Any individual or group who wishes to address the council shall inform the town clerk, any time prior to the start of the meeting, and provide their name, address and subject matter about which they wish to speak. Person(s) must be present if they wish to address the Council. Comments should be limited to five minutes per speaker.

Open Forum is not intended to require Council or staff to answer impromptu questions. Speakers will address all comments to the entire Council as a whole and not one individual member. Discussions between speakers and the audience will not be permitted. Speakers will maintain decorum at all times. Speakers are expected to be courteous and respectful at all times regardless of who occupies the Council chairs. These guidelines will help ensure that a safe and productive meeting is held and all those wishing to address the Council will be afforded the opportunity.

POOL – JOE JENSEN, 2632 CURT LEDFORD, LAWNSDALE: Mr. Jensen addressed the Council on behalf of Excel Aquatics, advocating for funding a permanent shelter for the pool to benefit future generations. He praised coaches Linda and Lily Kidd for their dedication to developing young swimmers across four counties since 2008. He highlighted their team's achievements, including sending athletes to state and USA Swimming events and producing collegiate swimmers and military members. Mr. Jensen shared his personal story, detailing how his son Jacob progressed from local summer swimming to setting a state record and becoming a high school All-American and Male Swimmer of the Year. Jacob's swimming success also earned him a scholarship to Gardner-Webb University. Mr. Jensen emphasized the economic impact of supporting the aquatics program, estimating his family spent over \$20,000 in Valdese over five years. He concluded by reading a statement from Jacob, who expressed gratitude to the Town of Valdese and stressed the importance of a permanent structure to provide others with the same opportunities he had. Jacob attributed his achievements to the discipline and commitment developed through swimming and urged support for the facility's improvement.

VALDESE WEAVERS – STARR FRANKLIN, 990 LAUREL ST NE, VALDESE: Ms. Franklin, a former Little Miss Valdese, expressed her love for the town and spoke against the proposed housing bond. While supportive of housing development, she opposed the bond, citing its failure to address the needs of teachers, law enforcement, and seniors. She advocated for future development efforts focused on housing for taxpayers and expanding the community.

POOL – RICK MCCLURD, 408 GARROU AVE SE, VALDESE: Mr. McClurd shared concerns regarding the pool and emphasized the need for detailed usage and financial data before proceeding with funding a permanent cover. He requested information on how many Valdese citizens, outside visitors, schools, and

private trainers use the pool, particularly during winter. He also inquired about the costs of maintaining and heating the pool in colder months. Mr. McClurd suggested that Burke County schools and the county government should contribute financially if they benefit from the facility. While not opposed to the pool cover, he urged the town to provide clear figures and consider broader support before moving forward.

CITIZEN SURVEY – JEAN-MARIE COLE, 705 BERTIS ST, VALDESE: Ms. Cole addressed the Council regarding the citizen survey on budget priorities, questioning the need for another survey when priorities from the previous survey remain unaddressed. The 2023 survey identified top priorities as public safety buildings, a permanent pool structure, and road repaving.

She provided updates on these issues:

- **Public Safety Buildings:** The original plan for a joint Fire and Police facility on Pineburr Avenue was terminated. The Town purchased property near Town Hall, but an architectural study found it unsuitable for both departments. Current considerations include using the property for a fire station, repurposing a building on Main Street for the police department, or exploring a combined facility on the Town Hall property. No final decisions or commitments have been made.
- **Permanent Pool Structure:** Only one bid was received for the project due to most companies being committed elsewhere. Cold weather is limiting pool use, and the project has not progressed. It was noted that the item was on this month's agenda.
- The road paving is not on the agenda this month.

CONSENT AGENDA: (enacted by one motion)

APPROVED PRE-AGENDA MEETING MINUTES OF OCTOBER 28, 2024

APPROVED REGULAR MEETING MINUTES OF NOVEMBER 4, 2024

APPROVED AGREEMENT FOR ENGINEERING AND DESIGN SERVICES – HOYLE CREEK STREAM RESTORATION AND SIDEPATH TRAIL Agreement between the Town of Valdese and McGill Associates, P.A. for engineering services for the Hoyle Creek Stream Restoration and Sidepath Trail. This agreement covers schematic and routing phase services, survey and design phase services, and bidding and award phase services.

Councilman Harvey made a motion to approve the aforementioned items on the Consent Agenda, seconded by Councilman Ogle. The vote was unanimous. Motion carried.

End Consent Agenda

ITEMS REMOVED FROM CONSENT AGENDA: None

ADDED – CLOSED SESSION AT THE END OF THE MEETING Councilman Ogle made a motion to add **CLOSED SESSION PURSUANT TO NC GENERAL STATUTE 143-318.11(A)(6)** to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee, at the end of new business, seconded by Councilwoman Lowman. The vote was unanimous.

NO MOTION - PUBLIC HEARING – VALDESE WEAVERS MILL HOUSING BONDS Mayor Watts opened the Public Hearing at 6:17 pm.

The purpose and scope of the proposed Weaver's Mill low-income housing project were reviewed. Luke Fowler, President Northwestern Housing Enterprises explained the project aims to transform the building at the corner of Praley and Main Street into 60 housing units for individuals earning 60% of the Area Median Income (AMI) for Burke County, ranging from \$32,000 to \$40,000, depending on household size. It was clarified that town employees, teachers, and police officers earn above this threshold, making them ineligible. The estimated cost of the project is \$18 million. The developers are seeking a bond referendum to approve \$11 million, with the remaining \$7 million to be secured through private financing, including commercial loans and charitable contributions. The project is utilizing Low-Income Housing Tax Credits to attract private investment, a federal program designed to encourage development without direct government subsidies. Mr. Fowler explained that maintaining 100% of units as affordable housing is critical

to the project's financial viability. Suggestions from Council to make only 20% of units affordable and 80% market-rate were deemed infeasible, as this would compromise the budget and sustainability of the project. Mr. Fowler noted that increasing the commercial loan amount to \$7 million was already at the maximum threshold for financial feasibility. The project is expected to repurpose an unused building, eliminate an eyesore, and provide housing for seniors and workers at local facilities, contributing to community revitalization.

Mayor Watts asked if anyone wished to speak for or against this project.

RICK MCCLURD, 408 GARROU AVE SE, VALDESE: Mr. McClurd expressed concerns about the proposed Weaver's Mill low-income housing project. He suggested considering a 50/50 split between affordable and market-rate units to better serve the Town's residents. He noted that if approved, Valdese could become a leading producer of low-rent housing for a Town of its size in North Carolina. Mr. McClurd emphasized the importance of generating tax revenue to support Town projects and expressed concern that this development would not contribute to tax revenues. He compared the proposal to Pine Crossing, a similar project in the area, and stated his opposition to this project being entirely affordable housing. While he supported the idea of a mixed-income approach, he recognized that the developers were unwilling to adopt a 50/50 model.

DAVID WIESE, 3318 MONTANYA VIEW DR, VALDESE: Mr. Wiese raised concerns regarding the lack of property tax revenue from the proposed Weaver's Mill housing project. He confirmed that the property would not generate tax revenue for the first 15 years under current regulations. He questioned the potential value of 15 years' worth of property tax revenue, expressing concern about the financial impact of forgoing such income. He noted the Town's ongoing and upcoming projects, such as public service improvements and road paving, and highlighted the challenges of funding these initiatives without additional tax revenue from developments like Weaver's Mill.

Mayor Watts invited any additional speakers for the Public Hearing. Hearing none, he closed the Public Hearing at 6:29 p.m.

Following the hearing, Mayor Watts asked if the Council wished to make a motion regarding the Valdese Weavers Housing Resolution. No motion was made by any Council member. Mayor Watts concluded the discussion by stating that the matter would not move forward.

END OF YEAR COMMITTEE REPORTS

- I. **Facilities Review Committee** – Councilman Harvey gave an update on behalf of the original committee (Roger Heavner, Greg Refour, Tessa Collinson, Jerry Hyde, Councilman Harvey) and provided a written report to the Town Clerk.

FINAL REPORT – FACILITIES REVIEW COMMITTEE

December 2, 2024

COMMITTEE MEMBERS

Tessa Collinson Roger Heavner (Resigned in October)
 Glenn Harvey Jerry Hyde Greg Refour (Resigned in November)

FORMAL AND INFORMAL MEETINGS AND ACTIVITIES

March 21: Members introduced themselves, reviewed eight proposals from architectural firms, and selected three firms for small group interviews. The initial consensus was to vacate the present public safety building and possibly renovate a portion of it to facilitate the phasing in of new facilities.

April 9: The consensus recommendation to the town council was to engage the firm Talley & Smith to undertake a two-phase contract. Phase 1 will evaluate three options: 1) total renovation of the existing facility; 2) relocation of PD and FD to a new combined facility; and 3) separate PD and FD facilities. Phase 2 would be to design, develop, bid, and build the option selected by the council. The committee learned of the possibility of obtaining 200 Massel Ave SW and recommended that Talley & Smith quickly evaluate its suitability.

April 30: The committee reviewed a preliminary PowerPoint presentation by co-chairs Heavner and Refour that would be presented to the Town Council with the basic recommendations (May 6 Town Council meeting minutes) to:

- Consider the Phase 1 contract with Talley & Smith for \$32,000.
- Acquire 1.75 acres property at 200 Massel Ave SW.
- List town-owned 14.9 acres property at 800 Pineburr Ave for sale.

June 12: Talley & Smith gave a verbal report of their in-depth inspection of the existing facility, to be followed by a written report of their conclusions and a contract for undertaking the three Phase 1 options. On June 25, Talley & Smith submitted the contract to Interim Manager Steen, along with their recommendations stating that the PD and FD personnel should be relocated to a safe facility within 30 days.

From this point on, facilities considerations by the council were evolving rapidly, so along with the travel and work schedules of the committee members, committee members individually and in small groups reviewed a property under consideration, visited several fire stations in the region, and prepared and reviewed council presentations and recommendations through email, text, and telephone correspondence related to the following council actions:

- **August 5:** The Committee PowerPoint presentation (Town Council Aug 5 minutes) recommended that the Town Council consider purchasing the 215 Main St E property for a permanent PD, entering into a Phase 2 Design, Bid, and Build contract with Talley &

Smith to renovate the property (\$175,000). This path reduced the scope (and cost by \$11,600) of the Phase 1 contract to Option 3 – provide a schematic design and cost estimate for a FD on Massel Ave SW.

- September 19: Talley & Smith’s cost estimates for the renovation of the 7300 SF, 58-year-old but structurally sound 215 Main St E building and a pre-engineered FD on Massel Ave SW shocked all who had any knowledge of such matters:
 - Fire Station on Massel Ave SW – \$6.1 million was two to three times the cost of similar fire stations visited by council and committee members.
 - 215 Main St E, which the police chief had recommended as being almost “move-in ready” – at \$2.5 million, excluding the 1000SF 2-story addition.

Committee members toured the 215 Main St E property again to review the extensive renovations, noting concerns and oversights. Drawing upon the presentations by guest speakers on September 24 and conferring among themselves and around Hurricane Helene (Sept 27), the committee and then-councilman Mears recommended this alternate approach and proposal for the council’s consideration on October 7 to keep the 215 Main St E renovation on a six-month schedule and within a reasonable cost:

...that the renovation of 215 Main St E office building as the permanent police station be given the highest priority of all of Valdese’s planned and in-progress construction projects; that the Interim Manager advertise a “Request for Quotations” seeking proposals from NC General Contractors for a “Design-Build” approach to the renovation at a cost not to exceed \$1 million with work to be completed no later than six months from acceptance of a proposal; and that the Agreement, AIA document B101-2017, approved August 5, 2024, be terminated without cause.

- October 7: the Town Council increased the maximum to \$1.75 million, resulting in upwards of \$2.5 million being invested in the 58-year-old building and a renovation scope that could not be completed in six months.

CONCLUSION

The attached spreadsheet, “The Path to the ‘Design-Build’ RFQ for 200 Massel Ave SW,” rolls up the estimates of costs and omissions based on the Talley & Smith reports. The Facilities Review Committee now presumes that its work has been completed and recommends that the Valdese Town Council terminate the committee.

Respectfully and regretfully submitted,

Glenn Harvey, on behalf of the majority of the original Committee Members

THE PATH TO THE "DESIGN-BUILD" RFQ FOR 200 MASSEL AVE SW

As of discussion at the October 28, Town Council Preliminary Agenda Discussion

Meeting	ACTIONS, PRESENTATIONS, AND CONCLUSIONS		
6-May	1) Talley & Smith "Study Contract" at \$36k; Phase 1, to evaluate 3 options: 1) Renovate Existing; 2) Design new PD&FD; 3) Separate PD & FD 2) 200 Massel Ave SW acquired for \$400k		
5-Aug	1) 215 Main Street E building acquired for \$360k, on recommendations of Police Chief; two council members and four facilities review committee members whose renovation experience indicated that it could meet current needs for a renovation cost of \$500k to \$1 million. 2) Talley & Smith "Study Contract" reduced to \$23,400		
Note A -	3) Talley & Smith "D-B-B Contract" to Renovate 215 Main, fee \$175,000		
19-Sep	Talley & Smith presented cost estimates for two options:		
		New FD Building	Renovate 215
1) COST PER SF		\$300-350	\$300-350
Architect Fee Estimates		\$500,000	\$175,000
2)	ESTIMATE TO RENOVATE 215 MAIN STREET E AT ABOVE COST/SF		
COST OF 215 MAIN STREET E per 4 T&S :	\$ 300	\$ 350	
Purchase Price	\$ 360,000	\$ 360,000	
Renovation on Street Floor and Lower Level	\$ 2,186,000	\$ 2,550,000	
Architect Fee	\$ 175,000	\$ 175,000	
Total for 7300 SF - existing structure alone:	\$ 2,721,000	\$ 3,085,000	
ESTIMATES NOT PROVIDED FOR:			
Sally Port of 600-1000 SF	?	?	
Contingency of Renovation Unknowns	?	?	
7-Oct	The "Vision" of 215 Main Street became that of a "New Building"		
Purchase Price	\$ 360,000	\$ 360,000	
Design Build Approach, not to exceed	\$ 1,000,000	\$ 1,750,000	
Potential Investment in 58-yr old Building	\$ 1,360,000	\$ 2,110,000	
24-Oct	Presentation By Guests and Consideration by Council		
1) Cost of 7300SF New Building: \$300 or \$350	\$ 2,190,000	\$ 2,555,000	
Note B - 2) Cost of New at \$200 or \$250 D-B Estimates	\$ 1,460,000	\$ 1,825,000	
3) Potential Savings by Design-Build Approach			
Waco Architect fees for 15,000 SF building were:		\$ 59,000	
T&S Fee of D-B-B Renovation of 215 Main		\$ 175,000	
T&S Estimated Fee for D-B-B of Fire Station on 200 Massel		\$ 500,000	
Note C - 3) Potential savings by Selling 215 Main	(\$400,000 - \$600,000)		
Notes:			
A	D-B-B Architect led, "Design, Bid, Build approach to construction.		
B	D-B (Design-Build) preliminary est. of planned Waco FD presented on Oct 24.		
C	Purchase price of 215 Main Street E at \$360,000 was \$9,000 under the tax value; plus the cost of a survey and closing costs		

II. **Drug & Homeless Task Force** – Police Chief Marc Sharpe gave an update on behalf of the Drug & Homeless Task Force and provided a written report to the Town Clerk.

The Homelessness/Drug Task Force has met (7) seven times since getting started on March 25, 2024. Some of the things that have evolved from those meetings are:

- Suggestion and establishment of partnership between WPCOG and VPD to identify Homeless and provide possible resources to get off the streets. Start ride along program with VPD.
- This is done by forming partnerships in the local community to identify the homeless, identify their needs, and provide resources to get them off the streets. This is accomplished in basically a (6) six step process identified below:
 - (1) Identify possible homeless individuals.
 - (2) Data collection from those individuals.
 - (3) Verification the individual is in fact homeless.
 - (4) Identify the individual's circumstances and needs.
 - (5) Offer to provide follow up services and resources to the individual.
 - (6) If accepted, actually provide services and resources to the individual.
- Identify homeless population and reasons for being homeless. Offer solutions and resources to those who will take them. Started with identifying the population in our community and came up with approximately 30 individuals.
- That population has reduced by (8) eight individuals. Some being placed, some getting jobs, and some passing away. The efforts are not instant but as the numbers, show a difference is being made.
- As the Task Force Looked into offering resources they found that BUCM provides resources to the homeless community we were trying to establish. Rather than re-invent those services we established a way to take those wanting the services to BUCM.
- "Jethros" was established as a Thursday pick up location for the unsheltered to be transported to BUCM for services. The pick-up begins at 11:00 a.m. every Thursday and leaves BUCM at 2:00 p.m. This provides our unsheltered an opportunity to receive a hot meal, get a shower, do some laundry, and sign up or receive additional services BUCM provides at least once a week from Valdese. The service has been provided by River of Life Church and their Bus with various pastors and volunteers driving the bus route. We have had individuals taking advantage of this service and as many as (5) five have gone in the past. Providing this service creates a meeting spot for services and those in need.
- Law Enforcement Department Heads throughout the County have been communicating with each other and Greenway Transportation, the WPCOG, BUCM, and others about expanding a route on 70 in Burke County. Those talks are continuing.
- VPD continues to meet with the COG as needed to make additional contact with the homeless as needed when called upon and VPD continues to reach out to the COG when needed. This partnership has turned into a two way street making contact with one another when and as needed.
- The Task Force has suggested additional ways to make contact with the homeless and to help them connect and find services. Several things were attempted, A shower night, A luncheon, and recently a Dinner occurred in honor Homelessness awareness week at the United Methodist Church in Valdese as a connect opportunity for those seeking services. All three events had participants who connected with services and we continue to follow up with the participants of our events. Some of these services were found to be a repeat of those already offered at BUCM and were transferred to that area by providing the bus route.
- Jethro's "Homeless Awareness under the Stars" which was targeted at educating and addressing teenage homelessness was cancelled due to some unforeseen issues and did not occur.
- VPD started an improved Trespassing Program and has continued to come to agreements with various citizens and business owners who have prepared trespassing notices for their properties. Those notices have assisted VPD in another community effort partnership with citizens. Our goal is trespass individuals who are not welcome on properties and arrest them if they go back. This has been utilized to

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shut down property areas being illegally used by individuals for various criminal behavior. Several suspected drug houses or hot spots where illegal drugs are being used and sold have been shut down due to the partnership between the citizen and the police department. We will continue to promote these efforts not only to combat the drug issue but to also remove camps that are in places citizens have not approved them to be within their property.

- The Task Force has had several guest speakers providing an inside look at addiction issues and the struggles to find rehab. Additional programs are being researched and outreach is being sought when someone wants help with their drug problem. The Task Force is working to find additional answers, solutions, and response to these request. Rehabilitation success stories have been heard and we are looking at ways to share the news and find outreach.
- VPD has made several new drug arrest and seizures involving mainly Fentanyl and Methamphetamine in our town limits. We will work with the courts for adjudication. This has improved as the PD has now installed court liaison officers on VPD court dates to oversee and guide our cases through the process. An additional avenue is having the court order drug rehab for offenders as a solution to the problem for some offenders and more information is being gather about that process. We continue to seek additional assistance with our Sheriff's Office Drug Task Force by sharing information and partnering on larger scale drug investigations.
- VPD has made approximately (41) forty-one arrest this year involving the homeless from an enforcement standpoint. Those charges involve trespassing, drug possession, and breaking and entering, assault, and property damage.
- Olive Branch Ministry recently spoke at a recent meeting and offered additional insight into addiction and rehabilitation issues. The guest speakers are educating members of the Task Force on the complexity of the problem.
- Three individuals Charles Waters Jr. AKA: Charlie Brown, Josh Sanders, and Cody Vance Dehaven who lost their lives were remembered by name during the Homelessness Awareness event at BUCM this past month. Had these relationships not occurred I am not sure they would have been known in the community.
- BUCM has provided on the street outreach in Valdese providing medicine, food, and clothing items to individuals through a partnership with VPD helping to identify those individuals in need of services.
- A partnership with Harbour Programs has provided officers with Narcan Training and a supply of Narcan which is carried on duty to address overdoses encountered in our community. Since establishing this program officers have administered Narcan on three occasions.
- Harbour Programs has been active in our community also providing Narcan to citizens for use in case of an overdose and has attempted some street medicine campaigns for those in need of medical assistance. EMS has provided a community paramedic who follows up with those individuals on overdoses in an attempt to get them additional help if needed.
- Narcotics anonymous and Alcoholics anonymous programs have been identified and suggested to those in need and avenues have been provided to get citizens to those meetings if needed.
- Drug enforcement statistics by officers for the year are as follows:
- VPD has responded to (13) thirteen overdoses within our jurisdiction.

Drug Seizures from strictly a patrol officer standpoint: This being vehicle stops, calls for service, and suspicious persons have provided the following statistics: These statistics are now being properly collected and maintained by our department. Our yearly totals thus far are:

35.16 grams of Methamphetamine has been seized
8 grams of cocaine has been seized.

.06 grams of Fentanyl has been seized.
 1 gram of Xanax
 51 grams of Marijuana

Our officers have made (46) forty-six drug charges for the year of those (46) forty-six charges (27) twenty-seven were for felonies within our drug statutes. That is over 58% of our arrest. Some of the offenders are repeat offenders.

- We will continue our multifaceted approach to the community to combat our homeless and drug issues by offering resources, help, solutions, and enforcement to combat these problems. Arrest is not our only answer as other avenues for help are being offer on the front end and rear end of arrest.
- Help is being offered to those in need if they choose to take it.
- The Homelessness Drug Task Force will continue to meet on the last Tuesday of each month as we work together to address these ongoing issues and attempt to find new and additional solutions.

III. **Merchants Advisory Committee** – Kevin Farris gave an update on behalf of the Merchants Advisory Committee.

Mr. Farris provided an update on the advisory committee's activities. The committee has held three meetings, beginning with an initial discussion on goals and processes, followed by official meetings on October 21st and November 18th. Minutes for the November meeting are pending approval and will be submitted later.

Key initiatives discussed included:

1. **Enhancing Support for Local Restaurants:**

The committee proposed involving local restaurants to provide food at Temple Field during Friday night music events, allowing patrons to enjoy meals while attending and alleviating crowding at restaurants downtown. A rotation schedule among participating restaurants is being considered to share the responsibility evenly.

2. **Increasing Visibility for Main Street Businesses:**

Suggestions included inviting Main Street vendors to set up tents or booths at Temple Field during events to showcase their products and attract new customers.

3. **Coordination with Myras:**

A Myras representative shared plans to support Main Street businesses, fostering a productive partnership with the advisory committee.

4. **Other Enhancements:**

- Considering food truck setups at the Old Rock School during events like concerts.
- Exploring low-cost initiatives to drive foot traffic and promote local businesses.

5. **Future Projects:**

Mr. Farris proposed a new Founders Day celebration tied to a significant anniversary, potentially including week-long festivities, international collaborations, and unique commemorative activities. This idea is still in early discussion phases but is envisioned as a future highlight for the community.

Mr. Farris emphasized the committee's focus on enhancing community events and supporting businesses while keeping costs minimal.

APPROVED RESOLUTION ADOPTING 2025 TOWN COUNCIL MEETING CALENDAR

Motion: Councilman Harvey made a motion to adopt the Option 2 calendar in the agenda packet, seconded by Councilwoman Ward.

Discussion: Interim Town Manager Bo Weichel reviewed the two options with the differences being with the last four meetings of the year to account for the election and potential changes in Council members. Councilwoman Lowman noted that the Burke County Board of Commissioners and the Burke County Board

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of Education are swearing in their members tonight which is the first Monday in December. Councilwoman Lowman also noted that we do not know when the BC Board of Elections will certify the elections each year and we should follow the lead of the other Towns in Burke County and continue to swear in new members on the first Monday in December. Councilwoman Lowman likes Option 1. Councilman Harvey feels that we should not have a Council meeting on election eve night and we need to get the new elects on board as fast as we can to make the transition smoother.

Note: Councilwoman Lowman – No, Councilman Harvey – Yes, Councilman Ogle – Yes, Councilwoman Ward – Yes, the motion was approved for Option 2.

**TOWN OF VALDESE
RESOLUTION ADOPTING 2025 TOWN COUNCIL MEETING SCHEDULE**

WHEREAS, pursuant to Section 2-1011 of the Town of Valdese Code of Ordinances,
there shall be a regular meeting of the council at the town hall,
on the first Monday in each month at 6:00 p.m.,
unless another place, date or time shall be designated.

**NOW, THEREFORE, BE IT RESOLVED that the Town of Valdese Town Council
adopts the following Meeting Schedule for 2025**

Council Chambers, Unless Noted

2025 REGULAR MONTHLY MEETINGS	
January 13	
February 3	
March 3	
April 7	
April 15 & 16	Budget Review #1, 9:00 am
May 5	
May 12	Budget Review #2, 9:00 am
June 2	Budget Presented
June 23	2025-26 Budget Hearing
August 4	
September 2	Tuesday
October 6	
November 17	Swear in Elects
December 8	

Council Chambers, Unless Noted

2025 PRE-AGENDA MONTHLY MEETINGS (Informal review of agendas/town news)	
January 6	Review Jan Meeting
January 27	Review Feb Agenda
February 24	Review Mar Agenda
March 31	Review April Agenda
April 28	Review May Agenda
May 27	Review June Agenda - Tuesday
(No Regular meeting in July.)	
July 28	Review August Agenda
August 25	Review Sept Agenda
September 29	Review Oct Agenda
November 10	Review Nov Agenda & Intro Elects
December 1	Review Dec Agenda

This 2nd day of December, 2024.

Charles Watts, Mayor

COUNCIL APPOINTMENTS TO BOARDS/COMMISSIONS/COMMITTEES

Planning Board: Councilwoman Lowman made a motion to move Cindy Stephens from an Alternate position on the Planning Board to a full position on the Planning Board, seconded by Councilman Ogle. The vote was unanimous and motion carried.

Councilwoman Lowman made a motion to appoint Keith Huffman to the Valdese Planning Board, seconded by Councilwoman Ward. The vote was unanimous and motion carried.

Mayor Watts noted that we have one Board seat and two Alternate seats available on the Planning Board.

Parks & Recreation Commission: Councilman Ogle made a motion to reappoint Nancy Tucker to the Parks & Rec Commission, seconded by Councilwoman Lowman. The vote was unanimous and motion carried.

Councilman Ogle made a motion to reappoint Scott Compton to the Parks & Rec Commission, seconded by Councilwoman Ward. The vote was unanimous and motion carried.

Facilities Review Committee: No applications were submitted.

Efficiency Task Force Committee: No applications were submitted.

WARD 2 VACANCY Mayor Watts said we did not have any applications at this time and will remain open until January 6, 2025.

APPROVED CITIZEN SURVEY ON BUDGET PRIORITIES

Motion: Councilman Harvey made a motion that we approve the proposal that we received from WPCOG to revisit the work that we did this past year, engage the citizens in surveying regarding a number of budget priorities and this would be a mailed survey with reply envelopes and an online survey, at the end they would compile the results and lead the Council into a SWOT analysis to priorities the priorities that the citizens tell us they would like the Council and the Town to pursue. The cost is in the amount of \$1850.00 with the Town doing the mailings by including the survey forms and water bill and having the surveys returned on non-profit postal index return. Seconded by Councilwoman Ward.

Discussion: Councilwoman Lowman questioned the authorization of a new survey, noting there was no vote by the Council to proceed with it. She reminded citizens that the Council had already approved an \$8,000 strategic plan on March 18, 2024, which outlined key priorities: hiring a town manager, addressing the public safety building, recruiting and retaining town employees, constructing a permanent pool structure, tackling water and sewer infrastructure, and maintaining a repaving schedule. Councilwoman Lowman expressed concern that none of these priorities had been accomplished and questioned the need to spend an additional \$1,850 for another public input session in February to reaffirm priorities already identified. She emphasized that the strategic plan was intended to guide the Council's actions, budgeting, and spending, and reiterated the importance of focusing on those existing goals rather than revisiting the same issues.

Councilwoman Ward has been involved with State boards that have a 5-10 year strategic plans with yearly revisits. She feels that citizens are looking for ways to give input that cannot be at the meeting and suggested having online surveys. Councilman Harvey noted that last year, we said we would look at this annually.

Proposal of Technical Planning Assistance
Town of Valdese
Strategic Action Plan
January 1, 2025 through April 30, 2025

The Town of Valdese Council requested a proposal from Western Piedmont Council of Governments (WPCOG) in late 2023 to complete a strategic planning process through a public engagement process. Public Input results, Council priorities were presented to Council and adopted on March 18, 2024 for a direction for the fiscal 2025 budget year. Revisitation of the plan is recommended on an annual basis

to ensure progress is made, innovative ideas are shared, and the Town continues to fulfill the vision of its residents and business owners.

Most recently, the Town requested WPCOG aid the revisitation process for the upcoming fiscal 2026 budget year. WPCOG will collaborate with staff to obtain input from the public. The results of the plan will be composed in a similar fashion to the previous year's publication. The next steps will be to determine the scope, timing, and cost with the Manager. The proposal will be presented to the council and upon approval an agreement signed.

WPCOG will provide personnel to facilitate meetings and schedules to accommodate the planning process:

- Initial Contract approval December 2024 for a beginning project date of January 1, 2025.
- Survey releases, collection and compilation of data will occur.
- Two council meetings - One work session to be held at the end of February 2025 to include the public input feedback and the Council SWOT assessment. Presentation of the final document and findings to the Town Council in late March of 2025.
- Contract time of performance will be January 1, 2025 - April 30, 2025, to allow for any transfer of information, needed clarification, or delays.
- Travel, printing, and all other associated costs to facilitate this project will be included in the contract price, except mailings in which the Town of Valdese will pay for the mailing of letters and provide the labor to send mailings to survey participants.
- As part of the process WPCOG will provide a brief demographic landscape within the final document to provide context.
- The Town will communicate and provide guidance to WPCOG staff regarding significant issues that arise during the planning process.
- The Town will assist in promoting the survey through social media and releasing the survey in a timely manner to keep the project on track to meet the final deadline.
- WPCOG will coordinate with the town staff and officials in drafting the plan.

The cost associated with the work being completed is as follows:

Planning Director - 10 hours at 110 per hour (administration, meetings, survey analysis and final document development)

Planning Staff - 10 hours at 60 per hour (survey, development, compilation of results and analysis, and final document development)

20 hours staff time = \$1,700.00

Travel associated with four meetings - \$150.00.

Total cost proposal: \$1,850.00

Vote: Councilwoman Lowman – No, Councilman Harvey – Yes, Councilman Ogle – Yes, Councilwoman Ward – Yes, the motion was approved.

ADOPTED DESIGN-BUILD ESTABLISHMENT OF CRITERIA Interim Town Manager Bo Weichel said that this was reviewed at the last meeting and supplements the RFQ document next on the agenda.

Town of Valdese Police Department
Design-Build Criteria Statement

Title of Item:

Establishment of criteria for a design-build delivery method for construction contracts and approval of using the design-build delivery method for a phased approach toward either renovation of an existing building for a Police Department or a combo Fire and Police Department new building project.

Explanation:

In accordance with Session Law 2013-401 (HB 857) and NCGS 143-128.1A (b) regarding the addition of design-build delivery method for construction projects, the Town of Valdese is submitting, for approval, the criteria that the Town must establish to utilize this method of delivery. Additionally, the Town of Valdese is requesting approval to utilize the design-build method of delivery to explore the budget options of either a renovation project at 215 Main St E. or a combo Fire and Police building at 200 Massel Ave SW.

Due to the need for the project to be complete by the 4th quarter of 2026, this delivery method will provide the needed flexibility to complete the project on time and within budget without sacrificing quality.

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Part 1. Establishment of Criteria. On August 23, 2013, the Governor signed into law Session Law 2013-401. House Bill 857, authorizing governmental entities to utilize the design-build delivery method for construction contracts. The first step in the process for utilizing the design-build delivery method is that a governmental entity is to establish in writing the criteria used for determining the circumstances under which the design-build method is appropriate for a project. The criteria proposed are the following:

(Criteria 1) The extent to which the Town can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.

The design-build delivery method may be used if it is determined that, for the project, the Town has professional personnel that are both qualified and experienced to thoroughly define project requirements prior to the issuance of a request for qualifications for a design-builder.

Consideration will be given to the qualifications and experience of the personnel in the Facilities Review Committee, Town Council, and the availability of professional personnel in the areas of purchasing, finance and legal to assist in the development of an RFQ.

(Criteria 2) The time constraints for the delivery of the project. The design-build delivery method may be used if a project has a firm date by which a facility must be operational and the normal delivery method is likely not to be timely (typically RFQ, study, design, bid and construct). The size and cost of a project will dictate complexity and schedule.

(Criteria 3) The ability to ensure that a quality project can be delivered. The design-build delivery method may be used if it is determined that, for the project, the Town has access to professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by Council. Consideration will be given to the qualifications and experience of the Facilities Review Committee, Town Council, and hired professional services if necessary.

(Criteria 4) The capability of the Town to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery. The design-build delivery method may be used if it is determined that, for the project, the Town has professional and experienced personnel that are knowledgeable of design-build projects or, alternatively, experienced consultants local to Valdese are available to be retained to perform the construction management of a design-build contract.

(Criteria 5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The design-build delivery method may be used if it is determined that, for the project, requirements will be imposed which ensure that contractors will comply with the M/WBE goals.

(Criteria 6) The criteria utilized by the Town, including a comparison of the costs and benefits of using the design-build delivery method for a given project in lieu of the other delivery methods identified. The criteria utilized by the Town when considering a design-build delivery method for a project will be as follows:

- Is the project well defined and does it include qualitative and quantitative characteristics that make a design-build contract more appropriate than other methods of delivery?
- Is the project timeline overly constrained and will it be necessary to have the facility complete and operational within a short timeframe?
- Will it be necessary to have beneficial use of a portion of the facility while it is under construction?
- Given the scope of the project, is there a maximum budget that must be adhered to allow negotiations and flexibility to make appropriate decisions on scope as the project progresses?
- Does the design-build delivery method meet the ultimate operational goals established for a given facility and the quality of product achieved because of a more fluid and flexible delivery method?

In general terms, if it is determined that the expected expense of a design-build project will be no more than ten (10%) greater than the expected expense of a traditional RFQ, study, design, bid and construct project, the design-build delivery method may be utilized.

Part 2. The second step for the process in determining whether to use the design build delivery method for a project is to apply the criteria to the project. In applying the criteria for the Police Department project, it is recommended that the design-build delivery method be used for this project. This determination is based upon a review of the above criteria as it relates to this project as follows:

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(Criteria 1) Through the Facilities Review Committee, Town Council, and hired professional services, if necessary, the Town has professional personnel that are both qualified and experienced to thoroughly define project requirements prior to the issuance of a request for qualifications for a design builder. Additionally, professional personnel are available in the areas of purchasing, finance and legal services to assist in the development of an RFQ.

(Criteria 2) The Valdese Police Department requires a facility to establish an efficient process of operations to keep the community safe. To provide a facility so that outside regulating agency requirements are met, and the Police personnel can effectively perform their duties, the construction must be completed by the 4th quarter of 2026. This is a period of approximately 10 months. Typical procedure would be to procure a design consultant, complete design and then undertake construction. This process would take approximately 12-18 months thus preventing the Police Department from meeting the stated expectations. The Design-Build process provides the best option for the Town to meet this timeframe.

(Criteria 3) Within the Facilities Review Committee, Town Council, and hired professional services, the Town has professional and experienced personnel to ensure that the design-build firm will provide a quality project within the budget constraints established by Council.

(Criteria 4) Should it become necessary to contract the construction management of a design-build contract, there are experienced consultants local to Valdese that are available.

(Criteria 5) In developing an RFQ and interviewing selected firms, the Town will put forth a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4.

(Criteria 6) As stated under Criteria #2, one of the benefits of the Design-Build process is that it may reduce the overall project schedule by 8 months. This has a direct benefit on the project budget. The design-build delivery method is not expected to involve any additional expense than the expected expense of a traditional RFQ, study, design, bid, and construct project. By reducing the time frame by 8 months, we are eliminating the price escalation that would occur within that year. Additionally, the scope of the design efforts will be reduced. This enables more of the approved project budget to go directly towards the physical improvements of the facility. It is expected that the design-build process will enable an extra 5% of existing funds to be allocated to the construction over what our typical design-bid-build process would allow. These benefits to both the project schedule and cost make the design-build option more appealing than the more conventional design-bid-build in this instance.

Fiscal Note:

There is no fiscal impact to the establishment of this policy and approval of the utilization of design-build delivery method.

Recommendation: Approve the criteria for the use of the design-build delivery method and authorize Town staff to move forward with use of the design-build delivery method for the renovations and additions to the Police Department facility.

Motion: Councilwoman Lowman made a motion to adopt the criteria for the use of design-build method and authorize Town staff to move forward with the use of design-build delivery method for the renovation and additions to the Police Department facility, seconded by Councilman Ogle.

Vote: The vote was unanimous and the motion carried.

APPROVED RFQ DESIGN BUILD Interim Town Manager Bo Weichel reminded Council that the RFQ would be in two phases.

1st Motion: Councilwoman Lowman made a motion to approve the Request for Qualifications for design-build services for the Police Department facility cost comparison and construction, seconded by Councilman Ogle.

Discussion: Councilman Harvey expressed concerns with the current proposal, noting that it lacked plans for a standalone fire station on Massel Avenue. He emphasized the importance of including this as part of

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Phase 1 to ensure all options are thoroughly considered. Councilman Harvey highlighted the extensive efforts and resources already invested, including \$24,000 spent on previous estimates and schematic drawings, and questioned why earlier findings and agreements seemed to be revisited.

1st Amendment to Motion: Councilman Harvey proposed amending the motion or RFQ to include two additional estimates in Phase 1: The cost of constructing a standalone fire station on Massel Avenue, and the cost of expanding Town Hall to accommodate the police department, seconded by Councilwoman Ward.

Discussion: Councilwoman Lowman is fine with looking at a Fire Department but is opposed to adding the Police Department in Town Hall. Councilman Ogle agrees with not using the Town Hall as a Police Station. Councilwoman Ward asked if it would take longer to add two more options to the RFQ. Mr. Weichel said the more design work you add the longer it will take and will cost more. Mr. Weichel also noted for Council to consider is if we decide to go with renovations and a standalone Fire Department, we would have to have two separate RFQs, so once they complete the 30% budgetary number we will have to go out for an RFQ again and possibly not use the same contractor.

Vote: Councilwoman Lowman – No, Councilman Harvey – Yes, Councilman Ogle – No, Councilwoman Ward – No, the amendment was not approved.

2nd Amendment to Motion: Councilman Harvey proposed amending the RFQ to include getting an estimate in Phase 1 for a Fire Station on Massel Ave., seconded by Councilman Ogle.

Vote: Councilwoman Lowman – Yes, Councilman Harvey – Yes, Councilman Ogle – Yes, Councilwoman Ward – Yes, the motion carried.

Back to 1st Motion: Councilwoman Lowman made a motion to approve the Request for Qualifications for design-build services for the Police Department facility cost comparison and construction, and adding the amendment to include getting an estimate in Phase 1 for a Fire Station on Massel Ave., seconded by Councilman Ogle.

Vote: Councilwoman Lowman – Yes, Councilman Harvey – Yes, Councilman Ogle – Yes, Councilwoman Ward – Yes, the motion carried.

Council authorized Mr. Weichel to proceed on with submitting the updated RFQ with the addition of the standalone Fire Department.

APPROVED POOL STRUCTURE BIDS & CAPITAL CAMPAIGN DISCUSSION Parks & Recreation Commission President Scott Compton reported that the Parks and Recreation Commission held an emergency meeting on Thursday, November 14, 2024, following the opening of the bid. The Commission unanimously approved two recommendations:

1. Accept the bid from Houck Contracting for the new pool structure in the amount of \$1,793,930.
2. Initiate a capital fundraising campaign with a goal of \$300,000 to be completed within 12 months.

Motion: Councilman Ogle made a motion to proceed with construction of the permanent pool structure with Houck Contracting as presented and start construction as soon as we can, seconded by Councilwoman Lowman.

Discussion: Councilman Harvey asked Mr. Weichel to review the numbers.

Pool Structure Cost

\$1,793,930	Houck Contracting bid price
(377,000)	GRANT- NC Parks & Recreation Trust Fund Accessible Parks (\$500k less the \$123k for ADA work per grant requirement)
(100,000)	GRANTMATCH (20% on \$500k) - Private Donation
(300,000)	Capital Campaign program as recommended by Parks & Rec Commission-will discuss at the 11/18 pre agenda meeting
\$1,016,930	Remaining balance of the contract with Houck
\$123,000	Cost of completing ADA compliant work
(123,000)	GRANT- NC Parks & Recreation Trust Fund Accessible Parks (portion of the \$500k grant) ADA work is required to meet grant compliance
\$0	Remaining balance for ADA work

Councilman Harvey highlighted that the project in discussion is a \$2 million undertaking, with initial funding for the architect (\$112,000) coming from the fund balance. He emphasized that the project is one of several priorities identified in the Town’s strategic plan, which includes the public safety building, pool cover, street resurfacing, and water line upgrades. These projects are significant, each costing \$2 million or more, and will require funding through town reserves, contributions, or tax revenue. He noted that the pool cover project, for instance, is overdue, as the original bubble installed over two decades ago exceeded its life expectancy. Its collapse last year coincided with Election Day. Council has been addressing these longstanding priorities throughout the year, with this project being the most advanced.

Councilman Harvey noted that the Parks and Recreation Commission has committed to raising \$300,000 in contributions, reducing the immediate financial burden on the town reserves to \$1 million. Discussions are also ongoing with the school system to secure additional funding, as the pool serves as a varsity facility for local high schools. Councilman Harvey urged council members and citizens to advocate for financial support from the school board and county, emphasizing the shared benefits and need for collaboration.

Vote: Councilwoman Lowman – Yes, Councilman Harvey – Yes, Councilman Ogle – Yes, Councilwoman Ward – Yes, the motion carried.

Motion: Councilman Harvey made a motion to authorize the Capital Campaign, seconded by Councilman Ogle.

Discussion: Councilman Harvey will pass his 20% tax cut to the Interim Town Manager to deposit if the vote passes. Councilwoman Ward will also be sending hers in as well.

Vote: Councilwoman Lowman – Yes, Councilman Harvey – Yes, Councilman Ogle – Yes, Councilwoman Ward – Yes, the motion carried.

APPROVED N.C. PARKS & RECREATION TRUST FUND ACCESSIBLE PARKS PROJECT AGREEMENT Interim Town Manager Bo Weichel noted that this is the agreement to accept the \$500,000 award amount for the Pool Structure.

Motion: Councilwoman Lowman made a motion that we accept the grant from the Parks & Recreation Trust Fund, seconded by Councilman Ogle.

Vote: The vote was unanimous, the motion carried.

BUDGET AMENDMENTS

- I. **APPROVED Generator Docking Station** Interim Town Manager Bo Weichel reminded Council that at the last regular meeting, Council approved to purchase a portable generator at Public Works and this budget amendment is for the docking station.

Valdese Town Council Meeting

Monday, December 2, 2024

Budget Amendment # 7-10

Subject: Equipment and installation transfer switch and disconnect for PW generator

Description: This amendment covers the equipment and installation to switch power on/off from the generator. Three quotes were received from licensed electrical companies. This amount shown is the lowest of the three quotes. This work is necessary whether a new or used generator was purchased. Approximately \$50,000 was saved by going with a used generator.

Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, the following amendment is made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section I:

The following revenues available to the Town will be increased:

Account	Description	Decrease/ Debit	Increase/ Credit
10.3990.000	General Fund Balance Appr.		19,662
	Total	\$0	\$19,662

Amounts appropriated for expenditure are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
10.4250.740	Capital Outlay	19,662	
	Total	\$19,662	\$0

Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

Motion: Councilwoman Lowman made a motion to approve the Budget Amendment for the generator docking station, seconded by Councilman Ogle.

Vote: The vote was unanimous and motion carried.

- II. **NO MOTION July 4, 2025 Independence Day Celebration** Interim Town Manager Bo Weichel explained that the adopted budget includes \$21,000 for the Independence Day celebration, traditionally held on the Friday before the holiday. Moving the event to July 4th increases the total cost to approximately \$63,000 due to holiday rates, requiring an additional \$40,000.

Key cost increases include:

- Fireworks: The current budget allocates \$12,500, but the recommended vendor, JECO Pyrotechnics, has quoted \$22,000 for a high quality, commercial-grade display. This represents a \$9,500 shortfall.
- Staffing: The usual service provider, Burke React, is unavailable on July 4th, necessitating additional town staff, incurring extra labor costs for holiday work.
- Other expenses: Increased rates for staging, entertainment, and band fees due to the holiday.

To cover the additional \$40,000, Mr. Weichel presented two options:

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1. Use fund balance via a budget amendment.
2. Reallocate \$45,000 in salary savings from the administration budget, achieved since he assumed dual roles in August. This would avoid directly impacting the fund balance and could be adjusted at year-end.

Valdese Town Council Meeting

Monday, December 2, 2024

Budget Amendment # 6-10

Subject: Additional expenses for July 4, 2025 Independence Day Celebration

Description: The adopted budget includes funding this event at a "non-holiday" rate. This budget amendment includes the additional expenses associated with holding the Town-sponsored Independence Day celebration on July 4, 2025.

Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, the following amendment is made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section I:

The following revenues available to the Town will be increased:

Account	Description	Decrease/ Debit	Increase/ Credit
10.3990.000	General Fund Balance Appr.		40,380
	Total	\$0	\$40,380

Amounts appropriated for expenditure are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit	
10.4250.021	Overtime	571		Add'l employees/Holiday Pay
10.4250.050	FICA Taxes 7.65%	44		Add'l employees/Holiday Pay
10.4250.070	Retirement Contribution 14.41%	83		Add'l employees/Holiday Pay
10.4350.021	Overtime	1,507		Add'l employees/Holiday Pay
10.4350.022	Part time - Public Works	572		Add'l employees/Holiday Pay
10.4350.050	FICA Taxes 7.65%	159		Add'l employees/Holiday Pay
10.4350.070	Retirement Contribution 14.41%	218		Add'l employees/Holiday Pay
10.5600.021	Overtime	1,887		Add'l employees/Holiday Pay
10.5600.050	FICA Taxes 7.65%	145		Add'l employees/Holiday Pay
10.5600.070	Retirement Contribution 14.41%	272		Add'l employees/Holiday Pay
10.5800.021	Overtime	448		Add'l employees/Holiday Pay
10.5800.050	FICA Taxes 7.65%	35		Add'l employees/Holiday Pay
10.5800.070	Retirement Contribution 14.41%	65		Add'l employees/Holiday Pay
30.8120.021	Overtime	5,120		Add'l employees/Holiday Pay
30.8120.050	FICA Taxes 7.65%	392		Add'l employees/Holiday Pay
30.8120.070	Retirement Contribution 14.41%	737		Add'l employees/Holiday Pay
10.4200.020	Overtime	589		Add'l employees/Holiday Pay
10.4200.050	FICA Taxes 7.65%	45		Add'l employees/Holiday Pay
10.4200.070	Retirement Contribution 14.41%	85		Add'l employees/Holiday Pay
10.5100.021	Overtime	4,138		Add'l employees/Holiday Pay
10.5100.022	Part time - Reserve Officers	429		Add'l employees/Holiday Pay
10.5100.050	FICA Taxes 7.65%	351		Add'l employees/Holiday Pay
10.5100.065	Law Enforcement 401k 5%	195		Add'l employees/Holiday Pay
10.5100.070	LEO Retirement Contribution 15.79%	653		Add'l employees/Holiday Pay
10.5300.021	Overtime	2,720		Add'l employees/Holiday Pay
10.5300.050	FICA Taxes 7.65%	209		Add'l employees/Holiday Pay
10.5300.070	Retirement Contribution 14.41%	392		Add'l employees/Holiday Pay
10.6250.021	Overtime	2,039		Add'l employees/Holiday Pay
10.6250.021	Part time	585		Add'l employees/Holiday Pay
10.6250.050	FICA Taxes 7.65%	201		Add'l employees/Holiday Pay
10.6250.070	Retirement Contribution 14.41%	294		Add'l employees/Holiday Pay
10.5100.450	Contracted Services	1,400		Off-duty deputies x 4
10.6250.452	Contracted Services	250		Staging
10.6250.452	Contracted Services	2,000		Entertainment/Band
10.6250.452	Contracted Services	300		RV
10.6250.452	Contracted Services	1,750		Sound and Lighting
10.6250.450	Contracted Services	9,500		Fireworks
	Total	\$40,380	\$0	

Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

Independence Day Event Comparison							
Friday before the 4th = 4/27/25				July 4th, 2025			
Staging	\$3,500.00					\$3,750.00	
Entertainment / Band	\$3,000.00					\$5,000.00	
REACT volunteers	12 volunteers available					REACT not available (they work Morgan's Event)	
Off-duty deputies x 4	not needed					\$1,000.00	
RV	\$500.00					\$0.00	
Holiday Employee Pay/Advt Employees	not needed					\$25,950.00	
Sound & Lighting	\$2,000.00					\$3,750.00	
Fireworks Contract	Zambelli - Table Rock Shooters	JECO Pyrotechnics	Perennial Pyro	PyroWright	Starfire	Zambelli	PyroProductions
Cost	\$12,500.00	\$22,000.00	\$24,000.00	\$20,000.00	\$25,000.00	\$18,000.00	\$35,000.00
Availability	Available	Available	Available	Available	Not Available 7/4/25	Not Available 7/4/25	Not Available 7/4/25
Shell Count	682	1500	840	1450			
Notes:		Skyworks Pro		lesser grade shells			
References & Other Shows:	Contracted for the Valdese event since mid 1990's	Sawville, NC, Ashe County 10 years experience	North Wilkesboro, Deep Gap	(Weaverville, Old Fort) 20 yrs shooting - 2 yrs in business			

Contracts need to be in place by January 1 to lock in pricing and the prime date of 7/4/25. Larger Fireworks companies are unavailable due to prior larger contract commitments. Numerous companies were contacted only 6 responded with 3 being unavailable.

Councilman Harvey asked why the Recreation Department was not included in the budget considerations for the Independence Day event and confirmed with Mr. Weichel that the pool would not be open on July 4th (Corrected Minute entry: The pool is open on July 4th). He then shared an observation, drawing from his 35 years of experience managing a multimillion-dollar budget. He emphasized that the responsibility for managing budget adjustments should lie with the manager rather than the Council. With a \$7 million budget, he noted that the additional \$40,000 needed for the event represents a minor adjustment (approximately 0.6% of the total budget). Councilman Harvey suggested that such decisions fall within the manager's purview, especially given potential unbudgeted revenue and savings identified during the year.

INTERIM MANAGER'S REPORT:

Numerous events are scheduled for the month of December. A Holiday Event Calendar has been included in the reading materials for your reference. Please review the calendar for detailed information on upcoming activities.

Town Offices Closed on December 24, 25, 26, 2024 in Observance of Christmas and January 1, 2025 in Observance of New Year's Day.

Next Agenda Review Council meeting is scheduled for Monday, January 6, 2024, 6:00 p.m., Council Chambers, Valdese Town Hall

Next Regular Council meeting scheduled for Monday, January 13, 2025, 6:00 p.m., Council Chambers, Valdese Town Hall

MAYOR AND COUNCIL COMMENTS

Councilman Harvey thanked Mayor Pro Tem Councilman Ogle for reading the guidelines for the Public Comments that were in place a long time ago until the last election.

Mayor Watts reminded Council that the Christmas Parade is this Saturday, December 7, 2024, and if you plan on riding in the Parade, be at the Fire Department at 9:20 a.m., Saturday morning.

CLOSED SESSION PURSUANT TO NC GENERAL STATUTE 143-318.11(A)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee.

At 7:59 p.m., Councilman Ogle made a motion to go into closed session, seconded by Councilwoman Ward. The vote was unanimous and motion carried.

At 8:15 p.m., Councilwoman Lowman made a motion to return to open session, seconded by Councilman Ogle. The vote was unanimous and motion carried.

SPECIAL CALLED MEETING ANNOUNCEMENT Mayor Watts announced a Special Called Meeting on Wednesday, December 11, 2024, at 9:00 am., in the Council Chamber, and the purpose of the meeting is to identify or name a Town Manager.

DECEMBER 2, 2024, MB#32

Councilwoman Lowman made that in the form of a motion, seconded by Councilman Harvey. The vote was unanimous and motion carried.

ADJOURNMENT: At 8:17 p.m., there being no further business to come before Council, Councilwoman Lowman made a motion to adjourn, seconded by Councilman Harvey. The vote was unanimous and motion carried.

Town Clerk

Mayor

jl

**TOWN OF VALDESE
TOWN COUNCIL SPECIAL CALLED MEETING
DECEMBER 11, 2024**

The Town of Valdese Town Council met on Wednesday, December 11, 2024, at 9:00 a.m., in the Town Council Chambers at Town Hall, 102 Massel Avenue SW, Valdese, North Carolina. The following were present: Mayor Charles Watts, Mayor Pro Tem Gary Ogle, Councilwoman Rexanna Lowman, Councilwoman Heather Ward, and Councilman Glenn Harvey. Also present were: Interim Town Manager Bo Weichel, Town Attorney Tim Swanson, and Town Clerk Jessica Lail.

Absent: Ward 2 Vacancy

A quorum was present.

Mayor Watts announced a correction to the purpose of **Closed Session Pursuant to NC General Statute 143-318.11(a)(6)** was for the *Consideration of a Town Manager*, not to *Identify or Name a Town Manager*.

At 9:01 a.m., Councilwoman Lowman made a motion to recess into:

Closed Session under NC General Statute 143-318.11(a)(3) to consult with an attorney retained by the Town in order to preserve the attorney-client privilege between the Town attorney and the Town Council, which privilege is hereby acknowledged.

Closed Session Pursuant to NC General Statute 143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee.

Seconded by Councilwoman Ward. The vote was unanimous.

At 10:35 a.m., Councilwoman Lowman made a motion to return to open session, seconded by Councilwoman Ward. The vote was unanimous.

ADJOURNMENT: At 10:37 a.m., there being no further business to come before Council, Councilwoman Ward made a motion to adjourn, seconded by Councilman Harvey. The vote was unanimous.

Town Clerk

Mayor

jl

TOWN OF VALDESE
RESOLUTION
PROHIBITING VIEWING OF PORNOGRPAHY
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 Valdese; and

WHEREAS, the Town of Valdese 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 Valdese:

1. No employees of the Town of Valdese, elected officials, or Town appointees 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 report information required in NCGS §143-805 to the State Chief Information Officer.
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 shall remove, delete or uninstall the pornography no later than January 1, 2025.
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 Board.

9. Any elected official who violates any provision of this policy shall be subject to censure proceedings.

BE IT FURTHER RESOLVED that this Resolution shall become effective on the date of its adoption. This the ____ day of _____, 2025.

Charles Watts, Mayor

ATTEST:

Jessica Lail, Town Clerk

Whereas	Primary Government Unit Town of Valdese
and	Discretely Presented Component Unit (DPCU) (if applicable)
and	Auditor Lowdermilk Church & Co., L.L.P.

entered into a contract in which the Auditor agreed to audit the accounts of the Primary Government Unit and DPCU (if applicable)

for	Fiscal Year Ending	and originally to be submitted to the LGC on	Date
	<input type="text" value="06/30/24"/>		<input type="text" value="10/31/24"/>

hereby agree that it is now necessary that the contract be modified as follows.

<input checked="" type="checkbox"/> Modification to date submitted to LGC <input type="checkbox"/> Modification to fee	Original date 10/31/24	Modified date 12/31/24
	Original fee	Modified fee

Primary (choose 1) Other (choose 0-2)

Reason(s) for Contract Amendment

- Change in scope
- Issue with unit staff/turnover/workload
- Issue with auditor staff/turnover/workload
- Third-party financial statements not prepared by agreed-upon date
- Unit did not have bank reconciliations complete for the audit period
- Unit did not have reconciliations between subsidiary ledgers and general ledger complete
- Unit did not post previous years adjusting journal entries resulting in incorrect beginning balances in the general ledger
- Unit did not have information required for audit complete by the agreed-upon time
- Delay in component unit reports
- Software - implementation issue
- Software - system failure
- Software - ransomware/cyberattack
- Natural or other disaster
- Other (please explain)

Plan to Prevent Future Late Submissions

If the amendment is submitted to modify the date the audit will be submitted to the LGC, please indicate the steps the unit and auditor will take to prevent late filing of audits in subsequent years. Audits are due to the LGC four months after fiscal year end. Indicate NA if this is an amendment due to a change in cost only.

See attached letter

Additional Information

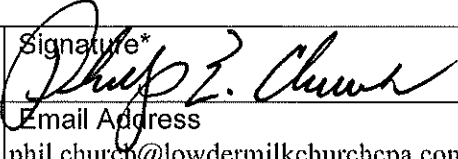
Please provide any additional explanation or details regarding the contract modification.

See attached letter

By their signatures on the following pages, the Auditor, the Primary Government Unit, and the DPCU (if applicable), agree to these modified terms.

SIGNATURE PAGE

AUDIT FIRM

Audit Firm* Lowdermilk Church & Co., L.L.P.	
Authorized Firm Representative* (typed or printed) Phillip E, Church	Signature* 
Date* 12-18-24	Email Address phil.church@lowdermilkchurchcpa.com

GOVERNMENTAL UNIT

Governmental Unit* Town of Valdese	
Date Primary Government Unit Governing Board Approved Amended Audit Contract* (If required by governing board policy)	
Mayor/Chairperson* (typed or printed) Charles Watts	Signature*
Date	Email Address mayor@valdesenc.gov

Chair of Audit Committee (typed or printed, or "NA") NA	Signature
Date	Email Address

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT

(Pre-audit certificate not required for hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

Primary Governmental Unit Finance Officer* Bo Weichel	Signature*
Date of Pre-Audit Certificate*	Email Address* bwcichcl@valdcscnc.gov

**SIGNATURE PAGE – DPCU
(complete only if applicable)**

DISCRETELY PRESENTED COMPONENT UNIT

DPCU	
Date DPCU Governing Board Approved Amended Audit Contract (If required by governing board policy)	
DPCU Chairperson (typed or printed)	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

DPCU – PRE-AUDIT CERTIFICATE
ONLY REQUIRED IF FEES ARE MODIFIED IN THE AMENDED CONTRACT
(Pre-audit certificate not required for hospitals)

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.

DPCU Finance Officer (typed or printed)	Signature
Date of Pre-Audit Certificate	Email Address

2025 Board/Commissions/Committees Appointments

Planning Board/Board of Adjustments (4-year terms)

- One Board seat and two alternate seats (residency in the Town of Valdese required)
Board - Replace unexpired term of Roy Sweezy, seat expiring 12/31/2025.
Alternate - Replace unexpired term of Barry Zimmerman, seat expiring 12/31/2026
Alternate – Replace unexpired term of Cindy Stephens who filled Scott Watts expired term on the Board, seat expiring 12/31/2026.

Requested:

1. Board – Mark Rostan, filling unexpired term of Roy Sweezy, seat expiring 12/31/2025.
Application enclosed
2. Alternate – Benton Brinkley, filling unexpired term of Barry Zimmerman, seat expiring 12/31/2026. Application enclosed
3. Alternate – Jordan Greene, filling unexpired term of Cindy Stephens, seat expiring 12/31/2026. Application enclosed

Facilities Review Committee

- Two seats
Replace unexpired term of Roger Heavner, seat expiring March 4, 2027
Replace unexpired term of Greg Refour, seat expiring March 4, 2025

Requested:

1. Thomas Oxentine – Application Enclosed



TOWN OF VALDESE
Application for Appointment to Boards and Committees

Boards and Committees:

1st Choice: Planning Board

2nd Choice:

Information About Me:

Full Name: John Mark Rostan

Age: 55

Marital Status: Married

Name of Spouse: Leslie

Current Address: 3270 Montanya View Drive, Valdese

Phone Number: 828-261-6275

Email: markrostan@valdeese.com

If Resident of Valdeese, Ward 3 :

How many years: 26 years

If owner or manager of Valdeese property or business, please describe:

Cold Creek Investments, LLC (investment properties and development) and Campfire H

Education and Employment:

Highest Level of Education: MBA - Wake Forest University

Employer: Self-Employed

Occupation Development, Investment, an

Business Address: 201 Main Street East, Valde Business Phone: 828-261-6275

Other Organizations: Blue Ridge Healthcare Foundation; Community Foundation of Burke County; Waldensian Heritage Foundation; Valdeese Fireman's Relief Fund; and Burke Charitable Properties (until end of 2024)

Return to: Town of Valdeese – Town Hall
Attn: Clerk to the Board
P.O. Box 339
Valdeese, NC 28690
Email: jlail@valdesenc.gov

Public Records Statement:

Agreement to the Public Records Statement and a Digital Signature are required to submit your application.

I understand that any information submitted becomes a public record, is NOT confidential, and is subject to North Carolina Public Records Law. This information will be used by the Town Council in making appointments to boards and committees, and it may be used as news release information to identify you to the community.

Upon appointment to serve as a board or committee representative, I understand that I must be impartial and responsible to the board or committee on which I serve. Any board or committee representative's conduct deemed unacceptable by Town Council may result in the dismissal of the representative. I agree to this policy.

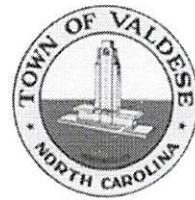
Signature: I certify that the facts contained in this application are true and correct to the best of my knowledge. I understand that nonattendance, without good cause, of meetings of the board or committee on which I serve may be grounds for dismissal by Town Council.


Signature

12/05/2024
Date

TOWN OF VALDESE

Application for Appointment to Boards and Committees



Boards and Committees:

1st Choice: *Valdese Planning Board Alternate*

2nd Choice:

Information About Me:

Full Name: *James Benton Brinkley Jr*

Age: *56*

Marital Status: *Married*

Name of Spouse: *Carol*

Current Address: *1022 Curville St NE Valdese*

Phone Number: *828 310 3422*

Email: *bentonbrinkley@hotmail.com*

If Resident of Valdese, Ward *4*:

How many years: *25*

If owner or manager of Valdese property or business, please describe:

Education and Employment:

Highest Level of Education: *MBA*

Employer: *Brinkley & Associates*

Occupation *Real Estate Broker/Appraiser*

Business Address: *142 Main St E Valdese*

Business Phone: *828 874-2233*

Other Organizations: *Lovelady Masonic Lodge 670 , LPDA*

Return to: Town of Valdese – Town Hall
Attn: Clerk to the Board
P.O. Box 339
Valdese, NC 28690
Email: jlail@valdesenc.gov

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Signature: I certify that the facts contained in this application are true and correct to the best of my knowledge. I understand that nonattendance, without good cause, of meetings of the board or committee on which I serve may be grounds for dismissal by Town Council.

James B Brinkley Jr
Signature

12-9-24
Date

TOWN OF VALDESE

Application for Appointment to Boards and Committees



Boards and Committees:

1st Choice: Planning Board Alternate

2nd Choice:

Information About Me:

Full Name: Jordan N. Greene

Age: 37

Marital Status: Married

Name of Spouse: Hayley B. Greene

Current Address: 909 Mountain View Ave SE Valdese NC 28690

Phone Number: 828-460-4917

Email: jordan.greene87@gmail.com

If Resident of Valdese, Ward 3 :

How many years: 10

If owner or manager of Valdese property or business, please describe:

Education and Employment:

Highest Level of Education: Bachelors Degree

Employer: Black & Associates, LLC

Occupation Financial Advisor/Partner

Business Address: 205 N. King Street Morgant Business Phone: 828-433-1016

Other Organizations:

Return to: Town of Valdese – Town Hall
Attn: Clerk to the Board
P.O. Box 339
Valdese, NC 28690
Email: jlail@valdesenc.gov


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Signature: I certify that the facts contained in this application are true and correct to the best of my knowledge. I understand that nonattendance, without good cause, of meetings of the board or committee on which I serve may be grounds for dismissal by Town Council.



Signature

12/10/2024

Date



TOWN OF VALDESE
Application for Appointment to Boards and Committees

Boards and Committees:

1st Choice: Facilities Review Committee

2nd Choice:

Information About Me:

Full Name: Thomas Heath Oxentine Age: 49
Marital Status: Married Name of Spouse: Haley Lail-Oxentine
Current Address: 758 Abees Grove Church Rd, Valdese, NC
Phone Number: 828-205-6012 Email: toxentine@hotmail.com
If Resident of Valdese, Ward ___: How many years:
If owner or manager of Valdese property or business, please describe:
Property Owner ; 901 Praley St SW, Valdese, NC

Education and Employment:

Highest Level of Education: Associates Degree, Western Piedmont Comm. College
Employer: City of Hickory Occupation Fire Captain
Business Address: 19 2nd St Dr NE, Hickory Business Phone: 828-323-7420
Other Organizations:

Return to: Town of Valdese – Town Hall
Attn: Clerk to the Board
P.O. Box 339
Valdese, NC 28690
Email: jlail@valdesenc.gov

Public Records Statement:

Agreement to the Public Records Statement and a Digital Signature are required to submit your application.

I understand that any information submitted becomes a public record, is NOT confidential, and is subject to North Carolina Public Records Law. This information will be used by the Town Council in making appointments to boards and committees, and it may be used as news release information to identify you to the community.

Upon appointment to serve as a board or committee representative, I understand that I must be impartial and responsible to the board or committee on which I serve. Any board or committee representative’s conduct deemed unacceptable by Town Council may result in the dismissal of the representative. I agree to this policy.

Signature: I certify that the facts contained in this application are true and correct to the best of my knowledge. I understand that nonattendance, without good cause, of meetings of the board or committee on which I serve may be grounds for dismissal by Town Council.

Thomas H Oxentine
Signature

12/5/2024
Date



TOWN OF VALDESE
NORTH CAROLINA'S FRIENDLY TOWN

P.O. BOX 339

VALDESE, NORTH CAROLINA 28690-0339

PHONE (828) 879-2120 | FAX (828) 879-2139 | TOWNOFVALDESE.COM

**AN ORDINANCE DECLARING ROAD CLOSURE
FOR TOWN OF VALDESE SPECIAL EVENTS**

WHEREAS, the Town of Valdese desires to schedule an Independence Day Celebration; Annual Waldensian Festival; Treats in the Streets; and the Annual Valdese Christmas Parade; and

WHEREAS, part of US 70/Main Street in Valdese will need to be closed for each of these special events; and

WHEREAS, G.S. 20-169 provides that local authorities shall have power to provide by ordinance for the regulation of the use of highways by processions or assemblages;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Valdese pursuant to G.S. 20-169 that the following portion of the State Highway System be closed during the times set forth below:

2025 Independence Day Celebration (*Description of Closure: 1.19 mi. US 70 Main St from Hoyle St to Eldred St*) on July 4, 2025 from 5:00 PM until 11:00 PM.

2025 Waldensian Festival Kickoff Celebration (*Description of Closure: 1.19 mi. US 70 Main St from Hoyle St to Eldred St*) on August 8, 2025 from 5:00 PM until 11:00 PM.

2025 Waldensian Festival Celebration (*Description of Closure: 1.19 mi. US 70 Main St from Hoyle St to Eldred St*) on August 9, 2025 from 5:30 AM until 11:00 PM.

2025 Valdese Treats in the Streets (*Description of Closure: 1.19 mi. US 70 Main St from Hoyle St to Eldred St*) on October 31, 2025 from 3:30 PM until 6:30 PM.

2025 Valdese Christmas Parade (*Description of Closure: 1.19 mi. US 70 Main St from Hoyle St to Eldred St*) on December 6, 2025 from 9:30 AM until 12 Noon.

Signs shall be erected giving notice of the limits and times of these street closures as required by G.S. 20-169.

THIS, the 13th day of January, 2025.

Charles Watts, Mayor

ATTEST:

Town Clerk

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
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Town of Valdese
102 Massel Avenue SW
Valdese, NC 28690

and the Contractor:
(Name, legal status, address and other information)

Houck Contracting, LLC
315 Skyline Road
Hickory, NC 28601

for the following Project:
(Name, location and detailed description)

Town of Valdese – Draughn Aquatic Center Structure
213 Massel Avenue SE
Valdese, NC 28690

The Architect:
(Name, legal status, address and other information)

Michael Graves
530 North Trade Street
Suite 301
Winston-Salem, NC 27101

The Owner and Contractor agree as follows.

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.

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.

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.
- 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 two hundred forty days (240) 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 one million, seven hundred ninety-three thousand, nine hundred and thirty dollars (\$ 1,793,930.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
N/A	N/A

§ 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
N/A	N/A

§ 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)
Excavation and off-site removal of unsuitable soil and replacement of off-site backfill (57 stone) compacted	Cu. Yd.	\$260.00

§ 4.5 Liquidated damages, if any:

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

N/A

§ 4.6 Other:

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

N/A

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:

N/A

§ 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 10TH day of the following 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 fifteen (15) 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.)

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.)

N/A

§ 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:

N/A

§ 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.)

N/A % N/A

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.)

N/A

§ 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)

Bo Weichel, Intern Town Manager
PO Box 339 Valdese, NC 28690
828-879-2123
bweichel@valdesenc.gov

§ 8.3 The Contractor’s representative:
(Name, address, email address, and other information)

Chad Houck
Houck Contracting, LLC
PO Box 6235
Hickory, NC 28603
(828) 320-4560
chouck7@gmail.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 a building information modeling exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with a building information modeling exhibit, 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:

- .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
- .4

(Paragraphs deleted)

- .5 Drawings

Number	Title	Date
G0.0	COVER SHEET	9/23/2024
G1.1	CODE SUMMARY	9/23/2024
G1.2	CODE COMPLIANCE PLAN LEVEL 01	9/23/2024
VFE101	EXISTING CONDITIONS	9/23/2024
CSN101	CIVIL SITE PLAN	9/23/2024
CUN101	UTILITY PLAN	9/23/2024
CUN501	UTILITY DETAILS	9/23/2024
A1.1	FLOOR PLAN – DEMOLITION PLAN	9/23/2024
A2.1	FLOOR PLAN – NEW CONSTRUCTION	9/23/2024
A4.1	ELEVATIONS- EXTERIOR	9/23/2024
S1.1	GENERAL NOTES, ABBREVIATIONS, DRAWINGS LEGENDS AND SHEET INDEX	9/23/2024
S2.1	FOUNDATION PLANS	9/23/2024
S2.2	PARTIAL FRAMING PLAN	9/23/2024
S7.1	TYPICAL FOUNDATION DETAILS AND SCHEDULES	9/23/2024
S7.2	TYPICAL REINFORCING AND STEEL DETAILS	9/23/2024
FP1.1	FIRE PROTECTION GENERAL NOTES, LEGENDS, AND DETAILS	9/23/2024
FP2.1	FIRE PROTECTION PLAN	9/23/2024
M1.1	MECHANICAL GENERAL NOTES AND LEGENDS	9/23/2024
M2.1	MECHANICAL PLAN	9/23/2024
E1.01	ELECTRICAL SYMBOLS, ABBREVIATIONS, AND NOTES	9/23/2024

E2.01	ELECTRICAL DEMOLITION	9/23/2024
E3.01	NEW POWER & SIGNAL	9/23/2024
E3.02	NEW LIGHTING	9/23/2024
E3.03	ELECTRICAL RISER DIAGRAM, DETAILS, AND PANEL SCHEDULES	9/23/2024
E4.01	ELECTRICAL SPECIFICATIONS	9/23/2024

.6 Specifications

Section	Title	Date	Pages
See Table of Content	Project Manual Town of Valdese Draughn Aquatic Center Structure	9/23/2024	290

.7 Addenda, if any:

Number	Date	Pages
Addendum 1	10/18/2024	9
Addendum 2	10/29/2024	17
Addendum 3	11/06/2024	8

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.)

N/A

The Sustainability Plan:

Title	Date	Pages
N/A	N/A	N/A

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A	N/A	N/A	N/A

.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.)

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

Init.

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User Notes:

(1196254262)

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

Init.

/

Additions and Deletions Report for AIA® Document A101® – 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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:55:06 ET on 12/02/2024.

PAGE 1

Town of Valdese
102 Massel Avenue SW
Valdese, NC 28690

...

Houck Contracting, LLC
315 Skyline Road
Hickory, NC 28601

...

Town of Valdese – Draughn Aquatic Center Structure
213 Massel Avenue SE
Valdese, NC 28690

...

Michael Graves
530 North Trade Street
Suite 301
Winston-Salem, NC 27101

PAGE 2

A date set forth in a notice to proceed issued by the Owner.

PAGE 3

Not later than two hundred forty days (240) calendar days from the date of commencement of the Work.

...

N/A

N/A

...

§ 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 one million, seven hundred ninety-three thousand, nine hundred and thirty dollars (\$ 1,793,930.00), subject to additions and deductions as provided in the Contract Documents.

...

N/A

N/A

...

N/A

N/A

N/A

...

N/A

N/A

...

<u>Excavation and off-site removal of unsuitable soil and replacement of off-site backfill (57 stone) compacted</u>	<u>Cu. Yd.</u>	<u>\$260.00</u>
---	----------------	-----------------

...

N/A

...

N/A
PAGE 4

N/A

§ 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 10TH day of the following 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 fifteen (15) days after the Architect receives the Application for Payment.

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5%
PAGE 5

N/A

...

N/A

...

N/A

...

N/A

...

N/A % N/A

...

N/A
PAGE 6

Litigation in a court of competent jurisdiction

...

N/A

...

Bo Weichel, Intern Town Manager
PO Box 339 Valdese, NC 28690
828-879-2123
bweichel@valdesenc.gov

...

Chad Houck
Houck Contracting, LLC
PO Box 6235
Hickory, NC 28603
(828) 320-4560
chouck7@gmail.com
PAGE 7

N/A

...

N/A

...

~~.4Building information modeling exhibit, dated as indicated below:
(Insert the date of the building information modeling exhibit incorporated into this Agreement.)~~

...

<u>G0.0</u>	<u>COVER SHEET</u>	<u>9/23/2024</u>
<u>G1.1</u>	<u>CODE SUMMARY</u>	<u>9/23/2024</u>
<u>G1.2</u>	<u>CODE COMPLIANCE PLAN LEVEL 01</u>	<u>9/23/2024</u>
<u>VFE101</u>	<u>EXISTING CONDITIONS</u>	<u>9/23/2024</u>
<u>CSN101</u>	<u>CIVIL SITE PLAN</u>	<u>9/23/2024</u>
<u>CUN101</u>	<u>UTILITY PLAN</u>	<u>9/23/2024</u>
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<u>S2.2</u>	<u>PARTIAL FRAMING PLAN</u>	<u>9/23/2024</u>
<u>S7.1</u>	<u>TYPICAL FOUNDATION DETAILS AND SCHEDULES</u>	<u>9/23/2024</u>

Certification of Document's Authenticity ***AIA® Document D401™ – 2003***

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:55:06 ET on 12/02/2024 under Order No. 2114432809 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Town of Valdese – Draughn Aquatic Center Structure
213 Massel Avenue SE
Valdese, NC 28690

THE OWNER:

(Name, legal status and address)

Town of Valdese
102 Massel Avenue SW
Valdese, NC 28690

THE ARCHITECT:

(Name, legal status and address)

Michael Graves
530 North Trade Street
Suite 301
Winston-Salem, NC 27101

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10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK

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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User Notes:

(1383034450)

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

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User Notes:

(1383034450)

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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.

§ 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

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.

§ 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,

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

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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 3.1.4.

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§ 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.

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§ 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.

§ 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.

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§ 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;

- .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

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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

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.

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§ 12.2.2 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.

§ 12.2.3 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.

§ 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.

Init.

§ 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.

Init.

§ 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.

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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:01:47 ET on 12/02/2024.

PAGE 1

Town of Valdese – Draughn Aquatic Center Structure
213 Massel Avenue SE
Valdese, NC 28690

...

Town of Valdese
102 Massel Avenue SW
Valdese, NC 28690

...

Michael Graves
530 North Trade Street
Suite 301
Winston-Salem, NC 27101

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:01:47 ET on 12/02/2024 under Order No. 2114432809 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Capital Project Ordinance Amendment # 1-31

Subject: Pool Structure

Description: This amendment to the project budget is to account for the revenue and expenditure associated with construction.

Proposed Action:

BE IT ORDAINED by the Council of the Town of Valdese that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the capital project ordinance for various capital projects funded from a variety of sources is hereby amended as follows.

Section I:

Revenues available to the Town to complete the projects are hereby amended as follows:

Account	Description	Decrease/ Debit	Increase/ Credit
31.3970.000	Transfer from General Fund		1,016,930
31.3970.001	NC Grant		500,000
31.3970.002	Private Donor Grant Match		100,000
31.3970.003	Capital Campaign		300,000
Total		\$0	\$1,916,930

Amounts appropriated for capital projects are hereby amended as follows:

Account	Description	Increase/ Debit	Decrease/ Credit
31.6200.740	Construction	1,793,930	
31.6200.741	ADA	123,000	
Total		\$1,916,930	\$0

Section II:

Copies of this budget amendment shall be furnished to the Clerk to the Governing Board, to the Budget Officer and the Finance Officer for their direction.

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: Town of Valdese

County: Burke

TIP: BL-0140A

Project: Lovelady Road Sidewalk

Scope: construction of sidewalk on Lovelady Road from Laurel Street to Crescent Street.

Eligible Activities:

PE	51529.1.2	Design
		Environmental
CON	51529.3.2	Construction
OTHER	_____	
FEDERAL-AID	5152902	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
STBG-DA	\$1,144,800	80 %	\$286,200	20 %
Total Available Funding			\$1,431,000	

Responsibility: The Town of Valdese shall be responsible for all aspects of the project.

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT -
FEDERAL**

BURKE COUNTY

DATE: 12/17/2024

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: BL-0140A

AND

WBS Elements: PE 51529.1.2

CON 51529.3.2

TOWN OF VALDESE

FEDERAL-AID NUMBER: 5152902

CFDA #: 20.205

Total Funds [NCDOT Participation] \$1,144,800

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Valdese, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Infrastructure Investment and Jobs Act (IIJA) allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for Lovelady Road Sidewalk, hereinafter referred to as the Project, in Burke County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$1,144,800 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved State Transportation Improvement Program (STIP) for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General

Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;

- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of construction of sidewalk on Lovelady Road from Laurel Street to Crescent Street.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Design

- Environmental Documentation
- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is STBG-DA. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse eighty percent (80%) of eligible expenses incurred by the Municipality up to a maximum amount of One Million One Hundred Forty Four Thousand Eight Hundred Dollars (\$1,144,800), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
STBG-DA	\$1,144,800	80%	\$286,200	20%
Total Available Funding		\$1,431,000		

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside, but is not limited to ten percent (10%) of the total available funding, or \$143,100, to use towards

the costs related to review and oversight of this Project. These costs may include but are not limited to: review and approval of plans, environmental documents, contract proposals, and engineering estimates; performance of any phase of work, for example, contract administration or construction engineering and inspection; oversight of any phases; or any other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

4. PERIOD OF PERFORMANCE

COMPLETION DATE

The Municipality has five (5) years to complete all work outlined in the Agreement from the date of authorization of Federal funds for the initial phase of work. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

MILESTONE DATES AND REVISIONS

The Municipality is responsible for regularly updating project milestones throughout the life of the project. If project milestones are near (or have passed without completion) and have not been updated to a realistic schedule by the Municipality, the Department reserves the right to revise the milestones accordingly. Revisions by the Department could lead to milestones being pushed into another fiscal year resulting in a change to the STIP. The Department is not responsible for project delays caused by these milestone revisions.

EXTENDING COMPLETION DATE

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department may allow up to three additional months for submission of final reimbursement package by the Municipality, without entering into a supplemental agreement. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64.31; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.
- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional

Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The Municipality shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.
- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4,

incorporated in this Agreement by reference at <https://www.ncleg.gov/Laws/GeneralStatutes> and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B

and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at <https://www.ncleg.gov/Laws/GeneralStatutes> ; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at <https://www.ncleg.gov/Laws/GeneralStatutes>.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference

<https://connect.ncdot.gov/resources/Specifications/Pages/2024-Specifications-and-Special-Provisions.aspx>.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at <https://connect.ncdot.gov/projects/construction/pages/construction-manual.aspx>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Lovelady Road Sidewalk, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Design
- Environmental Documentation
- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$1,144,800 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the total available funding.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the

Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the

Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

TOWN OF VALDESE

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

Town of Valdese

Remittance Address:

DEPARTMENT OF TRANSPORTATION

BY: _____

(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)

TOWN OF VALDESE
LOVELADY RD. SIDEWALK-PHASE I
CAPITAL PROJECT ORDINANCE

Be it ordained by the Town Council of the Town of Valdese that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following project ordinance is hereby adopted.

Section 1. The project authorized is the Lovelady Rd. Sidewalk – Phase I. The Town has received federal funding from the Federal Highway Administration, provided on a reimbursement basis through the NCDOT’s Surface Transportation Block Grant Program (STBG-DA) in the amount of \$1,144,800 with a local match of \$286,200 from the General Fund. Included in this project is preliminary engineering and design, environmental, and construction of a sidewalk on Lovelady Road spanning from Laurel Street. to Crescent Street.

Section 2. The officers of this unit are hereby directed to proceed with the capital project within the terms of the program ordinance and the budget contained herein.

Section 3. The following revenues are anticipated to be available to contribute to this project:

<u>Source</u>	<u>Amount</u>	<u>Assigned Account Number</u>
Grant	\$ 1,144,800	63.3970.000
Transfer From General Fund	286,200	63.3970.001

	\$ 1,431,000	
	=====	

Section 4. The following amounts are appropriated for the project:

<u>Source</u>	<u>Amount</u>	<u>Assigned Account Number</u>
Design & Construction	\$ 1,431,000	63.4200.000

	\$ 1,431,000	
	=====	

Section 5. The finance officer is hereby directed to maintain within the Project Fund sufficient specific detailed accounting records to provide the accounting to town council required by the program procedures, loan agreement(s), grant agreement(s) and state regulations.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due.

Section 7. The finance officer is directed to report quarterly on the financial status of each

project element in Section 4 and on the total revenues received or claimed.

Section 8. The budget officer is directed to include a detailed analysis of the past and future cost and revenues on this project in every budget submission made to this board.

Section 9: Copies of this project ordinance shall be made available to the budget officer and the finance officer for direction in carrying out this project.

Adopted this 13th day of January 2025.

Charles Watts, Mayor

Jessica Lail, Town Clerk