



**ELIZABETHTOWN
COUNCIL
REGULAR MEETING**
7:00 PM, Monday, February 3, 2025

1. OPENING AND CALL TO ORDER
 - 1.1 Opening and Call to Order
Mayor Sylvia Campbell will call the meeting to order.
2. PRESENTATION OF COLORS, PLEDGE OF ALLEGIANCE AND INVOCATION
 - 2.1 Presentation of Colors, Pledge of Allegiance and Invocation
Cadets from the Paul R. Brown Leadership Academy will present the Colors and all will join in reciting the Pledge of Allegiance.
3. APPOINTMENT AND OATH OF OFFICE - NEW TOWN COUNCIL MEMBER
 - 3.1 Appointment and Oath of Office - New Town Council Member
Council is requested to approve the new Town Council member appointment at the Noon meeting.
4. APPROVE CONSENT AGENDA ITEMS
 - 4.1 Approve Consent Agenda Items
Council is requested to approve the Consent Agenda items presented.
[Consent Agenda Documentation - 2.3.25.pdf](#)
5. PRESENTATIONS
 - 5.1 Special Presentation to Communications & Marketing Director Terri Dennison
Council is requested to hear the presentation.
 - 5.2 Town Manager Update
Council is requested to hear the updates.
6. ADMINISTRATIVE MATTERS

- 6.1 Community Development Block Grant (CDBG) No. 18-D-3095 (NR-Contingency) - Grant Agreement and Funding Approval - \$4,400,000.00
Council is requested to approve the grant documents for the C1 Vulcan Air Manufacturing Facility project.

[CDBG Grant Agreement, Funding Approval and Signatory Form and Certification.pdf](#)

- 6.2 Authorization to Terminate EDA Award #04-79-07892 for Convenience
Council is requested to approve the termination of the EDA Award #04-79-07892 for convenience.

- 6.3 Audit Contract - Thompson, Price, Scott, Adams & Co., P.A.
Council is requested to approve the Contract to Audit Accounts.
[6-30-2025 Audit Contract.pdf](#)

- 6.4 Design-Build Contract with Metcon, Inc. - Vulcan Air Manufacturing Facility
Council is requested to approve the Design-Build Contract with Metcon, Inc. in the amount of \$155,000.00 and to authorize Town Manager Dane Rideout to sign all documentation for this project.
[Design Build Contract with Metcon - 2.3.25.pdf](#)

- 6.5 Roster of Certified Firefighters and Relief Fund Board of Trustees
Council is requested to approve the Certified Firefighters' Roster and Relief Fund Board of Trustees.
[Certified Firefighters' Roster - 2.3.2025.pdf](#)
[NCGS - Certification of Firefighters - 2.3.2025.pdf](#)

7. OTHER BUSINESS

- 7.1 "Briefly" (*Reminders and announcements are made at this time*)
Town Manager Dane Rideout may be called upon to present this agenda item.
[Peak Agenda - Briefly - 2.3.2025.docx](#)
[Department Head Update Report - 2.3.2025.pdf](#)

8. OPEN FORUM

- 8.1 Open Forum
Council is requested to listen to any public concerns or comments received.
[Sign-In Sheet - Open Forum - February 3, 2025 Regular Meeting.docx](#)

9. CLOSED SESSION

- 9.1 Closed Session - ***To Be Conducted at the Noon Meeting***
Mayor Sylvia Campbell will entertain a motion and a second to enter into Closed Session in accordance with NCGS 143-318.11(a)(3) - Attorney-Client Privilege.

10. ADJOURNMENT

10.1 Adjournment

Mayor Sylvia Campbell will entertain a motion and a second to adjourn.



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: OPENING AND CALL TO ORDER

SUBJECT: Opening and Call to Order

BACKGROUND:

SUGGESTED ACTION: Mayor Sylvia Campbell will call the meeting to order.

ATTACHMENTS:



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: PRESENTATION OF COLORS, PLEDGE OF ALLEGIANCE AND INVOCATION

SUBJECT: Presentation of Colors, Pledge of Allegiance and Invocation

BACKGROUND: The presentation of Colors will be made by Cadets from the Paul R. Brown Leadership Academy. All will join in to recite the Pledge of Allegiance.

The Invocation will then be given.

SUGGESTED ACTION: Cadets from the Paul R. Brown Leadership Academy will present the Colors and all will join in reciting the Pledge of Allegiance.

ATTACHMENTS:



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: APPOINTMENT AND OATH OF OFFICE - NEW TOWN COUNCIL MEMBER

SUBJECT: Appointment and Oath of Office - New Town Council Member

BACKGROUND: At the Noon meeting, Town Council will vote on the new Town Council member appointment. At the 7 p.m. meeting, the new Town Council member will be sworn in by Bladen County Clerk of Superior Court Cristin Hursey.

SUGGESTED ACTION: Council is requested to approve the new Town Council member appointment at the Noon meeting.

ATTACHMENTS:



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: APPROVE CONSENT AGENDA ITEMS

SUBJECT: Approve Consent Agenda Items

BACKGROUND: A Consent Agenda includes several items for approval by the Board in a single motion. Documentation concerning these items are provided in the attached agenda material. Upon request from any one Board member, any item listed under the Consent Agenda shall be removed from the Consent Agenda and considered separately. After any items have been removed and the Consent Agenda is set, the Mayor will state the items on the Consent Agenda and moves to adopt it.

Consent Agenda Documentation provided.

SUGGESTED ACTION: Council is requested to approve the Consent Agenda items presented.

ATTACHMENTS:

[Consent Agenda Documentation - 2.3.25.pdf](#)



**February 3, 2025 Town Council Meeting
Consent Agenda Items**

- A. Proposed Agenda – Agenda considered *proposed* until approved by the Board
ACTION RECOMMENDED: Approval
- B. January 6, 2025 Noon Meeting Minutes **ATTACH. #B**
ACTION RECOMMENDED: Approval
- C. January 6, 2025 7 p.m. Meeting Minutes **ATTACH. #C**
ACTION RECOMMENDED: Approval
- D. January 6, 2025 Closed Session Minutes – Noon **ATTACH. #D**
ACTION RECOMMENDED: Approval
(To Be Provided at the Evening Meeting)
- E. Monthly Financial Report **ATTACH. #E**
ACTION RECOMMENDED: Approval
- F. Unpaid Tax Report for Years 2014-2024 – **ATTACH. #F**
Liens on Real Property
ACTION RECOMMENDED: Approval

UNOFFICIAL

TOWN OF ELIZABETHTOWN
January 6, 2025 Regular Meeting
Noon Meeting

The Elizabethtown Town Council met on Monday, January 6, 2025 at 12 o'clock Noon in the Council Chambers. Those present were Mayor Sylvia Campbell, Mayor Pro Tem Rufus Lloyd, Council Members Rich Glenn, Paula Greene, Ricky Leinwand and Herman Lewis. Also present were Town Manager Dane Rideout and Town Attorney Goldston Womble. Department Heads in attendance included Assistant Town Manager Pat DeVane, Planning Director Rusty Worley, Finance Director Sharon Penny, Public Works/Engineering Services Director Steve Duffy, Director of Communications and Marketing Terri Dennison, Police Chief Mark McMichael, Fire Chief Hollis Freeman and Town Clerk Juanita Hester. There were no representatives from the Press. Mr. Byron Scott was in attendance to present the FY 6/30/2024 Audit. Ms. Brenda Clark and Mrs. Nancy Willis were also in attendance.

Item #1.1 Opening and Call to Order

Mayor Sylvia Campbell opened the meeting and called to order.

Mayor then called upon Mayor Pro Tem Rufus Lloyd to give the invocation.

At this time, Mayor Sylvia Campbell presented a \$200.00 check to Ms. Crissie Cox with Families First. Proceeds were received from the 2024 Christmas Tree Grove fundraiser.

Item #2.1 Presentation of Colors, Pledge of Allegiance and Invocation

The presentation of Colors will be made by the Paul R. Brown Leadership Academy Cadets at the evening meeting.

Item #3.1 Approve Consent Agenda Items

Action on this agenda item will be taken at the 7 p.m. meeting.

Item #4.1 Public Hearing – 2020 Elizabethtown CDBG-NR Program Close-out

Town Manager Dane Rideout briefed on the purpose of the Public Hearing. The Public Hearing will be conducted at the 7 p.m. meeting.

Item #5.1 Audit Presentation for FY Ending 6/30/2024 – Noon Meeting

Mr. Bryon Scott with Thompson, Price, Scott & Adams presented the Fiscal Year ending 6/30/24 Audit Report. The Town received an exceptionally good Audit. Mr. Scott answered several questions received from Council members.

Item #5.2 Town Manager Update

Both Town Manager Dane Rideout and Planning Director Rusty Worley gave project updates.

Item #5.3 Christmas Tree Grove Contribution Presentation

Presentation of a \$200.00 check was made at the beginning of the meeting to Ms. Crissie Cox with Families First.

Item #6.1 Acceptance/Approval of the Audit Report for Fiscal Year ending 6/30/2024

ATTACH. #B

Action on this agenda item will be taken at the 7 p.m. meeting.

Item #6.2 Water and Sewer Bid for Corporate Airpark

Mayor Campbell called upon Planning Director Rusty Worley to brief Council. Action on this agenda item will be taken at the 7 p.m. meeting.

Item #6.3 Appointment: Relief Fund Board of Trustees Appointed by Local Government

Fire Chief Hollis Freeman noted that both Mr. Wayne Edge and Mr. Larry Richards had expressed an interest in serving another term. Action will be taken at the 7 p.m. meeting.

Item #6.4 Appointment: Elizabethtown Recreation Commission

Action on this agenda item will be taken at the 7 p.m. meeting.

Item #7.1 "Briefly" (Reminders and announcements are made at this time)

Town Manager Dane Rideout outlined upcoming event dates and the MLK holiday closing for the Town.

Item #8.1 Open Forum

Any concerns from citizens will be taken by Town Council at the 7 p.m. meeting.

Item #9.1 Closed Session - To Be Conducted at Noon Meeting

A motion was made by Council Member Paula Greene, seconded by Council Member Rich Glenn, to enter into Closed Session in accordance with NCGS 143-318.11(a)(3) – Attorney-Client Privilege and NCGS 143-318.11(a)(6) – Personnel (Unanimous).

RETURN FROM CLOSED SESSION TO OPEN SESSION:

A motion was made by Council Member Rich Glenn, and seconded by Council Member Paula Greene, to return from Closed Session to Open Session (Unanimous).

Action will need to be taken at the next regular scheduled Town Council meeting for appointment of a new Town Council member.

With no further business to conduct, Council Member Herman Lewis, seconded by Council Member Rich Glenn, made a motion to adjourn the meeting (Unanimous).

Sylvia Campbell, Mayor

ATTEST:

Juanita Hester, Town Clerk

TOWN OF ELIZABETHTOWN

Evening Meeting

January 6, 2025

The Elizabethtown Town Council met for its regular meeting on Monday, January 6, 2025, in the Council Chamber at 7:00 pm. Those present were Mayor Sylvia Campbell, Council Members Ricky Leinwand, Paula Greene, Rich Glenn, Herman Lewis, Town Manager Dane Rideout and Town Attorney Goldston Womble. Department Heads in attendance included Assistant Town Manager Pat DeVane, Town Planner Rusty Worley, Finance Director Sharon Penny, Director of Communications and Marketing Terri Dennison, Fire Chief Hollis Freeman, Police Chief Mark McMichael, Public Works Engineering Director Stephen Duffy and Town Clerk Juanita Hester. Absent: Mayor Pro Tem Rufus Lloyd. No members from the Press attended the meeting. Ms. Brenda Clark was in attendance.

Item #1.1: Opening and Call to Order

Mayor Sylvia Campbell opened the meeting and called to order. She welcomed everyone.

Item # 2.1: Presentation of Colors, Pledge of Allegiance and Invocation

Presentation of Colors and the Pledge of Allegiance were given by Paul R. Brown Leadership Academy Cadets. Mayor Sylvia Campbell then gave the invocation.

Item #3.1: Approve Consent Agenda Items

Upon a motion by Council Member Rich Glenn, seconded by Council Member Herman Lewis, the Board unanimously approved the following Consent Items as presented. A. Proposed Agenda, B. December 2, 2024 Noon Meeting Minutes, C. December 2, 2024 7 p.m. Meeting Minutes, D. December 2, 2024 Closed Session – Noon, E. Monthly Financial Report, F. Budget Amendment #2025-02, G. Tax Releases.

Item #4.1: Public Hearing: 2020 Elizabethtown CDBG-NR Program Close-out

Mayor Campbell opened the public hearing and called upon Mrs. Tammy Jones Daniels, with The Adams Company to present. Mrs. Daniels noted that the Town was originally funded \$750,000.00. The original project included \$415,000 to rehabilitate 3 homes, \$260,000 to renovate a park, and \$75,000 for grant administration. Amendment #1 was requested and approved by the Department of Commerce to increase the total project budget to \$950,000, add 1 new home, and change the park renovation to pedestrian improvements. The final project included \$511,446.90 rehabilitation to reconstruct 2 homes and rehabilitate 1, \$333,623.65

pedestrian improvements to install sidewalk and street lighting along W. Dunham Street from Martin Luther King Drive to Highway 701, \$93,695.18 Administration, total grant funds expended \$938,765.73, deobligated \$11,234.27 and LMI of completed project 82.20%. Ms. Brenda Clark signed up to speak. With her question about the \$4 million grant request at the 12/2/24 Town Council meeting, Town Manager Dane Rideout responded. Mayor Campbell then closed the public hearing.

Item #5.1: Audit Presentation for FY Ending 6/30/2024.

This agenda item was presented at the Noon meeting.

Item #5.2: Town Manager Update

- Town Planner Rusty Worley noted that the Community Center building color is approved and ordered.
- Assistant Town Manager Pat DeVane noted that there was a Safe Street tour.
- There were 2 public meetings: December 12, 2024 at Town Hall and December 14, 2024 at Paul R. Brown Leadership Academy to identify transportation safety concerns and seek input from members of New Town.
- There will be a report in March.
- Town Manager Dane Rideout noted that he appreciates the support of the New Town Community. This is a great investment for the New Town Community.

Item #5.3: Christmas Tree Grove Contribution Presentation

Director of Communications and Marketing Terri Dennison noted that 9 Christmas trees were decorated by local businesses and organizations as part of the Christmas Tree Grove at the Farmers Market as a fundraiser for a local charity. The "Old Fashion Christmas Tree" decorated by Mrs. Betty Tatum won the popularity vote. This year \$200.00 was raised for Families First.

Item #6.1: Acceptance/Approval of the Audit Report for Fiscal Year ending 6/30/24

Council Member Herman Lewis, seconded by Council Member Ricky Leinwand, made a motion to approve the Audit Report for Fiscal Year ending June 30, 2024 (Unanimous). Copy attached and incorporated herein by reference.

Item #6.2: Water and Sewer Bid for Corporate Airpark

Town Planner Rusty Worley noted that there will be 5 different phases, Hickman Utilities cost estimate is \$219,711.22. Council Member Rich Glenn, seconded by Council Member Herman Lewis, made a motion to approve the cost estimate from Hickman Utilities. (Unanimous). Copy attached and incorporated herein by reference.

Item #6.3: Appointment: Relief Fund Board of Trustees Appointed by Local Government

Council Member Ricky Leinwand, seconded by Council Member Rich Glenn, made a motion to re-appoint Mr. Wayne Edge to serve a one-year term and Mr. Larry Richards a two-year term (Unanimous).

Item #6.4: Appointment: Elizabethtown Recreation Commission

Council Member Rich Glenn, seconded by Council Member Herman Lewis, made a motion to appoint Mr. Hasting McGill to serve on the Elizabethtown Recreation Commission with a term of office to expire January 6, 2029 (Unanimous).

Item #7.1: "Briefly"

- Town Manager Dane Rideout briefed on the following:
- The Town had the best Audit, Fund Balance is the highest it's ever been. Thanks to the Finance Director and staff for what they do.
- Take a look at the Department Head Updates.
- January 14, 2025 Airport meeting at 7:30 a.m. at the Airport Terminal.
- The Martin Luther King Jr. Parade is January 20, 2025 at 11:00 a.m.
- The Chamber Award Gala is February 1, 2025 from 6:00 - 10:00 p.m. at Cape Fear Winery.
- Town's Annual Budget Retreat is February 25, 2025 at the Airport Terminal Building.
- Admin. Asst./Deputy Clerk/CTC Beverly Robinson celebrated her birthday January 5, 2025.
- A major Airline will have flight training at the Airport.

Item #8.1: Open Forum

Mr. Leroy Churchill with VFW is asking the Town for a donation for Desert Storm Vets. He is trying to have a membership drive to recruit Vets. There are over 3,000 Veterans.

With no further business to conduct, Council Member Herman Lewis, seconded by Council Member Rich Glenn, moved to adjourn (Unanimous).

Sylvia Campbell, Mayor

ATTEST:

Beverly Robinson, CTC/Admin Asst/DTC

ELIZABETHTOWN as of January 30, 2025

BUDGET & FINANCE SNAPSHOT

FISCAL YEAR 2024-2025 REVENUES

58% of Year Completed

Revenue Sources	Fiscal Year Budget	Actual Y-T-D as of 1-30-2025	% of Budget	Prior Year Actual-to-Date 1-31-2024
GENERAL FUND				
Ad Valorem & BID Taxes	1,973,465.00	1,977,568	100.2%	1,730,305
Vehicle Taxes	198,000.00	83,086	42.0%	91,144
Local Option Sales Taxes	850,000.00	288,885	34.0%	286,961
Utility Franchise Taxes	302,000.00	97,222	32.2%	86,039
ABC Revenue	105,000.00	52,500	50.0%	52,500
Powell Bill	120,000.00	135,006	112.5%	123,086
Bladen Fire District	256,909.00	81,500	31.7%	61,500
Street Improvement Loan	0.00	0	0.0%	0
Solid Waste fees	1,374,000.00	784,997	57.1%	679,419
Permits & Fees	48,635.00	30,924	63.6%	33,005
Rental Income	113,200.00	29,128	25.7%	31,615
Interest Income	180,000.00	113,771	63.2%	178,602
Salary & Admin. Reimbursements	0.00	0	0.0%	5,718
Miscellaneous Revenues	197,447.00	171,819	87.0%	39,226
Restricted Grants & Donations	110,000.00	47,000	0.0%	0
General Fund Balance Approp.	139,683.00	0	0.0%	0
TOTAL GENERAL FUND	5,968,339.00	3,893,405	65.2%	3,399,120
WATER FUND				
Water fees	871,400.00	575,758	66.1%	501,177
Sewer fees	1,053,400.00	690,833	65.6%	606,883
Miscellaneous Revenue	145,000.00	92,353	63.7%	92,022
Utility Fund Balance Approp.	0.00	0	0.0%	0
TOTAL WATER FUND	2,069,800.00	1,358,944	65.7%	1,200,082

ATTACH. #E

BUDGET & FINANCE SNAPSHOT

FISCAL YEAR 2024-2025 EXPENDITURES

Department	Fiscal Year Budget	Actual Y-T-D as of 1-30-2025	% of Budget	Prior Year Actual-to-Date 1-31-2024
Governing Body	42,213.00	26,135	61.9%	35,166
Administration	578,962.00	306,949	53.0%	325,798
Finance	236,750.00	128,921	54.5%	150,306
Public Works	770,010.00	422,565	54.9%	441,599
Technology	86,300.00	44,126	51.1%	29,178
Public Facilities	239,876.00	178,747	74.5%	33,536
Police	1,304,093.00	730,435	56.0%	711,946
Fire	927,262.00	576,569	62.2%	622,920
Streets	131,388.00	128,911	98.1%	40,142
Powell	287,149.00	145,703	50.7%	111,321
Street Improvement Loan Project	0.00	0	0.0%	906,089
Solid Waste	768,000.00	259,873	33.8%	279,325
Planning & Economic Develop.	143,021.00	93,866	65.6%	87,004
Recreation	34,750.00	8,033	23.1%	29,418
Farmers' Market	25,243.00	23,748	0.0%	1,108
Airport	29,920.00	6,621	22.1%	57,375
Special Appropriations	253,402.00	99,402	39.2%	79,402
Restricted Grants & Donations	110,000.00	38,863	35.3%	0
GENERAL FUND TOTAL	5,968,339.00	3,219,466	53.9%	3,941,633
WATER FUND				
Water	937,532.00	442,867	47.2%	426,866
Sewer	1,032,268.00	529,239	51.3%	429,866
Tank Maintenance & Transfer Out	100,000.00	58,333	58.3%	58,333
WATER FUND TOTAL	2,069,800.00	1,030,439	49.8%	915,065

REVENUE OVER/(UNDER) EXPENDITURES

GENERAL FUND	0.00	673,939	(542,513)	363,576
WATER FUND	0.00	328,505	285,017	
TOTAL COMBINED FUNDS	0.00	1,002,444	(257,496)	648,593

MEMORANDUM

TO: Dane Rideout, Town Manager
FROM: Beverly Robinson, Certified Tax Collector/Admin Assistant/Deputy Town Clerk *BR*
SUBJECT: Unpaid Tax Report
DATE: January 30, 2025

Listed below is the breakdown of the amounts and years 2014-2023 that have been charged and advertised and left on the books. The amount for 2024 to be charged with and advertised in March is \$177,834.20.

2014	\$ 293.86
2015	\$ 735.87
2016	\$1,419.63
2017	\$ 21,806.59
2018	\$ 25,242.65
2019	\$ 6,173.49
2020	\$ 4,572.60
2021	\$ 8,311.51
2022	\$ 14,404.74
2023	\$ 40,945.27
2024	\$ 177,834.20

ATTACH. #F



Item Cover Page

COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: PRESENTATIONS

SUBJECT: Special Presentation to Communications & Marketing Director Terri Dennison

BACKGROUND: Mayor Sylvia Campbell will present to Communications & Marketing Director Terri Dennison an engraved plaque recognizing her service to the Town since October 2019. Mrs. Dennison will be leaving employment with the Town. She will be the Director of the Small Business Center at Bladen Community College, and we wish Mrs. Dennison well in her new job. Mrs. Dennison has transformed our Elizabethtown community!

SUGGESTED ACTION: Council is requested to hear the presentation.

ATTACHMENTS:



Item Cover Page

COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: PRESENTATIONS

SUBJECT: Town Manager Update

BACKGROUND: Either Town Manager Dane Rideout and/or Assistant Town Manager Pat DeVane may be called upon to present project updates and other important items of interest.

SUGGESTED ACTION: Council is requested to hear the updates.

ATTACHMENTS:



Item Cover Page

COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: ADMINISTRATIVE MATTERS

SUBJECT: Community Development Block Grant (CDBG) No. 18-D-3095 (NR-Contingency) - Grant Agreement and Funding Approval - \$4,400,000.00

BACKGROUND: Town Manager Dane Rideout may be called upon to present this agenda item.

The required Public Hearings for this grant funding were conducted on August 5, 2024.

Copy of Grant Agreement, Funding Approval and Signatory Form and Certification provided.

SUGGESTED ACTION: Council is requested to approve the grant documents for the C1 Vulcan Air Manufacturing Facility project.

ATTACHMENTS:
[CDBG Grant Agreement, Funding Approval and Signatory Form and Certification.pdf](#)



Community Development Block Grant *Neighborhood Revitalization Program*

Upon execution of this grant agreement, the North Carolina Department of Commerce (DOC) agrees to provide to the **Town of Elizabethtown**, (the "Recipient" and collectively with DOC, the "Parties"), Community Development Block Grant (CDBG) assistance under Title I of the Housing and Community Development Act of 1974, (P.L. 93-383), as amended, authorized (and subject to Recipient's compliance with) the DOC funding approval, the North Carolina Community Development Block Grant administrative rules, other applicable laws, rules, regulations, and all other requirements of DOC now or hereafter in effect. The grant agreement is effective on the date the grant agreement and funding approval are signed by the Recipient. The grant agreement consists of the program guidelines and the approved application, including the certifications, maps, schedules and other submissions in the application, any subsequent amendments to this document or the approved application and funding approval and the following general terms and conditions:

1. **Definitions.** Except to the extent modified or supplemented by the agreement, any term defined in the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L, shall have the same meaning when used herein.
 - (a) Agreement means this grant agreement, as described above and any amendments or supplements thereto.
 - (b) Recipient means the **Town of Elizabethtown**, the entity designated as a recipient for grant assistance in the grant agreement and funding approval.
 - (c) Certifications mean the certifications submitted with the grant application pursuant to the requirements of Paragraph (e) of Rule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L.
 - (d) "Assistance" or "Grant" means the grant funds provided under this Agreement from funds allocated to the State of North Carolina from the Federal Treasury through the CDBG and supporting laws, rules, requirements, and regulations, in the amount of **\$4,400,000** except as modified.
 - (e) Program means the community development program, project, or other activities, including the administration thereof, for which assistance is being provided under this Agreement and which is described in the Recipient's approved application, as may be modified.
 - (f) The date for receiving the grant means the date of the REDD CDBG Director's signature on the Grant Agreement and Funding Approval.

2. Timely Execution. Due to the need to expedite the use and expenditure of CDBG funds, Recipient's failure to execute and return a copy of the Agreement within 60 days of the date of the REDD CDBG Director's signature on the Grant Agreement and Funding Approval may be deemed by DOC to determine the funds are available for reallocation to other subrecipients.

3. Obligations of the Recipient. The recipient shall perform the Program as specified in the application approved by DOC as may be amended with DOC approval. The Recipient hereby certifies that it will comply with all applicable federal and state laws, regulations, rules, and Executive Orders, pursuant to Paragraph (e) of Rule .0407 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L. The Recipient shall also comply with all other lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina specifically N. C. G. S. 87-1-87-15.9 and any other applicable laws, rules, regulations, requirements, and Executive Orders currently or hereafter in force. Recipient is prohibited from any fraud, waste, and abuse of CDBG funds by any person or entity. The rules contained in 4 N.C.A.C. 19L (as well as applicable federal rules and regulations) are part of the Agreement, except where specifically modified by applicable law, rule, regulation, DOC, the CDBG HUD Program Requirements and any subsequent amendments, regulations, or clarifications to any of the foregoing.

Additionally, Recipient agrees to ensure compliance with respect to the Program and the Grant (and any of its proceeds) with all applicable federal and state laws, rules, regulations and requirements, including but not limited to the following (as each may be modified or amended): (1) the CDBG HUD Program Requirements; (2) Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq*), (3) existing CDBG laws, rules, regulations and requirements, as may be amended, including those set forth in 24 C.F.R., Part 570; (4) North Carolina laws, rules, regulations and requirements; (5) DOC guidance and requirements regarding CDBG now or hereafter in effect, including but not limited to: DOC's CDBG Guidelines and Application Instructions, and DOC bulletins or other guidance documents; and (6) Recipient's own approved CDBG application to DOC, as may be amended with DOC approval.

4. Obligations of Recipient with Respect to Certain Third-Party Relationships. Recipient is responsible to DOC for ensuring compliance with the provisions of this Agreement and all applicable laws, rules, regulations, and requirements, even when the recipient designates a third party or parties to undertake all or any part of the Program. The Recipient shall comply with all lawful requirements of DOC necessary to ensure that the program is carried out in accordance with the Recipient's certifications including but not limited to the certification of assumption of environmental responsibilities under Rule .1004 of the North Carolina Community Development Block Grant Administrative Rules, 4 NCAC 19L. If the Recipient contracts with or designates a third party to undertake all or part of the Program, the Recipient's contract with the third party must require the third party to comply with this Agreement, all applicable laws, rules, regulations, and requirements, including but not limited to the procurement standards set forth in 4 N.C. Administrative Code 19L .0908 as may be applicable.

Recipient shall likewise ensure that all subrecipient contracts regarding Grant funds or relating to the Program include all required contractual elements in order to be in compliance with all Federal, State and local laws, including but not limited to the provisions

contained in 24 C.F.R. § 570.503, 24 C.F.R. § 85.37, and other provisions described throughout this Agreement, where applicable. In any event, the Recipient is liable to DOC and HUD for any improper expenditures, damage, loss, or harm resulting from the failure of any person or entity to comply with any applicable law, rule, regulation, or requirement regarding the Grant funds and/or the Program, including but not limited to an act or omission by a subrecipient or other third party. The Recipient agrees to periodically and rigorously monitor and audit its subrecipients and other third parties to ensure compliance with all applicable requirements.

Any subcontracts or subrecipient agreements entered into by the Recipient with Grant funds shall be subject to all terms and conditions of this Agreement. Payment of all subcontractors and subrecipients shall be the sole responsibility of the Recipient, and DOC shall not be obligated to pay for any work performed by any subcontractor or subrecipient. The Recipient shall be responsible for the performance of all subcontractors and subrecipients and shall not be relieved of any of the duties and responsibilities of this Agreement as a result of entering into subcontracts or subrecipient agreements.

5. Changes to Agreement. Recipient agrees that DOC may supplement or modify this Agreement as may be necessary to implement additional or modified Federal or State guidance regarding implementation of the CDBG program.
6. Conflict of Interest. Recipient agrees to comply with all applicable conflict of interest provisions, including but not limited to those found at 4 N.C.A.C. 19 L .0908 and .0914, N.C. Gen. Stat. § 14-234, 24 C.F.R. § 85.36, 24 C.F.R. § 570.489 (g) and (h), and 24 C.F.R. § 570.611, where applicable, copies of which may be obtained from DOC.

Except for eligible administrative or personnel costs, the general rule is that no persons described in the following sentence who exercise or have exercised any functions or responsibilities with respect to grant activities assisted under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a Grant-assisted activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

The conflict-of-interest summary in the sentence above generally applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or Recipient or applicable third parties which are receiving CDBG grant funds.

Recipient agrees to include these same prohibitions in all such contracts or subcontracts with any subrecipients or other third parties relating to the Program.

In any event, the Assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining DOC approval of the application for such assistance, or DOC approval of applications for additional assistance, or any other approval or concurrence of DOC required under this Agreement, or the North Carolina Community Development Block Grant Administrative Rules, with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such

services, other than actual solicitation, are not prohibited if otherwise eligible as program costs and allowed by applicable law.

Additionally, certain limited exceptions to the conflict-of-interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by HUD and/or DOC upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(ii)(4).

7. Reimbursement to DOC for Improper Expenditures. The Recipient will reimburse DOC for any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services shall include a clause holding the administrator organization responsible for reimbursement to the Recipient for any improperly expended grant funds that had to be returned to DOC.
8. Recordkeeping Requirements. Recipient will maintain any and all records and comply with all responsibilities as may be required under typical CDBG recordkeeping (for example, records and responsibilities set forth in 4 N.C.A.C. 19L.0911 ("Recordkeeping"), 24 C.F.R. 570.490 ("Recordkeeping Requirements"), 24 C.F.R. § 570.506 ("Records to be maintained") and 24 C.F.R. § 85.42 ("Retention and Access Requirements for Records") as each may be modified by HUD or DOC) as well as records and responsibilities related to CDBG or specifically to CDBG funds. Recipient agrees to comply with any additional record-keeping requirements now or hereinafter set forth by DOC, HUD or any other federal or state entity.
9. Access to Records. The Recipient shall provide any duly authorized representative of DOC, the State of North Carolina, the federal Department of Housing and Urban Development (HUD), and the Comptroller General, the Inspector General and other authorized parties at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant for a period of five years following the completion of all close-out procedures. All original files shall be maintained at the Local Government offices for access purposes.
10. Release of Personal, Financial, and Identifying Information. To ensure and document compliance with CDBG income requirements as well as other matters, Recipient shall obtain and retain personal, income-related, financial, tax and/or related information from individuals and families that are benefitting from Grant or Program funds. Additionally, Recipient is obligated to provide access to any and all information relating to the Program to DOC, HUD or some other appropriate federal or state monitoring entity, upon DOC's request. This obligation includes, but is not limited to, the personal, financial, and identifying information of individuals assisted by the Program. As such, Recipient shall obtain any releases or waivers from all individuals or entities necessary to ensure that this information can be properly and legally provided to appropriate federal and state entities, including DOC and HUD, without issue or objection by the individual or entity.
11. Project Savings. The Recipient is obligated to contribute 100 percent of its pledged **cash** contribution to the CDBG project even if the project experiences a savings after authorized activities are completed. Any project savings accrue to the CDBG program. **Substitution of in-kind contributions for cash is not allowed.**

12. Expenditure of Non-CDBG Funds. The recipient must ensure that non-CDBG funds are expended along with CDBG funds, following the implementation schedule described in the approved application and modified by the Performance Contract (or otherwise with DOC approval), and shall report on non-CDBG expenditures with each Annual Performance Report, consistent with Section .1100 PERFORMANCE of the program regulations (4NCAC 19L) as well as any other applicable reporting requirements.
13. Method of Payment. The Department of Commerce uses the Office of State Controller (OSC) to make CDBG payments to units of local government. The Electronic Payment Form from OSC must be completed for funds to be electronically transferred. Arrangements must be made with the Finance Officer in the Rural Economic Development Division if a Recipient does not want to use the electronic funds transfer.
14. Fair Housing. Recipients of CDBG funds are required to comply with fair housing and non-discrimination laws and regulations. Recipients should consult Section .1001 of the CDBG administrative rules for further information on equal opportunity requirements. Recipients are required to submit a fair housing plan for its jurisdiction. Recipients with 10,000 persons or more will be required to complete an Analysis to Impediments to Fair Housing Choice Study. For each grant year that a CDBG project is active, a Recipient must describe the actions it will take in the areas of enforcement, education and removal of barriers and impediments to affirmatively further fair housing. Guidance for developing a Fair Housing Plan can be found at www.commerce.nc.gov.
15. Equal Employment and Procurement Opportunity. A Recipient must describe the actions it will take annually while the grant is open in the areas of enforcement, education and removal of barriers and impediments that affirmatively further equal access in employment and procurement. This includes a description of steps to be taken in the areas of advertisement, compliance, and complaint tracking.
16. Local Economic Benefit (Section 3 Regulation). For each year that a CDBG is active, the Recipient must describe a strategy whereby opportunities in employment and procurement arising out of a CDBG assisted project are identified and made available to low-income residents within the CDBG assisted area to the greatest extent feasible. This strategy must include (1) identification of training and technical assistance resources to prepare low-income residents for employment and procurement opportunities, (2) attempts to reach the numerical targets for new hires set forth in the Section 3 regulation, which applies to Recipients receiving \$200,000 or more in non-administrative line items expended for construction contracts and (3) education of low-income residents within the CDBG assisted area about the components and opportunities of the program.

In addition, Recipients will be required to coordinate additional activities as it relates to Section 3 with the DOC CDBG Compliance Office.

17. Section 504 and ADA. Recipients must complete the Section 504 Survey and Transition Plan. This plan will not satisfy all the requirements of the Americans with Disabilities Act, but it will meet the minimum requirements for a CDBG-assisted project.
18. Environmental Review. Recipients of CDBG funds are required to complete the document entitled "Environmental Review Procedures for the CDBG Program." Once the

Environmental Review Record (ERR) is received, REDD will review for completeness and submit selected CDBG ERRs if required to the State Clearinghouse for other State agencies to review and comment. Recipients cannot conduct any program activities until REDD issues an environmental clearance.

19. Language Access Plan (LAP). Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by Limited English Proficient (LEP) persons to important government programs, services, and activities. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and its implementing regulations require that Recipients take responsible steps to ensure meaningful access by LEP persons. Recipients will be required to submit a language access plan using the approved template from REDD. The plan will address the LAP policy, translation of required vital documents, and requirements for citizen participation.
20. Procurement Standards. Where applicable, Recipient shall follow the procurement standards established in the "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments" (24 C.F.R., Part 85) and HUD implementing regulations contained in 24 C.F.R. § 570.489(g), which explicitly prohibit cost plus a percentage of cost and percentage of construction cost methods of contracting. 4 N.C.A.C. 19L.0908.
21.
 - a. Any Recipient or Subrecipient shall follow other applicable procurement standards set forth in 4 N.C.A.C. 19L.0908, and the relevant laws cited therein, including but not limited to, laws related to conflicts of interest (N.C.G.S. §14-234), public building contracts (N.C.G.S. § 148-128 to 135), and payment and performance bonds (N.C.G.S. § 44A-25 through 35); acquisition and relocation (4 N.C.A.C. 19L.1003); property management standards (4 N.C.A.C. 19L.0909); equal opportunity (4 N.C.A.C. 19L.1001); and labor standards (4 N.C.A.C. 19L.1006).
 - b. Recipient shall likewise follow all other applicable federal and state procurement rules, guidelines, and procedures, including those set forth in Office of Management and Budget Circular No. A-87 ("Cost Principles for State and Local Governments").

In any event, per 24 C.F.R. 570.489(g), all purchase orders and contracts shall include any clauses required by Federal statutes, executive orders and implementing regulations.

Additionally, Recipient acknowledges and agrees that, in its conduct under this Agreement and in connection with any and all expenditures of Grant funds made by it, Recipient, its officers, agents and employees shall be and are subject to the provisions of the North Carolina General Statutes and the North Carolina Administrative Code relating to and governing procurement, public contracts, suspension and debarment. Recipient further acknowledges and agrees that, in the event that it grants any of the Grant funds awarded hereunder to one or more subrecipients or other applicable entities, Recipient shall, by contract, ensure that the provisions of all applicable laws relating to and governing procurement, public contracts, suspension and debarment are made applicable to and binding upon any and all subrecipients and/or other applicable entities.

22. Labor Standards. Recipient shall follow all applicable laws, rules and regulations concerning the payment of wages, contract work hours, safety, health standards, and equal opportunity for CDBG programs, including but not limited to the rules set forth in 4 N.C.A.C 19L.1006, 24 C.F.R. § 570.603 and the following (as may be applicable to CDBG-R projects):

- a. Davis-Bacon Act (40 U.S.C.A. 276a). Among other provisions, this act requires that prevailing local wage levels be paid to laborers and mechanics employed on certain construction work assisted with CDBG funds.
- b. Contract Work Hours and Safety Standards Act (40 U.S.C.A. 327 through 333). Under this act, among other provisions, laborers and mechanics employed by contractors and subcontractors on construction work assisted with CDBG funds must receive overtime compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty hours in any workweek. Violators shall be liable for the unpaid wages and in addition for liquidated damages computed in respect to each laborer or mechanic employed in violation of the act.
- c. Fair Labor Standards Act (29 U.S.C. 201 et seq.), requiring among other things that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.
- d. Federal anti-kickback laws (18 U.S.C. 874 and 40 U.S.C. 276), which, among other things, outlaws and prescribes criminal penalties for "kickbacks" of wages in federally financed or assisted construction activities. Weekly statements of compliance and weekly payrolls must be provided by all contractors and subcontractors.

Recipient agrees to maintain records regarding compliance with the laws and regulations cited in 4 N.C.A.C. 19L.1006 (including the citations listed above) in accordance with 4 N.C.A.C. 19L.0911.

All contracts between Recipient and third parties shall contain labor standards provisions as required in 4 N.C.A.C. 19L.1006.

- 23. Architectural Barriers. Per 4 N.C.A.C.19L.1007, 24 C.F.R. §§ 570.487 and 570.614 and other applicable law, all applicable buildings or facilities designed, constructed, or altered with CDBG Grant funds shall be made accessible and useable to the physically handicapped as may be required by applicable laws, rules, regulations, or requirements. Additionally, Recipient must comply with the following (as may be applicable to CDBG projects):
 - a. Architectural Barriers Act of 1968 (P.L. 90-480). This act requires Recipient to ensure that certain buildings constructed or altered with CDBG funds are readily accessible to the physically handicapped.
 - b. Minimum Guidelines and Requirements for Accessible Design 36 C.F.R. Part 1190. These regulations establish guidelines for implementing the federal acts described in 4 N.C.A.C.19L.1007(1)(a). The regulations provide technical standards which must be met by Recipient.
 - c. Americans with Disabilities Act ["ADA"] and the ADA Accessibility Guidelines for Buildings and Facilities or the Uniform Federal Accessibility Standards.
 - d. North Carolina Building Code, Volume I, Chapter 11-X. These provisions describe minimum standards Recipient must meet in constructing or altering building and facilities, to make them accessible to and useable by the physically handicapped.
- 24. Change of Use of Real Property. Recipient agrees not to change the use or planned use of any property acquired with CDBG funds from that for which the acquisition or improvement was made, in accordance with this Agreement and applicable law, rule, regulation or requirement, unless (i) the DOC grants explicit written approval and (ii) the requirements of

24 C.F.R. § 570.489(j), 24 C.F.R. § 570.505 and other applicable requirements are followed, as modified (or as may be modified) by HUD or DOC.

24. Obligation of Recipient with Regard to Vacant Units. The recipient shall ensure that all vacant units being rehabilitated will be occupied by a low or moderate income person by the time close-out occurs.
25. Utility Assessments or Fees: Assessments or fees to recover the CDBG funded portion of a utility project may be charged to properties not owned and occupied by low-and-moderate income persons. Such assessments are program income and, as such, must be used for eligible CDBG activities that meet a CDBG national objective.
26. False or Misleading Information. Recipient is advised that providing false, fictitious, or misleading information with respect to CDBG funds may result in criminal, civil, or administrative prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, 31 U.S.C. § 3729, 31 U.S.C. § 3801, or another applicable statute. Recipient shall promptly refer to DOC and HUD's Office of the Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving CDBG funds.
27. Disputes with DOC. If Recipient has any disagreement or dispute with any action or inaction by DOC, Recipient shall inform DOC by letter addressed to Iris C. Payne, CDBG Director, N.C. Department of Commerce – Rural Economic Development Division, 4346 Mail Service Center, Raleigh, NC 27699-4346. The Rural Economic Development Division ["REDD"] will endeavor to respond in writing to said letter within 30 days from receipt. Recipient shall not be entitled to a hearing under Chapter 150B for matters described in N.C. Gen. Stat. § 150B(c)(8), added by N.C. Senate Bill 960, including matters related to "contracts, disputes, protests, and/or claims arising out of or relating to the implementation of the [CDBG]." This includes actions arising out of or related to this Agreement or the Program.
28. Disputes or Complaints by Subrecipients or Other Entities. Recipient is responsible for developing, implementing, and utilizing its own dispute resolution procedures with respect to disputes and/or complaints between and among Recipient, a Subrecipient, a contractor and/or any other person or entity (other than DOC). This includes (but is not limited to) procedures relating to procurement disputes or protests discussed in 24 C.F.R. 85.36. In the event of a dispute between and among Recipient, any Subrecipient, contractor and/or any other persons or entities (not including DOC), Recipient shall make every effort to resolve the dispute pursuant to its own dispute resolution procedures and shall issue a final decision on the matter as soon as is reasonably practicable. Recipient's dispute resolution procedure shall provide that, in the event that any party to such a dispute or complaint is dissatisfied with the final decision or other resolution provided by Recipient, the dissatisfied party shall appeal to the North Carolina Superior Court in an appropriate County for a trial de novo, to the extent that jurisdiction is proper pursuant to N.C. Gen. Stat. § 7A-240 and other applicable law.
29. Schedules
 - (a) Schedule for Release of Conditions and Completion Activities. **The Recipient must satisfy all Funding Approval Conditions to release CDBG funds within 3 months (4/14/2021) from the date the Grant Agreement and Funding Approval were signed**

by the REDD CDBG Director. The recipient must draw down all CDBG funds, expend all local non-CDBG funds and complete all project activities in conformance with the activities' implementation schedule in the application as modified by the Performance Based Contract.

- (b) **The Recipient must obligate all funds within 6 months (6/17/2025) from the date the Grant Agreement and Funding Approval are signed by REDD CDBG Director.**
- (c) **All funds are to be expended within 8 months (8/17/2025) from the date the Grant Agreement and Funding Approval are signed by REDD CDBG Director. Any remaining funds will be de-obligated.**
- (d) **All closeout documents must be returned to REDD by (12/17/2025).**
- (e) Schedule for Submission of Compliance Documents. The Recipient must submit the following compliance documents within the specified number of months from the date the Grant Agreement and the Funding Approval were signed by the REDD CDBG Director:
 - **Environmental – 4 months (NA-completed)**
 - **Equal Employment and Procurement Plan – 4 months (7/17/2025)**
 - **Section 3 Plan – 4 months (7/10/2025)**
 - **Section 504 Plan – 4 months (7/10/2025)**
 - **Language Access Plan – 4 months (7/10/2025)**
 - **Analysis of Impediments- 4 months (NA)**
 - **Request for Release of Funds – 5 months (NA-completed)**
- (f) Timely Drawdown of Funds. Recipient is expected make timely drawdowns so that funds are expended in a timely manner.

30. Performance Measures

The CPD Performance Measurement System is HUD's response to the standards set by the Government Performance and Results Act (GPRA) of 1993. This act holds all Federal agencies accountable for establishing goals and objectives and measuring achievements.

- (a) The recipient must ensure that all activities in the funded project(s) meet the appropriate objectives, outcomes, and indicators established by HUD and selected by DOC. CDBG funds cannot be used to pay for any activity that does not meet the above requirement.
- (b) The recipient must also assist DOC, when requested, in collecting indicators and any other data necessary to fulfill the requirements of the CPD Performance Measures System, which includes data for the Integrated Disbursement and Information System (IDIS).

Upon execution of this agreement by DOC and the Recipient, the Recipient hereby accepts the assistance on the terms of this grant agreement effective on the date indicated below, and further certifies that the official signing this document has been duly authorized by the recipient's governing body to execute this Grant Agreement.

Secretary of the Department of Commerce

Date: 1/17/2025

☒ By: Valerie Fegans
Valerie Fegans
CDBG Director
Rural Economic Development Division

Date: _____

Name of Recipient

☒ By: _____
Signature of Authorized Official

(Title)



Community Development Block Grant Neighborhood Revitalization Program Funding Approval

1. Name and Address of Recipient

Town of Elizabethtown
Post Office Box 700
Elizabethtown, North Carolina 28337

2. Grant Number and Funding Approval Date

Grant Number: 18-D-3095
Date of Original Funding Approval: 1/17/2025
Date of Amended Funding Approval:

3. Approved Projects

Approved Amount

C1 Vulcan Air Manufacturing Facility

\$4,400,000.00

Total Grant Award

\$4,400,000.00

4. Funding Approval Conditions

The following conditions must be removed in writing by the Rural Economic Development Division in order for all funds to be released for the approved project(s) listed in item (3) above:

A. Administration Contracts/Inter-local agreements Condition:

No funds may be obligated or expended in any project activity except the administration activity until the recipient has submitted either a copy of the contract awarded for administration of this grant or a statement signed by the CEO stating that the contract will be administered internally.

B. Use of Experienced CDBG Administrator:

No funds may be obligated or expended for the administration activity until the recipient has submitted a statement signed by the CEO stating that they will be using an experienced CDBG administrator or local government staff. This person should be one who has administered more than one (1) CDBG project. Please note that if issues result from the CDBG administrator, the local government will be subject to 4 NCAC 19L.

5. Signature of Authorized Official

Valerie Fegans

Name

Valerie Fegans

1/17/2025

Date

CDBG Director

Title

6. Signature of Authorized Local Official

Name

Date

Title

SIGNATORY FORM AND CERTIFICATION

Grant No. _____

Recipient Name _____

Address: _____

Signatures of individuals authorized to sign Requisition for Funds forms. (Two signatures required on each requisition.)

(Signature) _____

(Typed Name) (Typed Title) _____

(Signature) _____

(Typed Name) (Typed Title) _____

(Signature) _____

(Typed Name) (Typed Title) _____

(Signature) _____

(Typed Name) (Typed Title) _____

CERTIFICATION

1. ☐ I certify that the signatures above are of the individuals authorized to sign Requisition for Funds form for the above recipient.

Certifying Official + Title

2. ☐ The governing board has passed a resolution authorizing the persons above to sign Requisition for Funds forms for the above recipient. A copy of the resolution is attached.

I certify that the signatures above are those of the individuals authorized by resolution of the governing board of the recipient to sign Requisition for Funds forms.

Certifying Official + Title**INSTRUCTIONS FOR COMPLETING SIGNATORY FORM AND CERTIFICATION**

1. Indicate name and address of the recipient.
2. Two authorized signatures shall be required on all Requisition for Funds forms. The Rural Economic Development Division will check the signatures on each requisition form to see that they match the authorized signatures on the Signatory Form and Certification. Only the signatures of persons shown on the Signatory Forms and Certification will be accepted.
3. To allow for flexibility in making requisition requests, it is recommended that four authorized signatures appear on the Signatory Form and Certification. Local governments may choose one of two options in completing the Certification. If the local government choose to use the first option, the chief elected official or the chief finance officer must sign the form as the certifying official. In signing as the certifying official, the chief elected official or chief finance officer certifies that: 1) the signatures are authentic and 2) that the persons designated as signatories are authorized to sign requisitions for payment. If the chief elected official or the chief finance officer is the certifying official, that person may not also be authorized signature.

If the community wishes to have both the chief elected official and the chief finance officer sign requisitions for payment, the community should select the second option for certification. In this case, the governing board must pass a resolution authorizing sufficient persons to act as signatories. In addition, an individual who is not designated as a signatory must certify the authenticity of the authorized signatures. Anyone who knows all of the persons authorized to sign requisitions may sign as the certifying official. Another local government staff person or member of the governing body is recommended.

4. If the recipient wished to change the persons authorized to sign the requisition for funds form a new Signatory Form and Certification must be submitted to the Rural Economic Development Division.
5. No erasures or corrections may appear on the Signatory Form and Certification.



Item Cover Page

COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: ADMINISTRATIVE MATTERS

SUBJECT: Authorization to Terminate EDA Award #04-79-07892 for Convenience

BACKGROUND: Town Manager Dane Rideout may be called upon to present this agenda item.

SUGGESTED ACTION: Council is requested to approve the termination of the EDA Award #04-79-07892 for convenience.

ATTACHMENTS:



Item Cover Page

COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: ADMINISTRATIVE MATTERS

SUBJECT: Audit Contract - Thompson, Price, Scott, Adams & Co., P.A.

BACKGROUND: Finance Director Sharon Penny may be called upon to present this agenda item.

Copy of Audit Contract provided.

SUGGESTED ACTION: Council is requested to approve the Contract to Audit Accounts.

ATTACHMENTS:
[6-30-2025 Audit Contract.pdf](#)

The	Governing Board
of	Primary Government Unit Town of Elizabethtown
and	Discretely Presented Component Unit (DPCU) (if applicable) NA

Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)

and	Auditor Name Thompson, Price, Scott, Adams & Co., P.A.
	Auditor Address 4024 Oleander Dr., Suite 103, Wilmington, NC 28403

Hereinafter referred to as Auditor

for	Fiscal Year Ending 06/30/25	Date Audit Will Be Submitted to LGC 12/31/25
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Must be within six months of FYE

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business-type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types). The basic financial statements shall include budgetary comparison information in a budgetary comparison statement, rather than as RSI, for the General Fund and any annually budgeted Special Revenue funds.

2. At a minimum, the Auditor shall conduct the audit and render the report in accordance with GAAS. If the Governmental Unit expended \$100,000 or more in combined Federal and State financial assistance during the reporting period, the Auditor shall perform the audit in accordance with *Government Auditing Standards* (GAGAS). The Governmental Unit is subject to federal single audit requirements in accordance with Title 2 US Code of Federal Regulations Part 200 *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards*, Subpart F (*Uniform Guidance*) and the State Single Audit Implementation Act. Currently the threshold is \$750,000 for a federal single audit and \$500,000 for a State Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit in accordance with the Uniform Guidance (§200.501) the Auditor and Governmental Unit(s) should discuss, in advance of the execution of this contract, the responsibility for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512) to ensure proper submission.

Effective for audits of fiscal years beginning on or after June 30, 2023, the LGC will allow auditors to consider whether a unit qualifies as a State low-risk auditee. Please refer to "Discussion of Single Audits in North Carolina" on the LGC's website for more information.

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.
4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC Staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2018 revision, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to *Government Auditing Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC Staff within six months of fiscal year end. If it becomes necessary to amend the audit fee or the date that the audit report will be submitted to the LGC, an amended contract along with a written explanation of the change shall be submitted to the Secretary of the LGC for approval.
7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.

For GAAS or *Government Auditing Standards* audits, if an auditor issues an AU-C §260 report, commonly referred to as "Governance Letter," LGC staff does not require the report to be submitted unless the auditor cites significant findings or issues from the audit, as defined in AU-C §260.12 - .14. This would include issues such as difficulties encountered during the audit, significant or unusual transactions, uncorrected misstatements, matters that are difficult or contentious reviewed with those charged with governance, and other significant matters. If matters identified during the audit were required to be reported as described in AU-C §260.12-.14 and were communicated in a method other than an AU-C §260 letter, the written documentation must be submitted.

8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Approval is also required for the Alternative Compliance Examination Engagement for auditing the Coronavirus State and Local Fiscal Recovery Funds expenditures as allowed by US Treasury. Approval is not required on audit contracts and invoices for system improvements and similar services of a non-auditing nature.

9. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. This also includes any progress billings [G.S. 159-34 and 115C-447]. All invoices for audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to the Auditor to present to the Governmental Unit(s) for payment. This paragraph is not applicable to contracts for audits of hospitals.

10. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC if required, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 13).

11. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC Staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC Staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.

12. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.

13. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

14. The Auditor shall submit the report of audit in PDF format to LGC Staff. For audits of units other than hospitals, the audit report should be submitted when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC. These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements and/or the compliance section, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC Staff.

15. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

16. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to hospitals). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC.

17. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and except for fees, work, and terms not related to audit services, shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 30 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

18. Special provisions should be limited. Please list any special provisions in an attachment.

19. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the primary government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

20. The contract shall be executed, pre-audited (pre-audit requirement does not apply to hospitals), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

21. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

22. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

23. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

24. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

25. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

26. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.

27. **Applicable to audits with fiscal year ends of June 30, 2020 and later.** For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and *Government Auditing Standards, 2018 Revision* (as applicable). Preparing financial statements in their entirety shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. If the Auditor cannot reduce the threats to an acceptable level, the Auditor cannot complete the audit. If the Auditor is able to reduce the threats to an acceptable level, the documentation of this determination, including the safeguards applied, must be included in the audit workpapers.

All non-attest service(s) being performed by the Auditor that are necessary to perform the audit must be identified and included in this contract. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. If the Auditor is able to identify an individual with the appropriate SKE, s/he must document and include in the audit workpapers how he/she reached that conclusion. If the Auditor determines that an individual with the appropriate SKE cannot be identified, the Auditor cannot perform both the non-attest service(s) and the audit. See "Fees for Audit Services" page of this contract to disclose the person identified as having the appropriate SKE for the Governmental Unit.

28. **Applicable to audits with fiscal year ends of June 30, 2021 and later.** The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee shall include:

- a) the description of each finding, including all material weaknesses and significant deficiencies, as found by the auditor, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;
- b) the status of the prior year audit findings;
- c) the values of Financial Performance Indicators based on information presented in the audited financial statements; and
- d) notification to the governing body that the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under 20 NCAC 03 .0508.

29. Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern. See 20 NCAC 03 .0502(c)(6).

30. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 17 for clarification).

31. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/state-and-local-government-finance-division/local-government-commission/submitting-your-audit>

32. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

33. Modifications to the language and terms contained in this contract form (LGC-205) are not allowed.

FEES FOR AUDIT SERVICES

1. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct (as applicable) and *Government Auditing Standards, 2018 Revision*. Refer to Item 27 of this contract for specific requirements. The following information must be provided by the Auditor; contracts presented to the LGC without this information will be not be approved.

Financial statements were prepared by: ☒ Auditor ☐ Governmental Unit ☐ Third Party

If applicable: Individual at Governmental Unit designated to have the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the non-attest services and accept responsibility for the results of these services:

Name:

Title and Unit / Company:

Email Address:

Sharon Penny

Finance Officer/ Elizabethtown

spenny@elizabethtownnc.org

OR Not Applicable ☐ (Identification of SKE Individual on the LGC-205 Contract is not applicable for GAAS-only audits or audits with FYEs prior to June 30, 2020.)

2. Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8 and 13 for details on other allowable and excluded fees.

3. The audit fee information included in the table below for both the Primary Government Fees and the DPCU Fees (if applicable) should be reported as a specific dollar amount of audit fees for the year under this contract. If any language other than an amount is included here, the contract will be returned to the audit form for correction.

4. Prior to the submission of the completed audited financial report and applicable compliance reports subject to this contract, or to an amendment to this contract (if required) the Auditor may submit interim invoices for approval for services rendered under this contract to the Secretary of the LGC, not to exceed 75% of the billings for the unit's last annual audit that was submitted to the Secretary of the LGC. All invoices for services rendered in an audit engagement as defined in 20 NCAC .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law. (This paragraph not applicable to contracts and invoices associated with audits of hospitals).

Primary Government Unit	Town of Elizabethtown
Audit Fee (financial and compliance if applicable)	\$ 35000
Fee per Major Program (if not included above)	\$ 3500.00 if applicable
Additional Fees Not Included Above (if applicable):	
Financial Statement Preparation (incl. notes and RSI)	\$
All Other Non-Attest Services	\$
TOTAL AMOUNT NOT TO EXCEED	\$ 45,500

Discretely Presented Component Unit	NA
Audit Fee (financial and compliance if applicable)	\$
Fee per Major Program (if not included above)	\$
Additional Fees Not Included Above (if applicable):	
Financial Statement Preparation (incl. notes and RSI)	\$
All Other Non-Attest Services	\$
TOTAL AMOUNT NOT TO EXCEED	\$

SIGNATURE PAGE

AUDIT FIRM

Audit Firm*	
Thompson, Price, Scott, Adams & Co., P.A.	
Authorized Firm Representative (typed or printed)*	Signature*
Gregory S Adams, CPA	
Date*	Email Address*
	gadams@tpsacpas.com

GOVERNMENTAL UNIT

Governmental Unit*	
Town of Elizabethtown	
Date Governing Board Approved Audit Contract* (Enter date in box to right)	
Mayor/Chairperson (typed or printed)*	Signature*
Sylvia Campbell	
Date	Email Address*
	sy/viac@campbeloil.net

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

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1). Not applicable to hospital contracts.

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.

Sum Obligated by This Transaction:	\$ 45,500
Primary Governmental Unit Finance Officer* (typed or printed)	Signature*
Sharon Penny	
Date of Pre-Audit Certificate*	Email Address*
	spenny@elizabethtownnc.org

SIGNATURE PAGE – DPCU
(complete only if applicable)

DISCRETELY PRESENTED COMPONENT UNIT

DPCU*	
NA	
Date DPCU Governing Board Approved Audit Contract* (Enter date in box to right)	
DPCU Chairperson (typed or printed)*	Signature*
Date*	Email Address*

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

DPCU – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1). Not applicable to hospital contracts.

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.

Sum Obligated by this Transaction:	\$
DPCU Finance Officer (typed or printed)*	Signature*
Date of Pre-Audit Certificate*	Email Address*

Remember to print this form, and obtain all
required signatures prior to submission.





Item Cover Page

COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: ADMINISTRATIVE MATTERS

SUBJECT: Design-Build Contract with Metcon, Inc. - Vulcan Air Manufacturing Facility

BACKGROUND: Planning Director Rusty Worley may be called upon to present this agenda item.

Copy of Design-Build Contract provided.

SUGGESTED ACTION: Council is requested to approve the Design-Build Contract with Metcon, Inc. in the amount of \$155,000.00 and to authorize Town Manager Dane Rideout to sign all documentation for this project.

ATTACHMENTS:

[Design Build Contract with Metcon - 2.3.25.pdf](#)

AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 11 day of December in the year 2024
(In words, indicate day, month and year.)

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

Town of Elizabethtown
805 W Broad Street
Elizabethtown, NC 28337

and the Design-Builder:
(Name, legal status, address and other information)

Metcon, Inc.
763 Comtech Drive
Pembroke, NC 28372
910-521-8013

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

Vulcanair Manufacturing
Airport Corporate Park, Elizabethtown, North Carolina
Construction of an approximately 40,736 square foot building divided into 36,000 square foot of manufacturing and 4,300 Square foot of office space. Building to be single story with 29' eave height. Building will be a Pre-engineered Metal building.

The Owner and Design-Builder 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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Exhibit A' – "RFQ". Design for this phase of work is limited to the building line excluding sprinkler design. Building pad, sprinkler systems and all other sitework including utilities and their design by others.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

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(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Exhibit A' "RFQ"

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Construction of an approximate 40,736 square foot building divided into 36,000 square foot of manufacturing and 4,300 Square foot of office space. Building to be single story with 29' eave height. Building will be a combination of Pre-engineered Metal building and stick framing out of light gauge metal studs. Utilities will be 5' outside the building line. Sitework, utilities and building pad by others

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Not Applicable

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Not Applicable

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

TBD

.2 Submission of Design-Builder Proposal:

TBD

.3 Phased completion dates:

Not Applicable

.4 Substantial Completion date:

TBD

.5 Other milestone dates:

Not Applicable

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

Morse Architecture PLLc
PO Box 2263
Leland, NC 28451

.2 Consultants

Costal Plains Engineering
295 Locklear Road
Pembroke, NC 28372

FDR Engineers PLLC
Raleigh, NC

.3 Contractors

TBD

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

Not Applicable

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Design-Builder and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, or utilize building information modeling, they shall endeavor to establish written protocols governing the development, use, transmission, reliance, and exchange of digital data, including building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

Rusty Worley
805 W Broad Street
Elizabethtown, NC
910-874-3719

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

Not Applicable

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User Notes:

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§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

W.K. Dickson – Airport Project Lead
Barnhill Contracting - Sitework

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Mark Floyd
763 Comtech Drive
Pembroke, NC 28372
910-374-5623

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☒ [X] Arbitration pursuant to Section 14.4
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

Design Services= \$155,000.00 Lump Sum - Billed monthly

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

For work beyond the scope of this agreement if set forth by an hourly rate.

Individual or Position	Rate
Architect	\$125 per hour
Engineer	\$125 per hour
Administrative	\$50 per hour

<i>Estimator</i>	<i>\$75 per hour</i>
<i>Project Executive</i>	<i>\$225 per hour</i>
<i>Project Manager</i>	<i>\$175 per hour</i>
<i>Superintendent</i>	<i>\$150 per hour</i>

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.
- .10 If the Owner agrees to procure any items prior to the establishment of the Design Builder Amendment, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. All items and markups shall be agreed to in the form of a change order to this agreement.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of Ten percent (10 %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

one point five percent % 1.5

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports.

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications

relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; 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 an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

(List additional information, if any, to be included in the Design-Builder's written report.)

NA

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder 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.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder 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

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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 14.

§ 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder'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 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder 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 Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

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§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

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

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying 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 Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder

for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, 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 Design-Build 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 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and 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, 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 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. 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.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder 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.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written 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 deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, 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 Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 Design-Builder 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 Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner 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 to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .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 Design-Build Documents.

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment 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 Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, 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 Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, 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 Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

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

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build 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.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build 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 Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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 Design-Builder 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 Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder 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 Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (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 Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or 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 an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, 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 Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of 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 Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder 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 Design-Builder shall be responsible for precautions for the safety of, and 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 Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder 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 Design-Builder 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 notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

§ 10.2.7 The Design-Builder 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 the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written 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

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written 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 Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, 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 materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder 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 Design-Builder, the Design-Builder 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 Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within

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which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build 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 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the

Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, 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 Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 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.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;

- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. 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 Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time 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 Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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.

§ 14.1.6.2 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.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder 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 Design-Builder 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 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

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

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify 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.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 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.

§ 14.3 Mediation

§ 14.3.1 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 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 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 proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, 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. 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.

§ 14.4.1.1 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 or statute of repose. For statute of limitations or statute of repose 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.

§ 14.4.2 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.

§ 14.4.3 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.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, 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).

§ 14.4.4.2 Either party, at its sole discretion, 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.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build 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.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder 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 in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and 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 Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract 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.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build 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.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 Other:

Schedule I – division of Cost Elements

(Paragraphs deleted)

Exhibit B' – 179D

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

OWNER (Signature)

Rusty Worley Planning Director

(Printed name and title)

DESIGN-BUILDER (Signature)

Aaron K Thomas President

(Printed name and title)

Request For Qualifications ("RFQ")

**For: Design — Build services for
Construction of Aircraft Manufacturing
Elizabethtown, North Carolina**

Issued: September 9, 2024

Due September 30 , 2024

Revision 002

Introduction

Per NCGS 143-64.31, Elizabethtown, North Carolina seeks written proposals for qualified Construction Firms licensed in North Carolina, for the construction of a Manufacturing facility located on Ben Greene Extension, Elizabethtown NC 28337.

Project Description

The selected firm will work as Design/Build Contractor with the Town of Elizabethtown to construct the Project as well as prepare site work, construct building, landscaping, parking lot, and sidewalks. It will be located at the Airport Corporate Park on Ben Greene Extension, Elizabethtown, North Carolina.

The project will consist of construction of a 40,736 square foot building that will be divided into 36,000 sq ft of manufacturing and 4,736 sq ft of office area. The minimum eve height of twenty-four feet and 29'-0" and 1/12 pitch roof. The adjoining office will consist of as shown of preliminary plans exhibit A.

The construction of this Project will be monolithic slab with an elevation to be determined in the airport alp plan and site plan completed by WK Dickson. The remainder of the building will be metal sheeting. The roof will be Galvalume Standing Seam with 1/12 pitch with roof access ladder. The office area will be metal stud walls with gypsum interior. The ceiling will be fire rated suspended grid and tiles. The office exterior will be masonry construction with store front glass. The building will have a 58'-0" x 20'-0" hylift hydraulic door. It will also have an in-ground dock and a ground level entrance area with an overhead door. The windows will be aluminum store front components with insulated LOWE tempered glass. The exterior doors will be aluminum full-view doors with panic hardware, Insulated LOWE. Site work to be done by others including building pad grade, apron area, parking lot and utilities to site.

tempered glass. The ceilings will be two by two suspended ceilings with drop in LED lighting in the Office/Kitchen area. The floors in the Office/Kitchen will be VCT tile and the owners’ choice. The building will be designed with a sprinkler system for fire suppression. The On-call engineering firm for this project will be WK Dickson, the building site will be constructed and will be ready for construction September 10, 2024.

The sitework will be on Town Property, which will comply with all State and Federal Guidelines that pertain to Airport Construction and Development. These must be consistence with The Airport ALP and master plan.

HVAC systems will be either Package Unit Electric or Split System Electric. All lighting will be LED drop in, LED fixture or LED Halo lighting. Electrical service required will be 600-amp service with panel and subpanel.

Utility Providers

Electricity	Four County
Sewer	Town of Elizabethtown
Water	Town of Elizabethtown
Gas	Propane Only

The purposed building will be a total of 40,706 square feet, 36000 warehouse/manufacturing and 4736 square feet of office area. The purposed project Budget is being funded by various funds so of which are NCDOT Aviation, State Budget Management Office, HUD and possibly loans.

Initial Project Schedule Time Estimate

Task	Date
RFQ Release Date	September 9, 2024
Addenda (if applicable) Deadline	September 20, 2024 5pm
RFQ Proposal Due	September 30, 2024 2pm
RFQ Opening	October 1, 2024 2pm
Review & Tentatively Select Most Qualified	October 7, 2024 5pm
Negotiate Contract	October 24, 2024
Design Phase	October 31, 2024
Construction Start Date	November 18, 2024
Construction Completion	June 1, 2025

Proposal Format

A written proposal must be submitted in the format outlined herein. Each proposal will be reviewed to determine if it is complete to actual evaluation. A total of three hard copies and one electronic copy of the proposal shall be submitted to the Town of Elizabethtown.

Proposal Content

The written proposal should provide background information about your firm, its employees, standard fee schedules and its experience of the firm, as well as any consultants on the proposed team. For the purposes of the RFQ, the term "Firm" shall refer to the prime respondent of this RFQ, or in other words, the Firm with whom the Town will contract.

The term "Consultant" shall refer to any and all consultants or subcontractors with whom the prime respondent of this RFQ, or in other words, the Firm with whom the Town will contract.

Specifically, the proposal should address the following information in order:

1. Firm profile listing: name, address, year established, type of ownership, size of Firm and staff, and organization chart. If Firm has multiple offices, please list where the work for this project will be performed. Please also list the number of states in which the Firm has performed public building/community center design and highlight any consolidated facility design similar in nature to the Project scope.
2. Information about the overall makeup of the proposed project team, including: the identity of all key personnel, a description of their respective responsibilities and duties, and each team member's experience with regional design/build projects.
3. Information about any consultants or Engineering Firms to be used in the design process. Identify each firm proposed to be used and list recent projects with design/build that they have participated in.
4. List of two design/build projects completed outlining original budget, final cost and an explanation of overage or under budget.
5. List two projects outlining original schedule, completion schedule and an explanation of under or over original completion date.
6. List last three projects MBE participation percentage of project.
7. Current Firm workload and ability to perform work for this project.

8. Listing of any pending or settled lawsuits or professional liability claims in which the Firm was involved and found liable or guilty in any way for any claims during the last 5 years.
9. Please provide references for clients for whom the Firm and Consultants have provided work for. Include name, title, Firm or agency, phone number and electronic contact information.
10. This is a Qualifications-based selection process intended to result in the selection of the most qualified Firm without regard to price for the solicited services at this stage.
 - a. Do Not include cost or fee estimates for providing the solicited services to the Town other than standardized unit pricing/fee schedules that apply to all of Firm's work or services including those outside the scope of this project.
 - b. Any such schedule of standardized fee SHOULD be included.
 - c. The successful firm will be asked to negotiate a contract with the Town at a reasonable price to provide Design/Build services after selection, and in the event no reasonable price can be negotiated, the Town may reject that firm and negotiate with the next most qualified firm until an agreement is reached.
11. Additional information the respondent believes to be relevant to the selection efforts of the County.
 - a. Note: The Town reserves the right to issue Addenda to update the terms and conditions of this RFQ, which if issued shall be openly published on its website at [http:// https://elizabethtownnc.org/news-and-notice](http://https://elizabethtownnc.org/news-and-notice) by deadline stated in the project schedule above. It is the responsibility of each Firm to check for and respond in accordance with any such addenda before submitting its final proposal in response to this RFQ.

CONTRACT PROVISIONS

By submission of a Qualification Statement, the Contractor agrees to comply with the following provisions. Failure to comply with any and all provisions herein may be cause for the contracting agency to issue a cancellation notice to a contractor and maybe construed as a breach of contract by Contractor. The Contractor shall also be required to comply with additional EDA provisions as they are introduced throughout the course of the project.

I. Interest of Members, Officers, or Employees of the Local Governing Body, or other Public Officials.

No member, officer, or employee of the local government, or its agents, and no other public official of the local government who exercises any functions or responsibilities with respect to the program, during his tenure, or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family

members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The contractor shall incorporate, or cause to be incorporated, in all subcontracts, a provision prohibiting such interest pursuant to this section, and shall take appropriate steps to assure compliance.

II. Interest of Contractor and Employees

The Contractor covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interests shall be employed.

III. Legal Remedies/Termination of Contract

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Contract, the Local Government shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, the Contractor shall be entitled to receive just and equitable compensation for all satisfactorily completed work. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner and Local Government for damages sustained by the Owner and Local Government by virtue of any breach of the Contract by the Contractor, and the Local Government may withhold any payments to the Contractor for the purpose of set-off until such time as the amount of damages due the Local Government from the Contractor is determined.

IV. Nondiscrimination Clause - Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in the whole or in part with funds made available under this title.

V. Age Discrimination Act of 1975, as amended - Nondiscrimination on the Basis of Age

No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

VI. Section 504 of the Rehabilitation Act of 1973, as amended - Nondiscrimination on the Basis of Handicap

No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal Financial assistance.

VII. Section 3 - Compliance in the Provision of Training, Employment, and Business

Opportunities:

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that

are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

VIII. Access to Records and Record Retainage

All accounts and records shall be maintained, including personal property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary to assure proper accounting for all project funds, both federal and non-federal shares. These records shall be retained for three years after project closes out unless permission to destroy them is granted by the funding agency.

IX. Lobbying Clauses: Required by Section 1352, title 31, U.S. Code

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Member of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete an submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100.00 for each such failure.

X. Certification of Eligibility

By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 29 CFR 5.12(a)(1) or to participate in HUD programs pursuant to 24 CFR Part 24 or, if applicable, by virtue of Section 3(a) of the Davis-Bacon Act.

No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 29 CFR 5.12(a)(1) or to participate in HUD programs pursuant to 24 CFR Part 24 or, if applicable, by virtue of Section 3(a) of the Davis-Bacon Act.

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001 and 18 U.S.C. 1010.

XI. Key Personnel

The Contractor shall not substitute key personnel assigned to the performance of this contract without prior approval by the local government and the grantor agency, the North Carolina Department of Commerce, Division of Community Assistance. Individuals designated as key personnel for purpose of this contract are those specified in the proposal submitted by the Service Provider.

XII. Subcontracting

Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval by the Local Government and the grantor agency. Acceptance of an offeror's proposal shall include any subcontractor(s) specified therein.

Proposal Submission

Submit three (3) hard copies and one (1) electronic copy of you Firm's written proposal in response to this RFQ no later than the deadline first stated above. No proposal will be accepted after this time. No faxed submissions will be accepted. Firms are solely responsible for ensuring timely delivery of any proposals to the Town by the deadline stated.

Submit qualification to:

Town of Elizabethtown

Attn: Rusty Worley

805 W Broad Street

PO Box 700

Elizabethtown NC 28337

All questions regarding this project should be directed to:

Town Planning Director Rusty Worley at (910) 862-3979 ext 2014 or email at rworley@elizabethtownnc.org

***** Repost due to change in funding source *****

General Comments:

1. Any cost incurred by respondents in preparing or submitting proposals for the project shall be the respondent's sole responsibility.
2. All responses, inquiries, or correspondence relating to this RFQ will become the property of the Town when received and will be subject to the open records law of the state of North Carolina.
3. The Town reserves the right to refuse any or all proposals received.
4. The Town reserves the right to select a Firm without holding interviews.

Selection Criteria

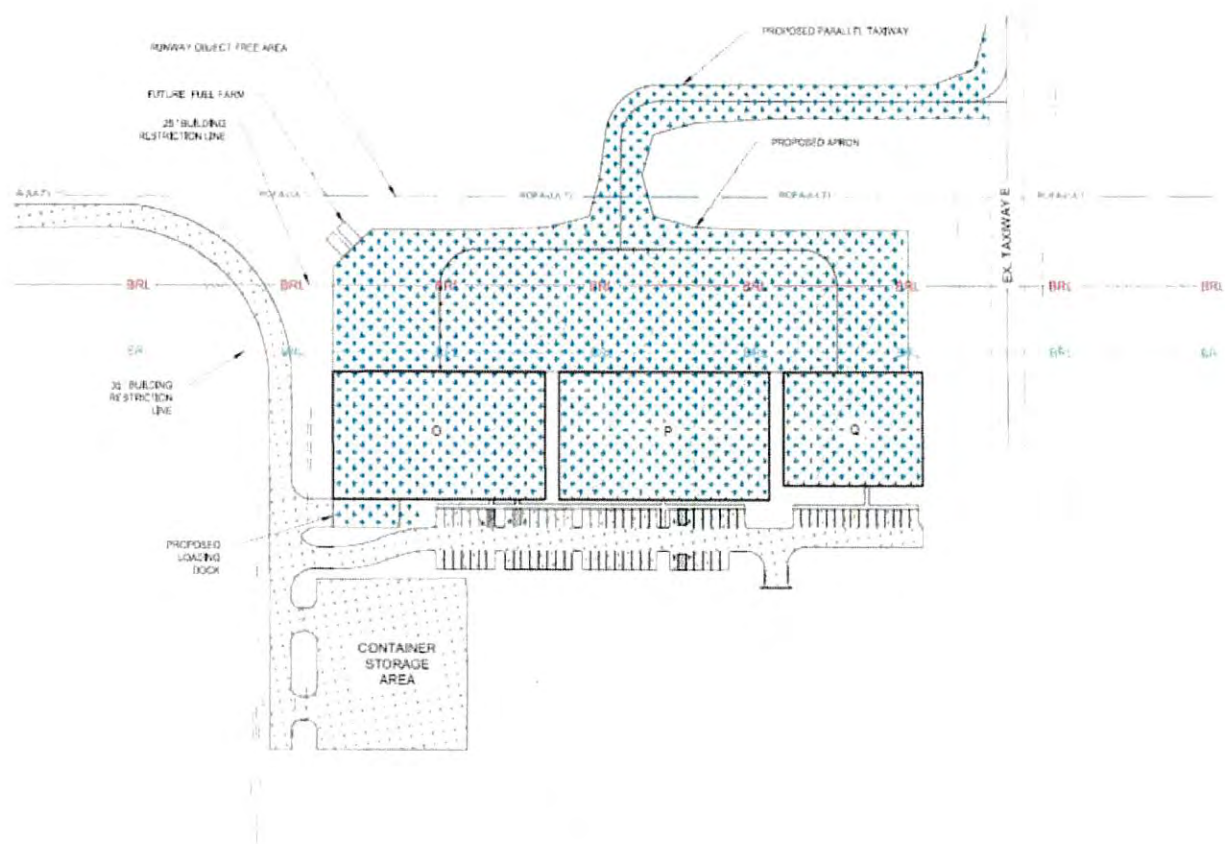
In selecting Design/Build Firm, the selection Town Council will take into consideration qualification information including such factors as:

1. Specialized or appropriate expertise in the type of project
2. Past performance on similar projects.
3. Adequate staff and proposed design or consultant team for the project.
4. Current workload and State projects awarded.
5. Proposed design approach for the project including design team and consultants.
6. Recent experience with project costs and schedules.

- Other factors which may be appropriate for the project.

Hand-drawn floor plan of a building on grid paper. The plan shows a large rectangular main area with a smaller section at the bottom left. Labels include: 'Back Door' (top left), 'Front Door' (top right), 'Kitchen' (top center), 'Living Room' (top right), 'Bedroom' (bottom left), 'Bathroom' (bottom center), 'Garage' (bottom right), 'HALL' (center), 'CLO' (closets), 'P.O.' (Post Office), 'Rm' (Room), 'KITCHEN' (top center), 'LIVING ROOM' (top right), 'BED ROOM' (bottom left), 'BATH' (bottom center), 'GARAGE' (bottom right), 'HALL' (center), 'CLO' (closets), 'P.O.' (Post Office), 'Rm' (Room).

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Aircraft Manufacturing Location is denoted as P

EXHIBIT B

November 14, 2024

Town of Elizabethtown
805 W. Broad Street
Elizabethtown, NC 28337

RE: Vulcanair Manufacturing Building
179D Tax Deduction Form of Allocation

Metcon, Inc. is requesting permission for allocation of the tax deduction incentives under §179D of the Internal Revenue Code regarding the Energy Policy Act of 2005 (EPACT 2005) and energy savings.

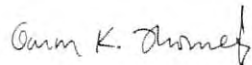
This deduction has no value to Robeson County as it does not pay federal income taxes.

Per the IRS definitions in Notice 2008-40 and the fact that the government entity does not pay taxes, tax deduction incentives can be allocated to the person primarily responsible for the design of this projects. We are requesting you verify that we are those responsible persons by signing this letter. After reviewing the enclosed form for accuracy, please sign and return it either by fax or by scanning your signed copy and e-mailing it to my attention.

We congratulate you and appreciate that you and your organization have played a leading role in Green Building initiatives. We are proud to be part of the effort and have enjoyed working with you.

If you have questions or desire further information regarding energy-saving features of the building, please feel free to contact me.

Sincerely,



Aaron Thomas, MCM, LEED, AP
President | CEO
Metcon, Inc.

CORPORATE

763 Comtech Drive
P.O. Box 1149
Pembroke, NC 28372
Phone: 910.521.8013
Fax: 910.521.8014

FAYETTEVILLE

110 Anderson St.
Fayetteville, NC 28301
Phone: 910.849.4197

RALEIGH

3100 Smoketree Court, Suite 215
Raleigh, NC 27604
Phone: 919.322.2220
Fax: 919.322.2222

CHARLOTTE/COLUMBIA

2401 Whitehall Park Dr., Ste. 650
Charlotte, NC 28273
Phone: 980.209.9680
Fax: 980.209.9698

NATIONAL HARBOR

6170 Oxon Hill Rd. Suite 210
Oxon Hill, Maryland 20745
Phone: 301.276.0123

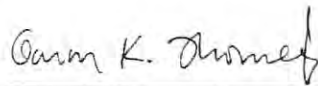
Facility Name	Address	Square Footage	Date Placed in Service	Cost of Property (Millions)	% Allocation to CM
TBD	Airport Corporate Park Elizabethtown, NC	TBD	TBD	TBD	100

Declaration of allocation:

"Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete."

Signature: Town of Elizabethtown

22



Signature: Aaron Thomas

Excerpt from §179D of the Internal Revenue Code regarding the Energy Policy Act of 2005

SECTION 3. SPECIAL RULE FOR GOVERNMENT-OWNED BUILDINGS

- .1 *In General.* In the case of energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D) that is installed on or in property owned by a Federal, State, or local government or a political subdivision thereof, the owner of the property may allocate the § 179D deduction to the person primarily responsible for designing the property (the designer). If the allocation of a § 179D deduction to a designer satisfies the requirements of this section, the deduction will be allowed only to that

designer. The deduction will be allowed to the designer for the taxable year that includes the date on which the property is placed in service.

- 2 *Designer of Government-Owned Buildings.* A designer is a person that creates the technical specifications for installation of energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D). A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specifications for a new building or an addition to an existing building that incorporates energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D). A person that merely installs, repairs, or maintains the property is not a designer.

- 3 *Allocation of the Deduction.* If more than one designer is responsible for creating the technical specifications for installation of energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D) on or in a government-owned building, the owner of the building shall—

- (1) determine which designer is primarily responsible and allocate the full deduction to that designer, or
- (2) at the owner's discretion, allocate the deduction among several designers.

- 4 *Form of Allocation.* An allocation of the § 179D deduction to the designer of a government-owned building must be in writing and will be treated as satisfying the requirements of this section with respect to energy efficient commercial building property (or partially qualifying commercial building property for which a deduction is allowed under § 179D) if the allocation contains all of the following:

- (1) The name, address, and telephone number of an authorized representative of the owner of the government-owned building;
- (2) The name, address, and telephone number of an authorized representative of the designer receiving the allocation of the § 179D deduction;
- (3) The address of the government-owned building on or in which the property is installed;
- (4) The cost of the property;
- (5) The date the property is placed in service;
- (6) The amount of the § 179D deduction allocated to the designer;
- (7) The signatures of the authorized representatives of both the owner of the government-owned building and the designer or the designer's authorized representative; and
- (8) A declaration, applicable to the allocation and any accompanying documents, signed by the authorized representative of the owner of the government-owned building, in the following form:

"Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete."

- 5 *Obligations of Designer.* Before a designer may claim the § 179D deduction with respect to property installed on or in a government-owned building, the designer must obtain the written allocation described in section 3.04. A designer is not required to attach the allocation to the return on which the deduction is taken. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, a

designer claiming a deduction under § 179D should retain the allocation as part of the taxpayer's records for purposes of § 1.6001-1(a) of the Income Tax Regulations.

.6 Tax Consequences to Designer of Government-Owned Buildings. The maximum amount of the § 179D deduction to be allocated to the designer is the amount of the costs incurred by the owner of the government-owned building to place the energy efficient commercial building property in service. A partial deduction may be allocated and computed in accordance with the procedures set forth in sections 2 and 3 of Notice 2006-52. The designer does not include any amount in income on account of the § 179D deduction allocated to the designer. In addition, the designer is not required to reduce future deductions by an amount equal to the § 179D deduction allocated to the designer. Although reducing future deductions in this manner would provide equivalent treatment for designers that are allocated a § 179D deduction and building owners that are required to reduce the basis of their energy efficient commercial building property by the amount of the § 179D deduction they claim, § 179D does not provide for any reductions other than reductions to the basis of the energy efficient commercial building property.

.7 Tax Consequences to Owner of Public Building. The owner of the public building is not required to include any amount in income on account of the § 179D deduction allocated to the designer. The owner of the public building is, however, required to reduce the basis of the energy efficient commercial building property (or partially qualifying commercial building property) by the amount of the § 179D deduction allocated.

Schedule I - Elizabethtown VulcanAir- Division of Cost Elements

Schedule I. CONSTRUCTION MANAGEMENT SERVICES						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Project Executive						
Sr. Project Manager						
Site Safety Director						
Project Manager						
General Superintendent						
Project Superintendent						
Assistant Superintendent						
Project Clerical and Costing						
Project Scheduling & Reports						
Site trucks/gas card, vehicle allowance, or mileage reimb.						
Legal Services - Review of Owner Contract						
Legal Services - Construction Phase						
Accounting (Check Distribution & Insurance Manager)						
Preconstruction Scheduling						
Construction Material & Special Testing Consultant						
MEP Consultant for Commissioning						
Life-Cycle Analysis Support						
Energy Management						
Purchasing						
Value Engineering						
Drawing review for constructability and sequencing						
Cash Flow Chart						
Systems Development / Cost Comparisons as requested						
Estimating						
E.E.O. Officer						
Out-of-State Staff Travel Costs for Project - Owner Appr.						
Employee Cell Phones						
Employee Computers, IT support, Programs including licensing and renewals						
Jobsite phone system and Service / T-1 lines						
Jobsite Office Equipment & Furniture						
Jobsite Office Supplies						
Project Phasing						
II. SAFETY, SECURITY AND SERVICES						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Safety Equipment						
First Aid Supplies						
Handrails and Toe Boards						
Opening Protection						
Fire Extinguishers - Temp. Construction only -						
Security Guard/Watchman Svcs.						
Weekly Cleanup						
Final Cleanup						
Temporary Fencing						
Covered Walkways						
Maintain Barricades						
Safety Nets						
Dumpster Rental/Removal						
Public Traffic Control						
Construction Roadway & Site Maintenance						
Dust Controls						
Trash Chute & Hoppers						
Employee Badging and Background Checks						

Schedule I - Elizabethtown VulcanAir- Division of Cost Elements

Snow and Ice Removal						
III. FACILITIES, EQUIPMENT AND SERVICES						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Office Trailer Rental, Set-Up & Teardown						
Tool/Utility Trailer Rental						
Water/Ice						
Temporary Lighting/Wiring						
Office Trailer Power and Water Utilities						
Utility Company Fees to Provide Temporary Services to site/trailers						
Temporary Power Utility Co. Fees - Jobsite						
Permanent Power Utility Co. Fees & Cost - New Building (until substantial)						
Temporary Water Utility Co. Fees - Jobsite						
Domestic/Fire Water Utility Co. Fees - New Building (until substantial)						
Temporary Water Services - Connections & hook-up						
Temporary Gas Utility Co. Fees - Jobsite						
Permanent Gas Utility Co. Fees - New Building (until substantial)						
Permanent Phone Service to Buildings (Elev., Fire alarm, HVAC, security)						
Permanent Utility Company Fees						
Temporary Heat Expenses						
Temporary Cooling Expenses						
Temporary Toilets/Sewer Services						
Lunch Areas						
Temporary Stairs						
Temporary Enclosures/Partitions						
Temporary Fencing						
Project Signs/Bulletin Boards						
On-site Telephone Expenses*						
Temporary Roads Construction						
Utility Trucks						
Air Compressors						
Dewatering Equipment						
Generators						
Miscellaneous Equipment						
Fuel/Repairs/Maintenance						
IV. VERTICAL HOISTING						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Crane(s)						
Forklifts						
Man-lifts						
V. REPRODUCTION AND PRINTING						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Design and Design Coordination						
Cost Study Documents						
Systems Study Documents						
Bid Package Documents						
Bidding Instructions						
Post Bid Construction Documents						
Addendum, Bulletin and Change Order Documents						
Accounting Forms						
Field Reporting Forms						

Schedule I - Elizabethtown VulcanAir- Division of Cost Elements

Owner Contract Agreements						
Schedule Report Form						
Estimating Forms						
Cost Reporting Forms						
Presentations Charts and Graphics						
Value Analysis Studies						
Data Processing (In-House)						
Records Retention & Storage (7 years project specific)						
Reference Materials						
Duplication Expense (Misc.)						
Prepare and Mail all Subcontract Agreements						
Shop Drawing Printing						
Assemble and Print Maintenance Manuals						
Assemble and Print Operation Manuals						
Postage and Delivery Expense - Construction Phase						
Postage and Delivery Expense - Bid Documents						
Legal Advertisements - Bid Notices						
VI. QUALITY CONTROL						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Special Inspection Consultants						
Special Testing Consultants						
Concrete Testing						
Masonry Testing						
Compaction Testing						
Welding Inspections						
Soils Investigations						
Special Testing Services						
Third Party Commissioning						
Site Survey and Property Control / Vertical Control point						
Field Office Supplies/Materials						
Project Photographs						
Warranty Inspection Coordination						
Air & Water Balancing						
As-Built Documents						
Operator On-Site Training						
Operation & Maintenance Manuals - Production						
Operation & Maintenance Manuals - Assembly						
VII. PERMITS AND SPECIAL FEES						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Driveway Permits						
Sign Permits						
Sealed Engineering As-Built						
City and NCDOT right-of-way permits and encroachments						
Building Permits						
Agency Express Review Fees for permitting						
Water Connection Fee*						
Sanitary Connection Fee*						
Storm Connection Fee*						
Gas Service Charge*						
Power Service Charge*						
Special Tap Fees						
Contractors' Licenses						
Royalties						
Zoning Fees/Consultants						

Schedule I - Elizabethtown VulcanAir- Division of Cost Elements

Use Fees						
Construction Equip. Licenses						
Construction Equip. Permits						
VIII. Bonds and Insurances						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE ALLOWANCE - Balance to Owner	COST OF WORK	OWNER
Designer's Errors and Omissions						
Subcontractor Insurances						
Subcontractor Bonds						
Off-Site Insurance						
Off-Site Taxes						
IX. OTHER COSTS						
DESCRIPTION	CM FEE (Overhead)	DESIGN BUILD FEE	LUMP SUM GENERAL CONDITIONS	REIMBURSABLE GENERAL CONDITIONS	COST OF WORK	OWNER
Project Taxes						
Construction Equipment						
Construction Labor Costs						
Warranty Period Administration						
Construction Materials						
A/E Cost of Bid Packages						
Preliminary Soils Inspections						
Title/Development Cost						
Land Costs						
Financing/Interest Cost						
Interim Financing Costs						
CM Contingency						
Owner Change Contingency						
Building Operation after Move-in						
Building Maint. After Move-in						
Moving Coordination						
Moving Costs						
Corrective Work						
Hazardous Materials Abatement (if applicable)						
C.M. General Overhead Cost						
C.M. Profit / Fee - fixed rate						
Costs Over GMP						
MWBE Manager - Preconstruction						
MWBE Manager - Construction (time spent on project)						
MWBE Outreach for Bidding						
Prequalify Trade Contractors						
Conduct Prebid Conferences						
Open, Review, Tab, and Certify Bids						
Post bid interview apparent low Trade Bidders						
Media Relations						
MAP / Partnering						
Meeting Accommodations						
Notary Fees						
Jobsite Office Supplies & Equipment						
Destructive Testing						
Monthly Report Manuals						
MEP Review and Coordination Drawings						
MEP Commissioning Agent (3rd Party)						
Subcontractor safety Representatives						
Safety Incentives						



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: ADMINISTRATIVE MATTERS

SUBJECT: Roster of Certified Firefighters and Relief Fund Board of Trustees

BACKGROUND: Fire Chief Hollis Freeman may be called upon to present this agenda item.

In accordance with NCGS 58-86-25, a valid and accurate list of all eligible firefighters is required by the N.C. State Firefighters' Association. The annual roster of firefighters shows those who are eligible for the line of duty death benefit as well as Pension Fund credit.

Copy of the Certified Firefighters' Roster, the Relief Fund Board of Trustees and NCGS 58-86-25 provided.

SUGGESTED ACTION: Council is requested to approve the Certified Firefighters' Roster and Relief Fund Board of Trustees.

ATTACHMENTS:

[Certified Firefighters' Roster - 2.3.2025.pdf](#)

[NCGS - Certification of Firefighters - 2.3.2025.pdf](#)



Fire Department Roster on 1/8/2025

Elizabethtown Fire Department

NC State Firefighters' Association
323 West Jones St, Suite 401
Raleigh, NC 27603
888-546-2732
919-821-9382

This Roster was last updated on 1/8/2025 3:10:38 PM

Elizabethtown Fire Department

PO Box 700
Elizabethtown, NC 28337

Email hfreeman@elizabethtownnc.org

Member Id: 100911

Member Type: FDC / Fire Dept Combo

Department Chief: Hollis W. Freeman

Paid thru: 12/31/2024

NCSFA Member Y Certification Letter 2024

Paid	10		
Vol	20		
Rescue	0		
Junior	1		
Retired	10	Non-Mem	0
Life	0	Ret Non-Mem	0
Member	0	Vacant	0
Total (Dues)	41		
County:	Bladen		

Showing certification for hours completed in 2024

	SSN	ID	Name/DOB	Address	PHONE/Email	GEN	MAR	P/V/R	CERT
1	XXXX-XX-5497 1/1/19 - now	234589	Daniel E. Adkins 07/14/1962	5367 NC 87-W Elizabethtown, NC 28337	(910) 862-7328 djdannyadkins@yahoo.com	M	S	RI	N
2	XXXX-XX-3323 1/1/16 - now	210452	John Dean Alsup 11/27/1998	511 Harwood St. Elizabethtown, NC 28337	910-549-6880 rnwest@elizabethtownnc.org	M	S	V	Y
3	XXXX-XX-6723 12/28/18 - now	226494	Landon Davis Alsup 12/27/2000	511 Harwood St. Elizabethtown, NC 28337	huntinlife13@gmail.com	M	S	V	Y
4	XXXX-XX-8392 1/1/19 - now	234597	Joshua Robeson Babson 06/21/2002	441 Morganwood Estates Dr. Elizabethtown, NC 28337	rjbabson@gmail.com	M	S	V	Y
5	XXXX-XX-8724 5/24/24 - now	234584	Garrick Bailey 03/25/1996	7165 Hallsboro Rd. Clarkton, NC 28433	910-918-2249 garrick.bailey@gmail.com	M		P	Y
6	XXXX-XX-0654 6/24/24 - now	274911	Josie Hope Brennan 01/03/1990	PO Box 700 Elizabethtown, NC 28337	hfreeman@elizabethtownnc.org	F	S	V	Y
7	XXXX-XX-1732 12/14/24 - now	274919	Rodney C Butler 09/14/2006	PO Box 700 Elizabethtown, NC 28337	hfreeman@elizabethtownnc.org	M	S	V	N
8	XXXX-XX-4663 1/1/19 - now	234599	Abigail Holbrook Cross 02/02/2002	203 Woodhouse Dr Elizabethtown, NC 28337	910-876-5814 crossabbie7@gmail.com	F		V	Y
9	XXXX-XX-1232 1/1/23 - now	259450	David Cross 01/03/1939	PO Box 700 Elizabethtown, NC 28337	(910) 862-4586 hfreeman@elizabethtownnc.org	M		RI	N
10	XXXX-XX-3564 1/1/19 - now	234590	Powell J. Cross 09/01/1968	203 Woodhouse Dr Elizabethtown, NC 28337	(910) 862-8959 pjcross2360@gmail.com	M	M	RA	N
11	XXXX-XX-7195 1/1/23 - now	259923	Charles DeVane 01/06/1943	PO Box 700 Elizabethtown, NC 28337	(910) 862-4586 hfreeman@elizabethtownnc.org	M		RI	N

	<u>SSN</u>	<u>ID</u>	<u>Name/DOB</u>	<u>Address</u>	<u>PHONE/Email</u>	<u>GEN</u>	<u>MAR</u>	<u>P/V/R</u>	<u>CERT</u>
12	XXXX-XX-1832 1/1/23 - now	259926	Wayne Edge 05/31/1949	PO Box 700 Elizabethtown, NC 28337	(910) 862-4586 hfreeman@elizabethtownnc.org	M		RI	N
13	XXXX-XX-8416 1/1/15 - now	203709	Allston Blake Freeman 04/15/1994	PO Box 544 PO Box 716 Bladenboro, NC 28320	(910) 871-3875 mwest@elizabethtownnc.org	M	S	V	Y
14	XXXX-XX-8698 11/10/08 - now	110091	Hollis W. Freeman 03/27/1975	30 Richardson Road Bladenboro, NC 28320	(910) 878-0385 hfreeman@elizabethtownnc.org	M	M	P	Y
15	XXXX-XX-2072 8/1/15 - now	203711	James Freeman 05/21/1972	821 S. Main St Bladenboro, NC 28320	jcw@intratar.net	M	M	V	Y
16	XXXX-XX-7845 11/3/15 - now	119208	Ennis Byron Graham, Jr. 01/13/1949	15 Beaver Street PO Box 1145 Elizabethtown, NC 28337	(910) 990-6355 ebgraham113@gmail.com	M	M	V	N
17	XXXX-XX-3826 12/14/24 - now	274924	Landon C Herring 05/11/2008	PO Box 700 Elizabethtown, NC 28337	 hfreeman@elizabethtownnc.org	M	S	J	N
18	XXXX-XX-4817 7/1/19 - now	232719	Robert Thomas Hester 04/28/1977	1707 Winding Creek Rd. Elizabethtown Elizabethtown, NC 28337	 mwest@elizabethtownnc.org	M	S	V	N
19	XXXX-XX-4899 1/4/17 - now	203710	Samuel Hodge 09/11/1996	2334 Purdie Church Rd Tar Heel, NC 28392	samhodge910@gmail.com	M	S	P	Y
20	XXXX-XX-4108 1/1/23 - now	259931	Paul Johnson 02/24/1968	PO Box 700 Elizabethtown, NC 28337	(910) 862-4586 hfreeman@elizabethtownnc.org	M		RI	N
21	XXXX-XX-9595 2/2/16 - now	210449	Thomas Morgan Johnson III 03/05/1998	106 Easy St. Elizabethtown, NC 28337	910-874-3068 mwest@elizabethtownnc.org	M	S	V	Y
22	XXXX-XX-4580 11/18/14 - now	110084	Adam Lin Jordan 05/08/1992	251 Singletary Avenue Elizabethtown, NC 28337	adamjordan4@yahoo.com	M	S	V	Y
23	XXXX-XX-1229 11/12/18 - now	133600	Cameron Lee Kinlaw 01/05/1988	1904 W Broad Street Elizabethtown, NC 28337	(910) 862-4621 baylakaasboy55@yahoo.com	M	S	P	Y
24	XXXX-XX-2057 1/1/19 - now	234586	Edwood Lancaster 10/12/1957	958 Mercer Mill Rd. Elizabethtown, NC 28337	mwest@elizabethtownnc.org	M	M	RA	N
25	XXXX-XX-4878 3/25/22 - now	251739	Michael Keith Lawls 05/08/1992	400 Hall Street Apt. 2A Elizabethtown, NC 28337	(910) 850-8891 firemike8122@gmail.com	M	S	P	Y
26	XXXX-XX-7080 5/27/24 - now	264839	Hunter Blake Long 04/14/1993	PO Box 700 Elizabethtown, NC 28337	 hfreeman@elizabethtownnc.org	M	S	P	Y
27	XXXX-XX-7132 1/1/23 - now	259928	Walter McDuffie 03/09/1940	PO Box 700 Elizabethtown, NC 28337	(910) 862-4586 hfreeman@elizabethtownnc.org	M		RI	N
28	XXXX-XX-3354 3/15/21 - now	235177	Charles Dustin Melvin 06/19/1987	859 River Rd. White Oak White Oak, NC 28399	cmelvin@bladenco.org	M	M	P	Y
29	XXXX-XX-4120 9/3/15 - now	203023	James Mize 08/18/1987	PO Box 700 Elizabethtown, NC 28337	mwest@elizabethtownnc.org	M		P	Y
30	XXXX-XX-8436 1/1/10 - now	110082	Stuart Nell Murphy 12/04/1957	102 Teal St Elizabethtown, NC 28337	(910) 845-4970	M	M	V	N
31	XXXX-XX-5047 1/7/24 - now	232721	Johnathon Norris 03/30/1992	205 Smiths Mill Pond Rd Garland Garland, NC 28441	mwest@elizabethtownnc.org	M	M	V	Y
32	XXXX-XX-6866 3/4/24 - now	274909	Spencer G Padrick 02/08/2005	PO Box 700 Elizabethtown, NC 28337	 hfreeman@elizabethtownnc.org	M	S	P	Y
33	XXXX-XX-7819 2/11/13 - now	180511	Jason L. Page 08/29/1981	87 Karen Dr. Bladenboro, NC 28320	(910) 874-0747 jpage@etownfd.com	M	M	V	Y
34	XXXX-XX-8799 1/1/10 - now	110094	John David Parks, III 04/29/1982	845 Airport Road Elizabethtown, NC 28337	(910) 862-3018	M	M	V	N

	<u>SSN</u>	<u>ID</u>	<u>Name/DOB</u>	<u>Address</u>	<u>PHONE/Email</u>	<u>GEN</u>	<u>MAR</u>	<u>P/VR</u>	<u>CERT</u>
35	XXXX-XX-5221 6/10/24 - now	264868	Joseph Dewayne Ramsey 04/23/1976	PO Box 1791 Elizabethtown, NC 28337		M	S	V	Y
36	XXXX-XX-4843 1/1/23 - now	259930	Larry Richards 05/19/1953	PO Box 700 Elizabethtown, NC 28337	(910) 882-4586 hfreeman@elizabethtownnc.org	M		RI	N
37	XXXX-XX-9895 1/20/15 - now	198553	Lawrence C. Sholar 03/10/1989	P.O. Box 1125 Elizabethtown, NC 28337	(910) 874-4467 lsholar@cl.fay.nc.us	M	S	P	Y
38	XXXX-XX-1230 11/1/24 - now	274927	Elden J Stackhouse 01/26/1994	PO Box 700 Elizabethtown, NC 28337		M	M	V	Y
					hfreeman@elizabethtownnc.org				
39	XXXX-XX-7250 7/22/24 - now	274916	Victoria P Sullivan 12/11/1993	680 Plantation Road Elizabethtown, NC 28337		F	M	V	N
40	XXXX-XX-2102 1/1/23 - now	259927	Sam Warren 12/27/1955	PO Box 700 Elizabethtown, NC 28337	(910) 882-4586 hfreeman@elizabethtownnc.org	M		RI	N
41	XXXX-XX-4968 12/14/24 - now	274922	Joseph Thomas Williams 11/13/1992	PO Box 700 Elizabethtown, NC 28337		M	M	V	Y
					hfreeman@elizabethtownnc.org				

Relief Fund Board of Trustees

Elizabethtown Fire Department

2024 Certification Date	Certified By
1/8/2025	Hollis W. Freeman

Board Trustees elected by Fire Department

Trustee #1

Powell Cross
203 Woodhouse Drive
Elizabethtown, NC 28337
pjcross2360@gmail.com
(910) 876-2360

Trustee #2

Byron Graham
P. O. Box 1145
Elizabethtown, NC 28337
ebgraham113@gmail.com
(910) 990-6355

Board Trustees appointed by Local Government

Trustee #3

Wayne Edge
2202 First Avenue
Elizabethtown, NC 28337
j.wedge@hotmail.com
(910) 991-2662

Trustee #4

Larry Richards
93 Gibson Dairy Rd.
Elizabethtown, NC 28337
etown232@gmail.com
9106454917

Board Member appointed by State Fire Marshal

Trustee #5

Giles Clark
P. O. Box 997
Elizabethtown, NC 28337
rnwest@elizabethtownnc.org
(910) 876-1945

§ 58-86-25. Determination and certification of eligible firefighters.

For purposes of this Article, eligible firefighters must attend 36 hours of training sessions in each calendar year. Each eligible fire department shall annually determine and report a certified roster of the names of those firefighters meeting the eligibility qualifications of this Article to its respective governing body, which upon determination of the validity and accuracy of the qualification, the department shall promptly submit the list to the North Carolina State Firefighters' Association. Submission of such information by a department to the North Carolina State Firefighters' Association constitutes a certification of its accuracy under accounting standards set forth by the Governmental Accounting Standards Board of the Financial Accounting Foundation. The North Carolina State Firefighters' Association shall provide a list of those persons meeting the eligibility requirements of this Article to the State Treasurer by January 31 of each year. For the purposes of the preceding sentences, the governing body of a fire department operated: by a county is the county board of commissioners; by a city is the city council; by a sanitary district is the sanitary district board; by a corporation, whether profit or nonprofit, is the corporation's board of directors; and by any other entity is that group designated by the board. An "eligible firefighter" may not also qualify as an "eligible rescue squad worker" in order to receive double benefits available under this Article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1981, c. 1029, s. 1; 1983, c. 416, s. 7; 1985, c. 241; 2000-67, s. 26.22; 2001-222, s. 1; 2003-362, s. 1; 2009-66, s. 2(b); 2013-284, s. 1(a); 2015-88, s. 3; 2016-51, s. 6.)



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: OTHER BUSINESS

SUBJECT: "Briefly" (*Reminders and announcements are made at this time*)

BACKGROUND: The Town Manager will present the "Briefly" items.

Copy provided for "Briefly" items and Department Head Update Report.

SUGGESTED ACTION: Town Manager Dane Rideout may be called upon to present this agenda item.

ATTACHMENTS:

[Peak Agenda - Briefly - 2.3.2025.docx](#)

[Department Head Update Report - 2.3.2025.pdf](#)

To: Mayor and Town Council
From: Dane Rideout, Town Manager
Subj: "Briefly"
Date: February 3, 2025 Regular Meeting

The following items are provided as information to Council:

- The Department Head Update Report is provided as a separate attachment.
- The Chamber of Commerce's Annual Meeting (Awards Gala) is scheduled for February 1, 2025 from 6 pm – 10 pm at Cape Fear Winery.
- In observance of Presidents' Day, the Town offices will be closed on Monday, February 17, 2025.
- The Town's Annual Budget Retreat is set for February 25, 2025 at the Airport Terminal Building.
- MCAB Meeting, February 27, 2025 at Farmer's Market at 6 p.m. Town of Elizabethtown is hosting this event.



FOR THE MONTH OF FEBRUARY

2/08 – Spencer Padrick – Part-time Firefighter

2/13 – John "Will" Lee – Public Works

2/18 – Delana Faircloth – Public Works Coordinator



Department Head Updates

February 2025

FIRE DEPARTMENT

Hollis Freeman



Call Report for January

Total Fires - 12

EMS Calls - 38

Special Responses - 4

Service Calls - 3

Other Incidents - 17

Total Calls for January - 74

Fire Inspections Completed - 20

POLICE DEPARTMENT

Mark McMichael

Total Calls	272
Reports taken	47
Arrests	11
Collisions	14
Citations	25
Warnings	21
Truck Route	8

PUBLIC WORKS – *Stephen Duffy & Delana Faircloth*

Water Resources (Water, Wastewater & Stormwater) –*Sherry Lanier, Ricky Smith, Nick Huffman & Dillon Hemingway*

All routine daily sampling, testing, monitoring, and documentation requirements were completed for both the drinking water and wastewater conveyance operations. There were 3 water service line leak repairs. The staff installed 0 MTUs, as there are none in inventory. There is still ± 100 MTUs needing replacement. ± 100 manual meter reads/re-reads for billing and ± 24 Cut-offs/Cut-ons related to the billing operations.

Staff installed 2 – 2-inch meters one at the new Westwood facility and one for the Daycare Center in the Industrial Park. They also completed the 6" Sewer taps for the same facilities.

We have contracted Hickman Utilities to make the necessary repair for McDonald's on Poplar St. across Mill St. to the median between the BP station and Bojangles. The repair will require the replacement of 1 manhole and 140 feet of 8" gravity sewer line. As most of the line is under asphalt there will be additional costs for its replacement. Total cost for the repair is $\pm \$24,000$ and should be completed in the next two weeks.



Wastewater Treatment Plant - *Hugh Bledsoe*

- Routine sampling and testing to maintain compliance with NPDES requirements.
- Made adjustments to the WWTP operations as needed to gain optimum treatment efficiency.
- Submitted monthly electronic discharge monitoring reports to NCDEQ for December.

- Average flow through the WWTP was 454,036 gallons per day for January, 16,000 gallons per day more than December. Recorded 2.0 inches of rain and 5 inches of snow for the month.
- Performed preventative maintenance on all the SBR and Sludge Blowers.
- Performed required quarterly sampling and inspections on the Stormwater Outfalls.
- Replaced a failed drive motor on #1 SBR Decanter.
- Used a blow torch to thaw the screenings piping to the dumpster during the winter storm event.
- Decanted approximately 80,000 gallons of effluent from the SBR Sludge Basin to gain more storage space.

Opportunities

- Empty ton containers used for Chlorine and Sulphur Dioxide still have not been removed by vendor – Jones Chemicals incorporated.
- Having electrical issues with the SBR controls, sections of wiring may need to be replaced. Cannot replace PLC components as they are obsolete.
- Not getting alarms from the SCADA system for the WWTP SBR decanters when a failure occurs, usually during storm events.
- Need to locate a replacement SBR Blower for #1 SBR Blower that had a failure. The cost for a new replacement is around \$20K.
- Had a Step Screen failure during the winter storm event, several laminae need to be replaced. Influent composite sampler failed, Mr. Taylor replaced both thermostats and the control board.
- Sampler is still non-operational. Using old sampler pump and small refrigerator until repairs are made.

Facilities Management – Greg Taylor & John Duffy & Public Services - Walter Czartoszewski, Joseph Ramsey, Steven Batton & Will Lee

January always seems to go by quickly. Public works took down all Christmas Decorations, really hated seeing them go. They filled in some holes along the edge of Dunham Street and cleaned snow and ice from the sidewalks on Broad Street and at Town Hall. Public Services also worked on some street signs throughout town. They continue to work in our parks with mulching and blowing leaves as well as limb removal. The rainy/snowy weather has slowed us down considerably, but we hope to have our parks in good shape before spring begins. Greg worked on an HVAC unit at the airport and replaced an inducer motor on an HVAC unit at Town Hall. He also removed a hot water heater from the police department. Greg also has placed some surplus on GovDeals.com and is working on several other big items to add in the upcoming weeks.



Fleet Maintenance - Tracy *Priest*

Mr. Priest serviced 1 mower, 0 small equipment and other items, 0 large pieces of equipment, 16 Police Vehicles, 1 Fire Department Vehicle, 2 Public Works Vehicles, 0 Admin Vehicles, and various other tasks as assigned. Mr. Priest also assisted with Christmas decorations, worked on a Lift Station generator, and other assignments outside his normal responsibilities.

EV Charging Station – *Farmers Market*

See attached reliability summary.



Quarterly Charging Reliability Report 2024 Q4

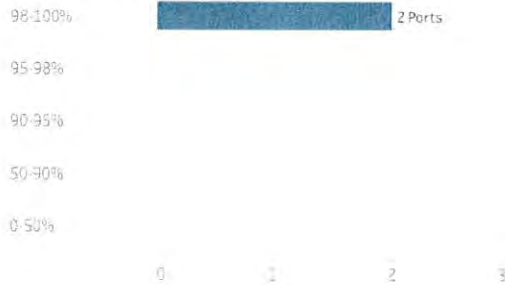
Report for Town of Elizabethtown, NC
generated on 1/19/2025

Quarterly Uptime - 2024 Q4

Quarterly Uptime is the percentage of time each individual charging port is able to dispense energy, averaged across all ports for your organization within the time period.

100.00%
0.00%
percentage point change from last quarter

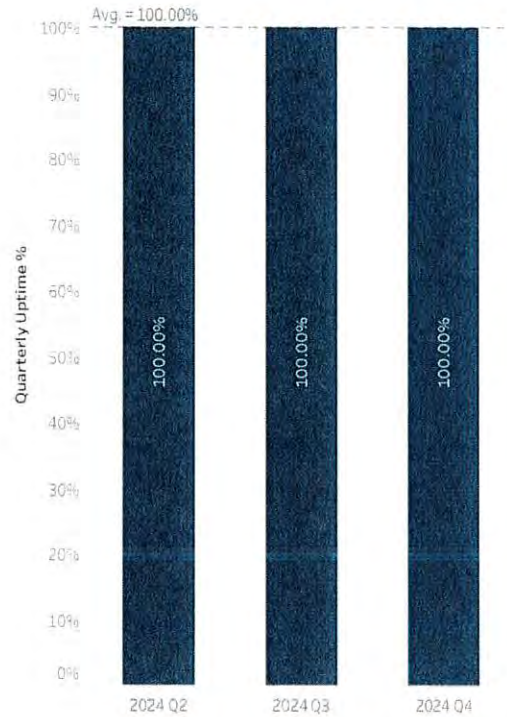
Quarterly Uptime %



Distribution of average quarterly uptime across 2 ports and 1 Stations

Quarterly Uptime - Last 4 quarters

Quarterly Uptime - Last 4 calendar quarters is the percentage of time each individual charging port is able to dispense energy, averaged across all ports for your organization within the time period. Only stations that are activated for the complete month are included.



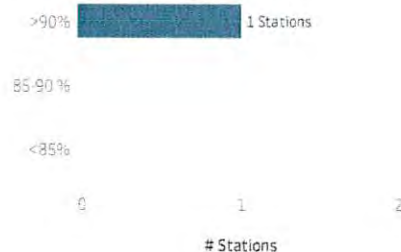
Quarterly average port uptime over the last 4 quarters.

Reachability - 2024 Q4

Reachability is the percentage of successful pings a station makes to the ChargePoint network, based on the total expected pings in this time period. Stations ping to the ChargePoint network every 10 minutes via cellular connection.

No connectivity issues

Quarterly Reachability %



Total stations in report

1 Stations

Includes the following models and service types:

Device Model Family	Assure *	Non Assure **
CT4000	1 Stations	0 Stations

Town Clerk
Juanita Hester

- Clerk assisted with providing information for Public Record Requests received during the month of January.
- The follow-ups and distribution of executed documents as approved at the 1/6/2025 Town Council meeting was handled by the Clerk.
- Prepared and distributed Meeting Notice for the Elizabethtown Airport/Economic Development Commission meeting on January 14, 2025.
- Clerk updated the Town's Personal Property Listing received from the County of Bladen and submitted prior to January 31, 2025.
- Assisted with arrangements for Town Council to participate in the Martin Luther King Day Parade.
- Prepared Holiday Notice for Dr. Martin Luther King, Jr. Day on January 20, 2025 for posting and distribution.
- Prepared meeting minutes for the 1/6/2025 Town Council Noon meeting as well as the 1/6/2025 Noon Closed Session.
- Weekly Friday Memos were prepared and distributed to Council Members and Department Heads.
- Prepared Staff Meeting Outline for the February 3, 2025 Town Council meeting for the Town Manager's review.
- In coordination with the Town Manager, Assistant Town Manager, Finance Director and Planning Director, the Clerk prepared the agenda material for the 2/3/2025 Town Council meeting, posted the information to the Town's webpage and made distribution to Town Council and Department Heads. In addition, the Clerk made notification to the Press that the agenda material had been posted to the Town's webpage.
- On 1/16/2025, Clerk made notification to Mrs. Theresa Lloyd at Paul R. Brown Leadership Academy of the February 3, 2025 Town Council Meeting so that advance preparation could be made for the Cadets to attend the meeting for presentation of the Colors.



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: OPEN FORUM

SUBJECT: Open Forum

BACKGROUND: Three (3) Minutes Per Citizen.....Should State Name/Address.

Copy of Open Forum Sign-In Sheet provided.

SUGGESTED ACTION: Council is requested to listen to any public concerns or comments received.

ATTACHMENTS:

[Sign-In Sheet - Open Forum - February 3, 2025 Regular Meeting.docx](#)



TOWN OF ELIZABETHTOWN

Open Forum Session

February 3, 2025 Regular Meeting

Citizens will be allowed three (3) minutes to speak.

Sign-In Sheet

<u>Name</u>	<u>Address</u>	<u>Phone #</u>	<u>Topic of Concern</u>
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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: CLOSED SESSION

SUBJECT: Closed Session - *To Be Conducted at the Noon Meeting*

BACKGROUND: A Closed Session will be conducted at the Noon meeting.

SUGGESTED ACTION: Mayor Sylvia Campbell will entertain a motion and a second to enter into Closed Session in accordance with NCGS 143-318.11(a)(3) - Attorney-Client Privilege.

ATTACHMENTS:



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COUNCIL AGENDA ITEM REPORT

DATE: February 3, 2025

SUBMITTED BY: Juanita Hester

ITEM TYPE: Request

AGENDA SECTION: ADJOURNMENT

SUBJECT: Adjournment

BACKGROUND: With no further business to be conducted, the meeting will be adjourned.

SUGGESTED ACTION: Mayor Sylvia Campbell will entertain a motion and a second to adjourn.

ATTACHMENTS: