

TOWN OF WAYNESVILLE, NC

Board of Aldermen – Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786

Date: **March 26, 2013** Time: **5:30 p.m.**

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(828) 452-2491

townclerk@townofwaynesville.org

A. CALL TO ORDER

1. Welcome/Calendar/Announcements – Mayor Gavin Brown
2. Adoption of Minutes

Motion: *To approve the minutes March 12, 2013 (regular session) as presented [or as corrected].*

B. NEW BUSINESS

3. Award of Contract – 2013 Public Art Project “Wildflowers of the Smokies”
 - Jan Griffin, Chair, Waynesville Public Art Commission

Motion: *To award a contract in the amount of \$12,500 to Waynesville artist Grace Cathey, for production of the 2013 Public Art Project “Wildflowers of the Smokies,” as recommended by the Waynesville Public Art Commission*

4. Award of Bid – Skate Park Grading & Construction

Motion: *To waive the requirement outlined in the Notice to Bidders that “general contractors have a license classification of Building Contractor”; and to award the contract for grading and construction of the skate park to WNC Paving of Waynesville, NC, the lowest responsive responsible bidder, in the amount of \$341,657.70.*

TOWN OF WAYNESVILLE – REGULAR SESSION AGENDA

March 26, 2013

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C. UNFINISHED BUSINESS

5. Request for Support of 2% Increase in Haywood County Occupancy Tax

Motion: *To authorize the mayor to sign and submit a letter to our local delegation of General Assembly on behalf of the Town of Waynesville, supporting the revised draft of local legislation authorizing an increase in Haywood County Occupancy Tax from 4% to 6%, and providing for proportional representation on the TDA Product Development Committee, as amended.*

D. COMMUNICATIONS FROM STAFF

6. Town Manager-Marcy Onieal

- Town Hall Day Legislative Topics
- Junaluska-Waynesville Merger Update
- Clean Community Coalition-Spring Clean-up Locations
- Budget Workshop Scheduling
- Appointments to Boards & Commissions
- Easter Street Closing
- Non-profit Printer Donations

7. Town Attorney-Woody Griffin

E. COMMUNICATIONS FROM THE MAYOR AND BOARD OF ALDERMEN

F. CALL ON THE AUDIENCE

G. ADJOURN

BOARD OF ALDERMEN

UPCOMING EVENTS

Tue, Mar 26	BoA meeting, 7 pm, Board Room
Wed, Mar 27	NCLM Town Hall Day, Raleigh
Fri, Mar 29	Town Holiday, Easter, offices closed
Tues, Apr 2	Senate Local Govt Committee, Raleigh (Junaluska/Waynesville merger bill)
W-F, Apr 4-6	Annual Mulch Sale (8:00 am-noon)
W-F, Apr 11-13	Annual Mulch Sale (8:00 am-noon)
Thursdays Apr 4-May 23	Waynesville Police Department, Civilian Police Academy (6:30 pm)
Thu, Apr 11	2013 Rules of Procedure Seminar for Elected Officials (Biltmore Park, Rm 346, 9:00 am – Noon)
Wed, Apr 17	EPA Region 4 Excellence in Site ReUse Award to HVO (Noon at HVO)
Mon, Apr 22	Earth Day
Fri, Apr 26	Arbor Day
Fr-Su, Apr 26-28	Smoky Mtn 9-Ball Shootout Benefit for ARC, Haywood Co. Fairgrounds
Tue, Apr 30	Working Dinner with Duke Energy Officials, (6:30 pm, Sweet Onion Restaurant)
Thu, May 9	Southwestern Commission Annual Dinner & Meeting, Cherokee (6:30 pm)
Wed, May 15	General Assembly Crossover Deadline
Mon, May 27	Town Holiday-Memorial Day, offices closed
Wed, Jun 5	2 nd Annual Rockslide Conference 2013, HCC, 9:00 am – 3:00 pm
Sat, Aug 31	Proposed Effective Date (Junaluska/Waynesville merger)

Manager's Out of Office Schedule:

Wed, Mar 27, Raleigh (NCLM Town Hall Day)
Mon, Apr 1, Asheville (family medical leave)
Tue, Apr 2, Raleigh (Senate Local Govt Committee)
F/S, Apr 12-13, Chapel Hill (UNC-CH GAA Board)
Fri, Apr 26, Asheville (family medical leave)
F/S, May 10-11, Chapel Hill (UNC-CH MPA Board)

**MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REGULAR SESSION MEETING
MARCH 12, 2013**

THE WAYNESVILLE BOARD OF ALDERMEN held its regular meeting on Tuesday March 12, 2013 at 7:00 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Brown called the meeting to order at 7:00 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Julia Freeman
Alderman Wells Greeley
Alderman LeRoy Roberson

The following staff members were present:

Marcy Onieal, Town Manager
Woodrow Griffin, Town Attorney
Alison Melnikova, Assistant Town Manager/Deputy Clerk
Eddie Ward, Administrative Assistant
Julie Grasty, Purchasing Manager

Representing the media:

Mary Ann Enloe, The Mountaineer
WLOS-TV13

1. Welcome /Calendar/Announcements

Mayor Brown welcomed everyone and asked Manager Onieal about upcoming events. She reminded everyone about NCLM Town Hall Day and discussed driving arrangements for Board Members attending. Also, Manager Onieal said VC3, our IT consultants, were having an open house in their main network server facility in Columbia if anyone was interested in attending. Mayor Brown mentioned the Smoky Mountain 9-Ball shootout benefit for ARC at the Haywood County Fairgrounds and also the working dinner with Duke Energy Officials tentatively scheduled for the last of April.

2. Minutes of February 26, 2013

Alderman Caldwell made a motion, seconded by Alderman Greeley, to approve the minutes of February 26, 2013 as presented. The motion passed unanimously.

B. NEW BUSINESS

3. Memorandum of Understanding between the Town of Waynesville and the French Broad River Metropolitan Planning Organization (FBRMPO)

Manager Onieal introduced Lyuba Zuyeva, Transportation Planner with FBRMPO and asked her to explain the revised Memorandum of Understanding between the Town of Waynesville and FBRMPO. Ms Zuyeva said the Town of Waynesville is considered part of the FBRMPO for the purpose of regional cooperation, coordination, planning and funding of North Carolina Department of Transportation projects. This agreement includes several municipalities and counties. The Memorandum of Understanding revisions have been triggered by the 2010 census data which expanded the Asheville metropolitan area to include rural parts of Transylvania, Madison, and Buncombe counties. Because of this expansion, the voting structure had to be amended to accommodate new municipal members. In addition, the revised agreement includes updated language to reflect changes in references to federal legislation and nomenclature. The mayor or his designee (Alderman LeRoy Roberson) will continue to represent the Town on the MPO Board, while the Town Manager or her designee (Development Services Director Paul Benson) will continue to represent the Town's interests on the Technical Coordinating Committee. The FBRMPO has helped the Town of Waynesville with planning studies such as the South Main Planning Study, the future North Main Planning Study, and the Haywood County Bicycle Plan.

Alderman Roberson made a motion, seconded by Alderman Greeley, to approve the revised Memorandum of Understanding between the Town of Waynesville and the French Broad River Metropolitan Planning Organization as presented, and to authorize the mayor to execute the agreement on behalf of the Town of Waynesville. The motion passed unanimously.

4. Award of Bid – Skate Park Grading and Construction

Manager Onieal recommended that the board table this item of business until the next meeting because of concerns pertaining to ambiguous wording in the Request for Proposals, which may have been interpreted to limit acceptable bidders solely to licensed contractors with building contractor classification, which was not the town's intent. Due to the short turnaround time between the bid opening on May 7 and this meeting, staff would like time to more carefully review the bids that were received before recommending an award. With the consensus of the Board, Mayor Brown tabled the item until the next regular meeting on March 26, 2013.

C. UNFINISHED BUSINESS

5. Lake Junaluska Merger Update

Manager Onieal said this is an historic evening because on March 8, 2013, after nearly two years of study, public input, and recommendations by various advisory bodies, the Board of Directors of Lake Junaluska Assembly formally voted to actively pursue annexation of Lake Junaluska by the Town of Waynesville effective August 31, 2013. She introduced Lake Junaluska Assembly Executive Director, Jack Ewing, to present the results of the public opinion surveys sent to Lake Junaluska property owners, and a summary of action taken by the Lake Junaluska Board of Directors.

Mr. Ewing said 811 surveys were sent to property owners and 492 had been returned with a response percentage of 60.7%, which is far above the minimum percentage necessary to be considered statistically significant. The final summary of the surveys included 65% of respondents in support of pursuing annexation with the Town of Waynesville. This report of the survey was followed on March 8, 2013 with a formal vote of the Board of Directors to request that General Assembly extend the

corporate limits of The Town of Waynesville to include all of Lake Junaluska and to seek the support of the Town of Waynesville Board of Aldermen in this request for annexation.

Mayor Brown said this has been a community decision of Lake Junaluska and there is a lot of history and future being created with this decision.

Alderman Roberson stated he has been impressed with the procedures, organization, and information from the Board of Directors of Lake Junaluska. The meetings have been very open and handled very well on the part of both officials at Lake Junaluska, as well as the Town Manager and her staff.

Alderman Greeley said the Town of Waynesville Board has been ready to make a decision in favor of annexation at an earlier date, but was glad they waited until the survey results had been recorded to make a formal decision. The public has weighed in overwhelmingly with their responses to the annexation and he feels annexation will be good for both communities.

Alderman Caldwell said a lot of time and effort has been put into this merger effort, and he is very excited about the future and welcomes Lake Junaluska into the Town of Waynesville.

Alderman Freeman said she felt the process had been thorough, and very impressive.

Manager Onieal wanted everyone to know that the Town of Waynesville Board discussed the proposed merger during eight separate regular meetings and during a daylong workshop, all of which were open to public comment, and held two formal public hearings on annexation during February. She felt the public input process had been very deliberate, thorough, and transparent, and that the Junaluska staff and Municipal Task Force had been very good to work with and very welcoming of Town input throughout the process. Senator Davis and Representative Queen have been very engaged in the process of annexation as well, and intend to introduce the draft local bill in both the Senate and the House on March 13, 2013.

A motion was made by Alderman Caldwell, seconded by Alderman Greeley, to adopt Resolution R-02-13 supporting the request by the LJA Board of Directors that the NC General Assembly authorize the extension of the corporate limits of the Town of Waynesville to include the 1200+ acre tract of land in Haywood County, more commonly known as Lake Junaluska Assembly, effective August 31, 2013. The motion passed unanimously.

Alderman Greeley made a motion, seconded by Alderman Roberson, to go to County Commissioners, municipalities, and other appropriate entities, such as the Economic Development Commission and Haywood County Chamber of Commerce, to seek their support of the Waynesville-Junaluska annexation and their assistance in encouraging the General Assembly to adopt local legislation, as referenced in Resolution R-06-13, extending the corporate limits of the Town of Waynesville to include the 1200+ acre tract of land in Haywood County, more commonly known as Lake Junaluska Assembly, effective August 31, 2013. The motion passed unanimously.

D. COMMUNICATIONS FROM STAFF

Manager Onieal said the Town owns 4 outlying residential properties, two at the watershed, one at the wastewater treatment plant, and one at Recreation Park, which traditionally have been rented by town staff for purposes of providing 24-hour security and emergency operational support. Two of these properties are now vacant and have deteriorated over an extended period of time so as not to be appropriate for continued residential use, without extensive maintenance. Manager Onieal indicated she will be working with staff on a recommendation for use and/or disposition of those properties, but that they will not continue to be used by staff for housing.

E. COMMUNICATIONS FROM THE MAYOR AND BOARD OF ALDERMEN

No communications from the Mayor and Board of Aldermen at this time.

F. CALL ON THE AUDIENCE

Mr. Bill King, 322 Littleton Road, Lake Junaluska, NC, asked to make comments concerning the annexation. Mr. King stated he felt that if the leaders of the Town of Waynesville and residents of Lake Junaluska keep the concept of being separate yet part of the same greater whole in mind, everyone can go forward together in a meaningful way and each will benefit. He looks forward to the new relationship of Lake Junaluska and Town of Waynesville with confidence.

Mr. Richard Heinkle of Heinkle Construction Company, Asheville, NC stated he was one of the bidders on the Skate Park. Attorney Griffin will be in contact with Mr. Heinkle concerning the bid.

G. ADJOURN

With no further business, Alderman Greeley made a motion, seconded by Alderman Freeman to adjourn the meeting at 7:52 p.m. The motion passed unanimously.

ATTEST

Gavin A Brown, Mayor

Marcia D Onieal, Town Manager

Alison Melnikova, Deputy Clerk

Prepared by:

Eddie Ward, Administrative Assistant

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: March 26, 2013

SUBJECT: Award of contract for 2013 Public Art project *Wildflowers of the Smokies* to artist Grace Cathey

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: 3-B
Department: Administrative Services
Contact: Alison Melnikova, Assistant Town Manager
Presenter: Jan Griffin, Chair of the Public Art Commission

BRIEF SUMMARY:

The Public Art Commission issued a *Call for Artists* in the fall of 2012 for a project themed *Wildflowers of the Smokies*, to be installed on the Town's wall located on the south side of the mini park at the corner of Depot and Main streets. Five submissions were received, and three of the artists were invited as finalists to present to a Community Advisory Panel on March 9th. All three artists presented very thoughtful and interesting pieces to the 23 panel members, and the Town would be proud to have artwork by any of these artists as part of its permanent collection. However, Grace Cathey's submission received the highest scores from the Panel, and best fits the Commission's desire to have a colorful piece that also showcases the diversity of wildflowers found within the Park. The contract between the artist and the town will reference specific elements from the piece presented to the Panel, but does allow for some artistic leeway as production progresses. Installation is scheduled for September 17, 2013, and will be coordinated between the Town and the artist. The wall will also receive a thorough cleaning this summer in anticipation of the project, and landscaping will be enhanced.

MOTION FOR CONSIDERATION: *To award a contract in the amount of \$12,500 to Waynesville artist Grace Cathey, for production of the 2013 Public Art Project "Wildflowers of the Smokies", as recommended by the Waynesville Public Art Commission.*

FUNDING SOURCE/IMPACT: The selected artist will receive \$12,500 for the project, which is already included in the budget for the WPAC. Although a public board appointed by the Board of Aldermen, the Public Art Commission is charged with raising all of the funds spent on the purchase of public art, and in return the town provides administrative and fundraising support. In FY 2013 the Town provided \$5,000 and the Commission has raised \$3,570 from the sale of its successful cookbook. A major fundraising event is scheduled for June 27th at HART Theater.

ATTACHMENTS:

- Slides from Grace Cathey's presentation to the Community Advisory Panel
- *Call to Artists* issued in 2012

MANAGER'S COMMENTS AND RECOMMENDATIONS:

Approve as recommended. Since its creation in 2006, the WPAC has raised \$1.60 from the community for every \$1 in direct town support. Over 30 members of the community sat in on the project review panel presentations, and provided input in support of the Commission's recommendation.

Wildflowers of the Smokies



Sculpture Garden





Bear in Mind it is Feeding Time

Chimney Rock State Park





Raccoon
Tree

Cultivating a Living Treasure



Traditions



Mimosa Kaleidoscope



King Luscious



Wildflowers of the Smokies





16'

6'

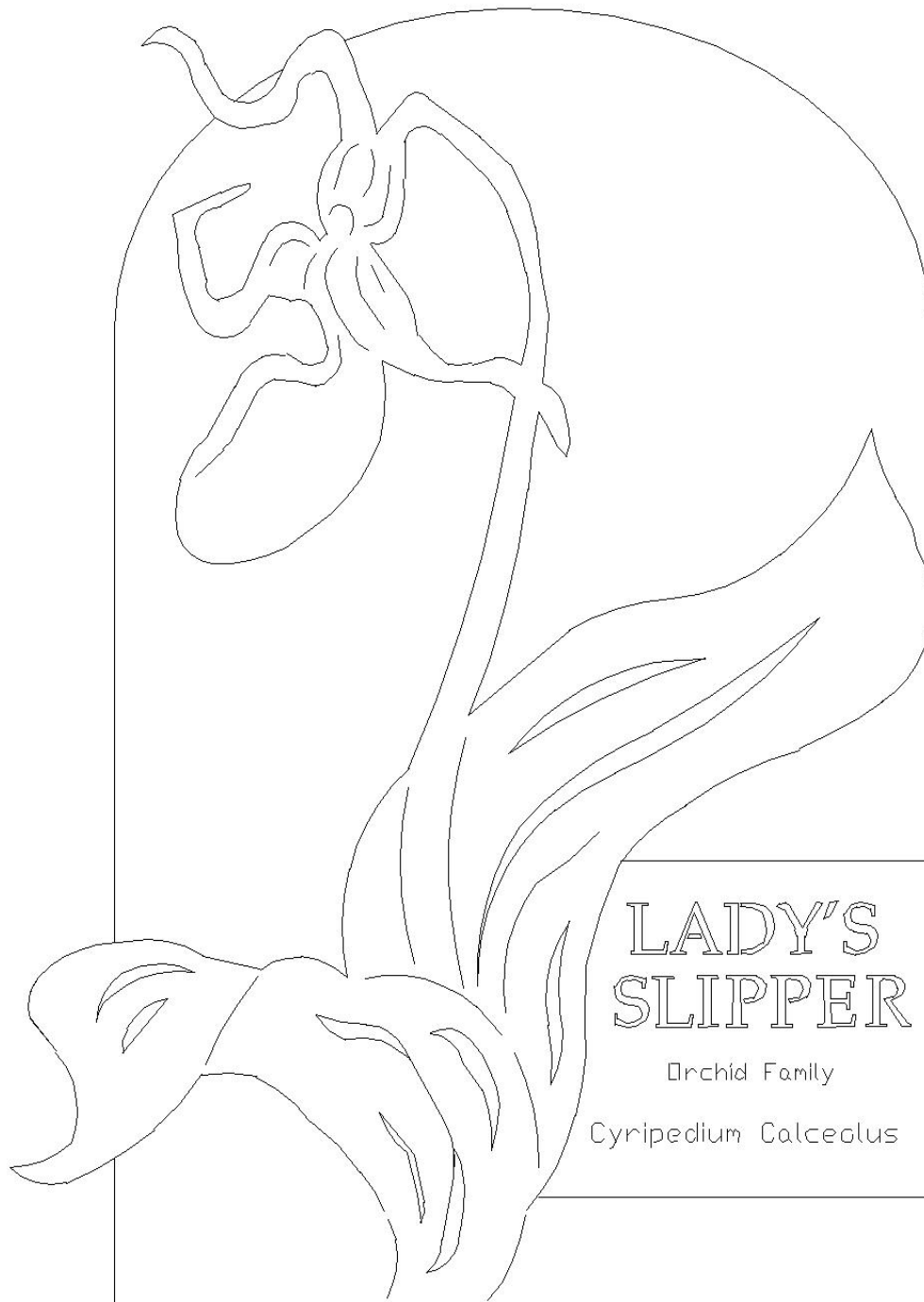
4'

18''

Wildflowers of the Smokies







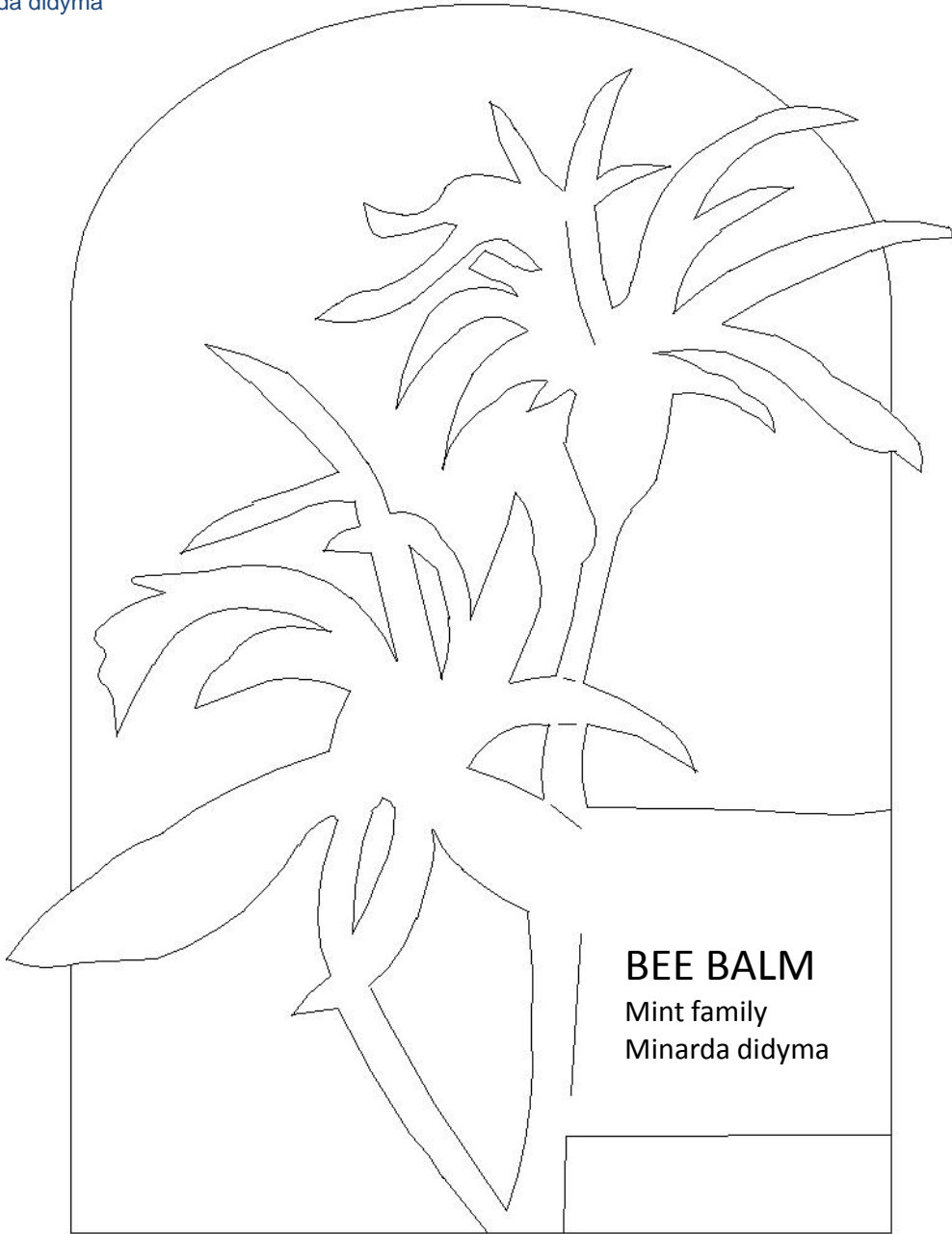
LADY'S SLIPPER

Orchid Family

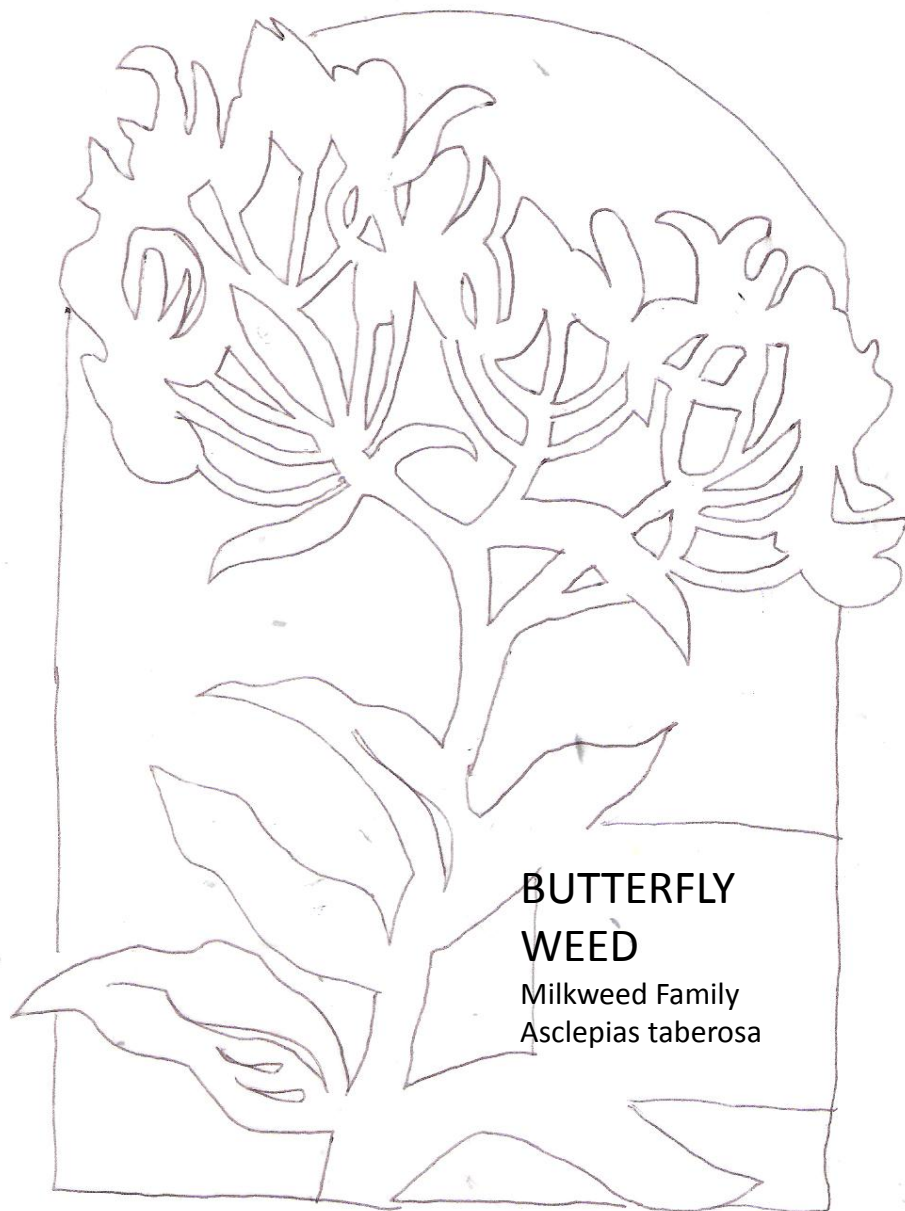
Cypripedium calceolus



Mint Family
Monarda didyma







**BUTTERFLY
WEED**

Milkweed Family
Asclepias taberosa



Waynesville Public Art Commision, Art Piece for Mini-Park
See "Notes" on last page for more details.



- Shadow Box Color Charcoal

- Paint color for wall

- Garlington Gray

-

Finishes

Automotive finish

20 year plus life on this wall

Installation The panels will bolt to the wall

Installation

- Lighting
- Lx Linear Outdoor lighting
- Low Voltage
- Xenon Lamps
-
- I do not do lighting and is not included in this sculpture

- Thank you





Wildflowers of the Smokies

Call for Artists

Waynesville, North Carolina

The mission of the Waynesville Public Art Commission is to engage the community and enrich public spaces through original art that celebrates Waynesville's historic, cultural, natural and human resources.

Application Deadline: January 4, 2013

Project Overview

The Public Art Commission of Waynesville, North Carolina is issuing a call for artists for its fourth commissioned public art project. The theme of the piece is *Wildflowers of the Smokies*, specifically wildflowers and flowering plants, to honor the historic connection between the Great Smoky Mountains National Park and the Town of Waynesville.

The selection process is managed by the Waynesville Public Art Commission, a non-profit commission of citizens appointed by the Waynesville Board of Aldermen.

Artist Eligibility

The Call is open to all professional artists, or teams of artists, over the age of 18, residing in the 25 North Carolina Counties that comprise the Blue Ridge National Heritage Area: Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey.

Commission

The commission to the selected artist is **\$12,500.00**. This commission includes all costs to the artist: i.e., materials for entire piece, mounting materials, installation, transportation, insurance*, travel, and sales tax.

**Insurance during fabrication, transportation, and installation. Upon final installation and acceptance by a Town representative, insurance becomes responsibility of the Town.*

Project Background

The project site is the "Mini-Park" located at the corner of North Main and Depot Streets in downtown Waynesville. The Mini-Park is the site of an artistic railing (commissioned in 2010), and an arched sign installed in honor of a similar sign that stood over Main

Street. Both pieces have a theme of connecting Waynesville to Great Smoky Mountains National Park.

The Great Smoky Mountains National Park is an International Biosphere Reserve and a World Heritage Site with historical family homesteads, biological diversity, and Southern Appalachian culture. One symbol of the biological diversity is the number of flowering plants found within the National Park - over 1,500 flowering plant species have been identified within its boundaries.

The Commission is looking for a sense of diverse elements coming together to reinforce the connection between the town's Main Street and the Great Smoky Mountains National Park.

Project Description

The Commission is seeking a durable multidimensional piece with texture and depth in its design. Artists are encouraged to use mixed media, including but not limited to combinations of metal, glass, or tile. Painted wood is discouraged.

The piece shall be located on the south side of the park, in what is now a raised flower bed. A stucco wall is located directly behind the planter, which may be used in the design and installation. A freestanding piece, anchored in the planting bed, is also encouraged.

The theme is *Wildflowers of the Smokies*, but other natural elements may also be incorporated, including but not limited to sunset/sunrise, clouds, trees, lakes, and mountains. While the main theme is flora, with an emphasis on wildflowers, the piece may be an abstract representation and specific wildflower species do not have to be recognizable.

A site plan with dimension and photos is available at www.townofwaynesville.org

Additional Informational and Historical Resources:

Historical and natural information and photos of Great Smoky Mountains National Park can be found at: <http://www.nps.gov/grsm>

Friends of Great Smoky Mountains National Park has a collection of informational links:
<http://www.friendsofthesmokies.org>

Regional history is available from the Mountain Heritage Center located at Western Carolina University: <http://www.wcu.edu/2389.asp>

Local newspapers: *Smoky Mountain News* www.smokymountainnews.com
The Mountaineer www.themountaineer.com

PROJECT SCHEDULE

January 4, 2013	Application deadline
January 17, 2013	Finalists notified
March 16, 2013	Finalist presentations to Advisory Panel
April 1, 2013	Artist notification
Date to be determined	Fundraising event
September 17, 2013	Installation
September 20, 2013	Unveiling and Grand Reception

APPLICATION PROCESS

The Public Art Commission shall consider the following when reviewing the initial application and finalist presentations:

1. The artist's biography, résumé and technical competency.
2. The artist's use of form, texture, color, line and medium.
3. Clarity of expression.
4. Significance to "place."
5. Examples of existing works.
6. Projected durability and maintenance needs.

Phase I: Call to Artists

The application materials will be reviewed by the Waynesville Public Art Commission. Page 5 of this Call contains the detailed list of required application materials.

Three finalists will be selected and each will be required to submit detailed drawings and/or models of the proposed artwork as part of the presentation in Phase II. The contract between the Town and the selected artist will incorporate specific design elements from the presentation made to the advisory panel.

Phase II: Finalist Presentations to Citizens Advisory Panel

The finalists will be required to travel to Waynesville and present their proposals to a Citizens Advisory Panel on or about Saturday, March 16, 2013. The Advisory Panel consists of local citizens, public officials and persons selected for their knowledge of public art installations, technical expertise, artistic knowledge and community history.

The members of the advisory panel shall be apprised of all of the points of consideration used to select the finalists, as well as the materials provided by the artist in the initial application.

A stipend of \$500 will be paid to each finalist for the model/sketches and to present the proposal. Documented travel and overnight expenses will also be reimbursed (maximum \$200) for each of the finalists to travel to Waynesville.

Phase III: Artist Selection

After considering the presentations by the finalists, and the feedback received from the Citizen Advisory Panel, the Public Art Commission will present a recommended artist and design to the Waynesville Board of Aldermen. The final selection and decision to award a contract to an artist will be made by the Board of Aldermen at a regularly scheduled meeting on or about March 26, 2013.

The following activities will be required by the selected artist:

1. Proposal development
2. Fabrication and installation
3. Professional images and materials documentation
4. Attendance at the Fundraising event

APPLICATION MATERIALS

To be considered a complete submission, an application must include the following:

- 1. Artist résumé or biography and contact information**
- 2. Summary of qualifications for this project (limit 2 pages)**
- 3. Image Portfolio of completed works:**

Images of **five (5)** different completed works must be submitted. Multiple images of each work to show different views or details may be included.

Digital Images (preferred): CD or email attachments of five (5) completed works in JPEG or TIFF format at least 5 x 7 inches in size, with a resolution of at least 150 dpi. Each individual image must be saved under the artist's last name and the corresponding number as noted on the inventory list. If the image is a "detail," please indicate that as well. If a CD is used, label the disc with artist's name and contact information. Files must be PC compatible and require no image management programs.

Slide Images may be submitted in a plastic slide sheet clearly labeled with artist's name and contact information. Five (5) completed works, 35 mm, 2" x 2" standard slides, labeled individually with artist's name, title of work, number (corresponding to inventory list) and indication of which is the top of slide.

4. Image inventory list

An annotated list should accompany the Image Portfolio clearly identifying each image by artist name, number, title, size, medium, date of work and location of installation (if applicable), and price of work (if available).

- 5. A rough sketch of a possible design** to give the Commission some idea of what the artist envisions. This may or may not be the solution the artist as a finalist ultimately proposes at the Citizen Advisory Panel.
- 6. A list of materials to be used in the piece, and suggestions on the need and estimated cost of future maintenance.**
- 7. Self-addressed envelope for return of mailed application materials (optional)**

Submissions are *not* reviewed before the application date for completeness.

APPLICATION INSTRUCTIONS

This document, site plans, and photos of the Mini-Park are available on the website www.townofwaynesville.org. Click on the *Public Art* button at the top of the page.

The site plan, photos, etc., may also be obtained by contacting the Town of Waynesville at (828) 452-2491 or WPAC@townofwaynesville.org.

Deadline: All materials must be delivered by **5:00 p.m. on January 4, 2013**.
Envelope must indicate materials are for the Public Art Commission.

Email to: WPAC@townofwaynesville.org
Subject: Wildflower Application

Email submissions are encouraged. A verification email of *receipt only* will be sent. Submissions are *not* reviewed before the application date for completeness.

Mail to: Waynesville Public Art Commission
P.O. Box 100
Waynesville, NC 28786

Hand deliver to: Town of Waynesville Municipal Building
16 South Main Street
Waynesville, NC 28786

Open Monday – Friday, 8:30 a.m. – 5:00 p.m.
Phone: (828) 452-2491

Questions regarding the details of this Call to Artists should be directed to Jan Griffin, Chairman of the Public Art Commission at (828) 246-8188.

The Waynesville Public Art Commission reserves the right to refuse any or all submissions, to refuse any finalist, to waive informalities in proposals or procedures, or to withhold the award of a commission should it be determined that submissions are not adequate, or for any other reason prior to a written contractual arrangement being reached.

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: March 26, 2013

SUBJECT: Bid Award for grading and construction of Waynesville Skate Park

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: 4B
Department: Finance - Purchasing Division
Contact: Alison Melnikova, Assistant Town Manager
Rhett Langston, Parks & Recreation Director
Presenter: Alison Melnikova, Assistant Town Manager

BRIEF SUMMARY: In 2010 Spohn Ranch was hired to design a skate park that would have a flat concrete slab and pre-fab ramps, but based on skater feedback the park design became a larger concrete park. A dedicated group of volunteers worked with Rhett Langston to raise funds for the construction of this larger park, and at the 2012 Board retreat, it was determined that the park should be built as designed. In late summer 2012, Stewart Engineering was hired to finalize the plans and construction documents based on the Spohn Ranch design, and manage the bidding and construction process. Stewart Engineering is experienced in skate parks, and has done the same service for Cherokee and Durham.

\$400,000 was budgeted in the current fiscal year, a number which was based upon an estimate provided by Spohn Ranch. However, as Stewart Engineering finalized the construction documents, they notified the Town that the amount budgeted would not be enough for all of the sidewalks and paving included in the original Spohn Ranch design. To protect the skate park itself, the nonessential sidewalks and pavement were removed from the base bid, and included as an alternate bid. These are also elements that can be done after the project is complete, as funds allow.

Unless we experience extremely unusual weather this spring, the skate park will be complete by June 30, and all site work will be complete by July 31, which is also the deadline for project completion under the grant received from the NC Parks and Recreation Trust Fund.

To ensure that the cast-in place concrete is done correctly, an RFQ was issued in January for a specialty skate park construction firm, and Artisan Skate Parks of Kitty Hawk, NC was the selected firm. Artisan will work as a subcontractor of the general contractor who will perform the site work, and those are the bids which are included in this agenda. The bids include the cost of Artisan's work, which is \$245,384.37.

A Request for Proposals (RFP) was distributed in early February and bids were opened on Thursday, March 7, 2013. Three bids were received, ranging from \$341,658.27 to \$462,998.00 for the base bid, and \$509,750.35 to \$699,010.10 for the inclusion of the alternate bid.

At the bid opening, it was discovered that a clerical error had been made in the instructions to bidders, specifying that “General contractors must have a license classification for Building Contractor.” This sentence in the RFP should not have included the word “building” since a general contractor can be certified in one of five classifications, including building. In consultation with Project Engineer John Jenkins, Purchasing Supervisor Julie Grasty and Town Attorney Woody Griffin, it is staff’s opinion that the inclusion of this phrase in the bid instructions was a minor informality, had no bearing on the bids actually submitted and due to error is a requirement that may be waived. All three bidders shall be considered responsible and responsive to the bid.

MOTION FOR CONSIDERATION: *To waive the requirement outlined in the Notice to Bidders that “general contractors have a license classification of Building Contractor”; and to award the contract for the construction of the skate park to WNC Paving of Waynesville, NC, the lowest responsive responsible bidder, in the amount of \$341,658.27.*

FUNDING SOURCE/IMPACT: The FY 12-13 adopted budget includes an allocation of \$400,000 for the construction of the skate park, a number based on an estimate provided by Spohn Ranch of construction costs of \$325,000. The contract with Stewart Engineering is for \$37,800, and if the project is awarded to WNC Paving, approximately \$20,000 will remain as a contingency.

ATTACHMENTS:

- Skatepark Plan
- Bid Tabulation
- Engineers Bid Award Recommendation Letter, dated March 20, 2013
- Skatepark Construction Budget
- Artisan Skateparks Qualifications
- Specialty Skatepark RFQ
- Notice to Bidders

MANAGER’S COMMENTS AND RECOMMENDATIONS: Approve as presented. This item was continued from the regular board meeting on March 12, 2013, in order to clarify the Town’s legal obligations for awarding the bid in light of ambiguous language contained in the RFQ distributed by the project engineer. The NC Licensing Board for General Contractors confirmed that multiple licensing classifications (including Building Contractor, Highway, Construction, and Grading & Excavating classifications) would all be appropriate for the type of work being undertaken at the skate park. Staff attorneys at the UNC School of Government confirmed that the ambiguous language regarding licensure constituted a waivable defect in the RFQ, and that WNC Paving is in fact, a qualified bidder, and presented the lowest responsive, responsible bid.



March 20 , 2012

Town of Waynesville
16 South Main Street
Waynesville, NC 28786

Attn: Alison Melnikova
Assistant Town Manager

Re: Contractor Recommendation
Vance Street Skate Park
Waynesville, NC
Stewart Project No. C12060.00

Dear Ms. Melnikova,

On Thursday, March 7, 2013 at 2:00 p.m. bids for the above referenced project were received and publicly opened and read aloud. The Town of Waynesville received a total of three (3) bids ranging from a low base bid of \$341,658.27 to a high base bid of \$463,000. We have reviewed the bid tabulation and all associated documents.

It is our recommendation that the contract be awarded to **W. N. C. Paving, Inc.** for the Base Bid of **\$341,658.27**.

Enclosed please find the certified bid tabulation for the project along with a copy of WNC Paving's bid proposal.

If you have any additional questions or comments, please do not hesitate to give me a call.

Respectfully submitted:
STEWART ENGINEERING, INC.

John T. Jenkins II, PE
Vice President

Enclosures



Town of Waynesville

Vance Street Skate Park

Bid Date: March 7, 2013

Bid Tabulation			
	Contractor	Base Bid	Alternate Bid
1	Cherokee Enterprises	\$363,325.00	\$540,435.00
2	W.N.C. Paving, Inc.	\$341,658.27	\$509,750.35
3	Heinkel Construction, Inc.	\$462,998.00	\$699,010.10
4			
5			
6			
7			
8			
9			
10			

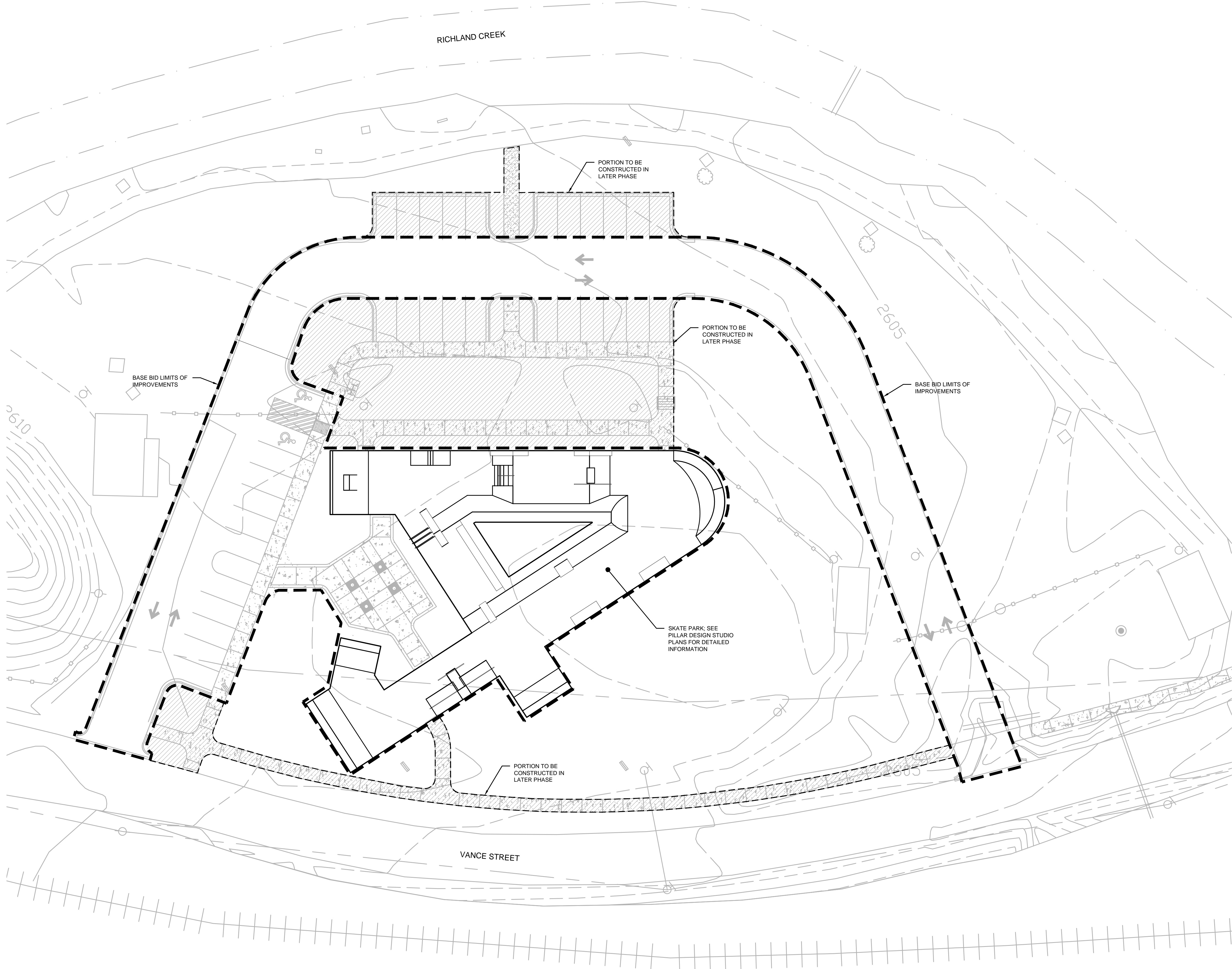
WNC PAVING**Skatepark Construction Bid Detail**

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST (WNC Paving's Numbers	EXTENDED COST CORRECTED*
1	1	LS	Mobilization (no more than 5% of bid)	\$ 9,950.00	\$ 9,950.00	\$ 9,950.00
2	1060	SY	3" deep CABC for gravel loop drive	\$ 4.40	\$ 4,664.00	\$ 4,664.00
3	675	SY	Asphalt pavement with striping for drives and parking lot	\$ 27.79	\$ 18,758.25	\$ 18,758.25
4	255	SY	Concrete sidewalk and plaza flatwork	\$ 63.83	\$ 16,276.08	\$ 16,276.65
5	7	Each	American Hornbeam	\$ 330.00	\$ 2,310.00	\$ 2,310.00
6	3	Each	Cherokee Chief Dogwood	\$ 240.00	\$ 720.00	\$ 720.00
7	1	Each	London Plane Tree	\$ 325.00	\$ 325.00	\$ 325.00
8	1	LS	Specialty Skate Park Construction	\$ 245,384.37	\$ 245,384.37	\$ 245,384.37
9	1	LS	All additional site work including but not limited to grading, drainage, erosion control, tree grates, ground cover and associated work necessary for a complete and finished project	\$ 43,270.00	\$ 43,270.00	\$ 43,270.00
			Total Amount of Base Bid		\$ 341,657.70	\$ 341,658.27

* Math errors have been corrected - this column contains the bid sheet *Quantity* multiplied by the *Unit Cost* from WNC Paving.


Q:\2012\C12060 - Waynesville Skate Park\DWGS\1-Planning\C12060-C1.0.dwg Feb 14, 2013 - 2:58pm

Q:\2012\C12060 - Waynesville Skate Park\DWGS\1-Planning\C12060-C1.0.dwg, 2/14/2013 2:58:24 PM, spike, ARCH expand D (24.00 x 36.00 Inches)



NOTE:
BROADBOOKS ASSOCIATES PLANS PROVIDED FOR REFERENCE AND ADD ALTERNATE. CONTRACTOR TO REFER TO BROADBOOKS PLANS DATED 07/22/2011 FOR DESIGNATED DIMENSIONS, DATA, SCHEDULES, AND DETAILS FOR BASE BID. IF ANY CONFLICTS, BASE BID PLANS BY STEWART (SHEETS C-1, C-2, C-3, C-4, C-5, AND C-6) TO TAKE PRECEDENCE OVER PLANS PROVIDED BY BROADBOOKS ASSOCIATES PA. ADD ALTERNATE TO INCLUDE BROADBOOKS ASSOCIATE PA DWGS WITH THE EXCEPTION OF THE PLAZA DESIGN AS SHOWN ON STEWART PLANS.

- PHASING LEGEND**
- BASE BID LIMITS OF IMPROVEMENTS
 - FUTURE PHASE




STEWART

421 FAYETTEVILLE ST., STE 400
RALEIGH, NC 27601
T 919.380.8750

FIRM LICENSE # C-1051
www.stewartinc.com
PROJECT # C12060

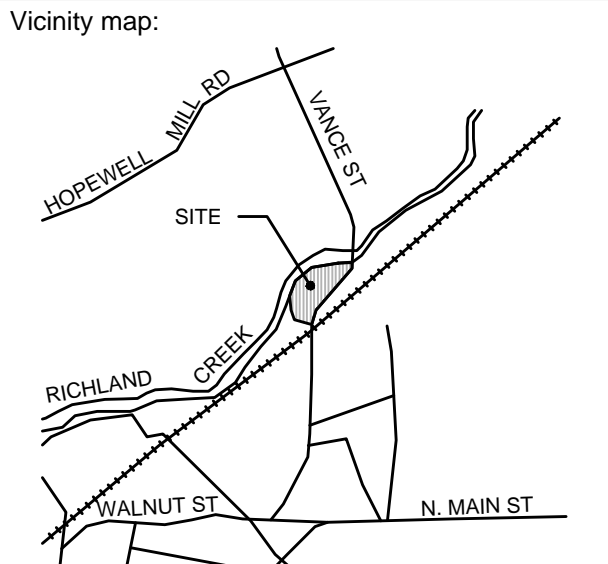
Client:



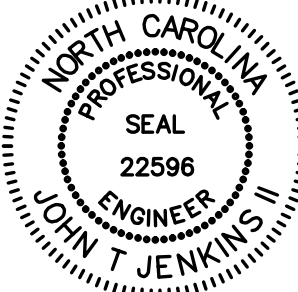
WAYNESVILLE PARKS AND RECREATION
550 VANCE STREET
WAYNESVILLE, NC 28786
(828) 456-2620

Project:

TOWN OF WAYNESVILLE VANCE STREET SKATE PARK



Seal:

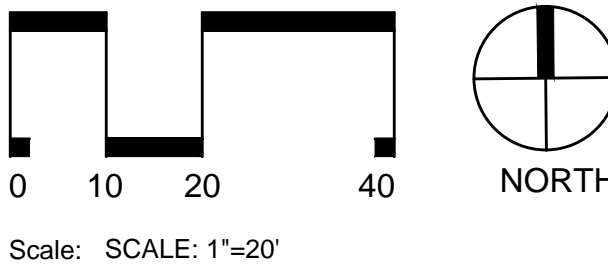


PRELIMINARY - DO NOT USE
FOR CONSTRUCTION

Issued for:

CONSTRUCTION DOCUMENTS

No.	Date	Description
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		



Title:

BASE BID IMPROVEMENTS PLAN

Project number: C12060 Sheet:
Date: 02.08.13
Drawn by: JBG
Approved by: JTJ

C-1

Skate Park Construction
as of March 12, 2013

Expenses

Engineering & Construction Administration <i>Stewart Engineering</i>	\$ 37,800
Construction	\$ 341,658
Contingency	\$ 20,542
Total	\$ 400,000

Revenue

PARTF Grant	\$ 61,425
Brick Sales	\$ 5,280
Tony Hawk Foundation Grant	\$ 5,000
Waynesville Kiwanis	\$ 20,000
Grace Episcopal Church	\$ 500
 Pizza Sale	 \$ 525
Raffle	\$ 7
BBQ	\$ 667
Pepsi	\$ 2,500
Southern Concrete	\$ 500
Wells Fargo	\$ 250
 Total Funds Raised	 \$ 96,654
FY 2013 Budget	\$ 303,346
 Total Available	 \$ 400,000



Town of Waynesville

VANCE STREET SKATE PARK WAYNESVILLE, NORTH CAROLINA

CONTRACT DOCUMENTS

February 8, 2013

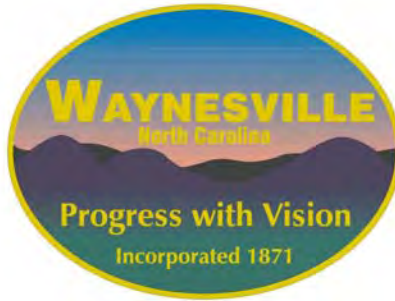
STEWART PROJECT #: C12060

STEWART

421 Fayetteville Street
Suite 400
Raleigh, NC 27601
(919) 380-8750
www.stewartinc.com

John T. Jenkins II, PE
jjenkins@stewartinc.com





Town of Waynesville

VANCE STREET SKATE PARK WAYNESVILLE, NORTH CAROLINA

Table of Contents

Notice to Bidders
Supplementary General Conditions
Bid Form
Form of Construction Contract
Instructions to Bidders/General Conditions

NOTICE TO BIDDERS

The Town of Waynesville will receive sealed bids until 2:00 p.m., Thursday, March 7, 2013 for general construction and site work of the Vance Street Skate Park in Waynesville, NC.

Proposals must be enclosed in a sealed envelope, clearly marked: **"Skate Park Proposal"**.

Bidders are to mail their proposals to:

Town of Waynesville
P.O. Box 100
Waynesville, NC 28786
Attn: Julie Grasty

Or Bidders may deliver to:

Town of Waynesville
129 Legion Drive
Waynesville, NC 28786
Attn: Julie Grasty

A responsive bid must also include: 5% Bid Security, 100% Performance Bond and Proof of Liability Insurance. The Town reserves the right to reject any and all bids and to select the bid deemed to be in the best interest of the Town.

The Town has pre-qualified and negotiated a price with a specialty skate park sub-contractor that will be contracted under the successful general contractor.

The scope of the general contractor for the project includes general site work and preparation for the construction of a cast-in-place concrete skate park. The general contractor will be responsible for all work to complete the project as described on the plans and specifications including site preparation, erosion control, rough grading of entire site, establishment of base subgrade within the skate park, finish grading of the site outside the perimeter of the skate park, storm drainage, concrete plaza, concrete sidewalks, asphalt parking lot, gravel loop road, ground cover and landscaping. The skate park includes 10,000 square feet of concrete flat work and associated specialty construction which is the responsibility of the specialty skate park sub-contractor which will be sub-contracted under the general contractor.

Bids will be received for Single-Prime general contracting. All proposals shall be lump sum with unit price allowances as noted on the Bid Form.

Complete plans, specifications and contract documents will be open for inspection in the offices of STEWART, 421 Fayetteville Street, Suite 400, Raleigh, NC 27601 and may be obtained by those qualified as prime bidders, upon deposit of One Hundred and Fifty dollars (\$ 150) in cash or certified check (made out to Stewart Engineering). The full plan deposit will be returned to those bidders provided all documents are returned in good, usable condition within ten (10) days after the bid date. In lieu of hard copy and deposit, a link to a sharefile can be provided to prime bidders.

NOTE: All contractors are hereby notified that they must have proper license as required under the state laws governing their respective trades.

TOWN OF WAYNESVILLE

VANCE STREET SKATE PARK

General contractors are notified that Chapter 87, Article 1, General Statutes of North Carolina, will be observed in receiving and awarding general contracts. General contractors submitting bids on this project must have a license classification for Building Contractor.

Each proposal shall include a project schedule which demonstrates the contractor's ability to meet the project deadlines. To be submitted as 11x17 schedule using Microsoft Project or some other suitable scheduling software.

Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company, insured by the Federal Deposit Insurance Corporation, of an amount equal to not less than five percent (5%) of the proposal, or in lieu thereof a bidder may offer a bid bond of five percent (5%) of the bid executed by a surety company licensed under the laws of North Carolina to execute the contract in accordance with the bid bond. Said deposit shall be retained by the owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten days after the award or to give satisfactory surety as required by law.

A performance bond and a payment bond will be required for one hundred percent (100%) of the contract price.

Payment will be made based on ninety-five percent (95%) of monthly estimates and final payment made upon completion and acceptance of work.

No bid may be withdrawn after the scheduled closing time for the receipt of bids for a period of 60 days.

The owner reserves the right to reject any or all bids and to waive informalities.

Designer:

John T Jenkins II, PE
Stewart
421 Fayetteville Street
Suite 400
Raleigh, NC 27601
(919) 866-4802
jjenkins@stewartinc.com

Owner:

Alilson Melnikova – Assistant Town Manager
Town of Waynesville
(828) 452-2491
townmanagerassistant@townofwaynesville.org

SUPPLEMENTARY GENERAL CONDITIONS

TIME OF COMPLETION

The Contractor shall commence work to be performed under this Contract on a date to be specified in written order from the Designer and shall fully complete all work hereunder with a substantial completion date of **June 30, 2013** and a final completion date of **July 31, 2013**.

If the Contractor is delayed at anytime in the progress of his work by any act or negligence of the Owner, by changes ordered in the work; by abnormal weather conditions; by any causes beyond the Contractor's control or by other causes deemed justifiable by Owner, then the contract time may be reasonably extended in a written order from the Owner upon written request from the contractor within ten days following the cause for delay.

UTILITIES

Contractor is responsible for obtaining necessary utilities to complete the construction including water and power.

SECURITY

Contractor is responsible for securing the work site as necessary during the duration of the contract.

USE OF SITE

Work hour limitations are per Town of Waynesville. No other limitations or restrictions are noted.

ADD ALTERNATE BID

An Add Alternate Bid is requested for the full construction of the project as described and shown on the Broadbrooks Associates plans SW-1 through SW-7. Refer to the Bid Form for further direction on the Add Alternate.

ALLOWANCES

See Contract Proposal for Allowance Unit Prices to be used as contingency throughout the project. Use of allowances only as directed and approved by Owner and only by change orders that indicate amounts to be charged using unit prices provided in the bid. Credit unused allowances at project closeout to the Owner by Change Order.

BID FORM

Town of Waynesville, NC_____

Bidder:_____

Vance Street Skate Park_____

Date: _____

The undersigned, as bidder, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud. The bidder further declares that he has examined the site of the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed.

The Bidder proposes and agrees if this proposal is accepted to contract with the **Town of Waynesville** in the form of contract specified below, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to complete the construction of

The **Vance Street Skate Park** and associated site work in full in complete accordance with the plans, specifications and contract documents, to the full and entire satisfaction of the Designer (Stewart) and Owner (Town of Waynesville) with a definite understanding that no money will be allowed for extra work except as set forth in the General Conditions and the contract documents, for the sum of:

Furnish and Deliver as Base Bid:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	1060	SY	3" deep CABC for gravel loop drive		
2	675	SY	Asphalt pavement with striping for drives and parking lot		
3	255	SY	Concrete sidewalk and plaza flatwork		
4	7	Each	American Hornbeam		
5	3	Each	Cherokee Chief Dogwood		
6	1	Each	London Plane Tree		
7	1	LS	Specialty Skate Park Construction		
8	1	LS	All additional site work including but not limited to grading, drainage, erosion control, tree grates, ground cover and associated work necessary for a complete and finished project		
			Total Amount of Base Bid		

BASE BID

BASE BID PRICE \$ _____

WRITTEN BASE BID PRICE OF _____

_____ **DOLLARS**

AND _____ **CENTS.**

The purpose of the Add Alternate is for the Town to consider construction of the entire project including the additional asphalt parking lot, paving the loop drive, additional sidewalks, grading, land contouring/sculpting, and landscape material.

Furnish and Deliver as Add Alternate Bid:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	1060	SY	Asphalt pavement with striping for drives and parking lot		
2	765	SY	Concrete sidewalk and plaza flatwork		
3	1	LS	Landscaping material described in Planting Schedule SW-6		
4	1	LS	Specialty Skate Park Construction (No Change from Base Bid)		
5	1	LS	All additional site work including but not limited to grading, drainage, erosion control, tree grates, ground cover and associated work necessary for a complete and finished project		
			Total Amount of Add Alternate Bid		

ADD ALTERNATE BID

TOTAL ADD ALTERNATE PRICE \$ _____

WRITTEN ADD ALTERNATE PRICE OF _____

_____ **DOLLARS**

AND _____ **CENTS.**

General:

- a- Proof of Contractor's General Liability Insurance for a minimum of \$1,000,000.00. Shall include Premises property Damages, vehicles and Bodily Injury.
- b- Workers' compensation insurance as per the State of NC standards.
- c- Bid Bond of contract sum 5% or check of 5% of Sum in lieu of.
- d- Performance Bond and Material Payment Bond of 100% of the bid amount

Contractor whom contract is awarded will be required to submit the following:

- e- AIA Document G702 Application for payment.
- f- Change Order AIA Document G701, if there is any change in the scope of the work
- g- Certificate of Substantial Completion AIA Document G704.
- h- Contractor's Affidavit of Release of Liens AIA Document G706A.
- i- Contractor's Affidavit of Payment of Debts and Claims with signed release from all subcontractors involved in the project.

Proposal Signature Page

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

Respectfully submitted this day of _____

(Name of firm or corporation making bid)

WITNESS:

By: _____

Signature

(Proprietorship or Partnership)

Name: _____

Print or type

Title _____

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

Address _____

ATTEST:

By: _____

License No. _____

Title: _____

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

Federal I.D. No. _____

Email Address: _____

(CORPORATE SEAL)

Addendum received and used in computing bid:

Addendum No. 1 ____

Addendum No. 2 ____

FORM OF CONSTRUCTION CONTRACT

(ALL PRIME CONTRACTS)

THIS AGREEMENT, made the _____ day of _____ in
the year of 20__ by and between _____

hereinafter called the Party of the First Part and The Town of Waynesville
hereinafter called the Party of the Second Part.

WITNESSETH:

That the Party of the First Part and the Party of the Second Part for the
consideration herein named agree as follows:

1. Scope of Work: The Party of the First Part shall furnish and deliver all
of the materials, and perform all of the work in the manner and form as
provided by the following enumerated plans, specifications and documents,
which are attached hereto and made a part thereof as if fully contained herein:
advertisement; Instructions to Bidders; General Conditions; Supplementary
General Conditions; specifications; accepted proposal; contract; performance
bond; payment bond; power of attorney; workmen's compensation; public
liability; property damage and builder's risk insurance certificates; and
drawings, titled:

TOWN OF WAYNESVILLE – VANCE STREET SKATE PARK

Consisting of the following **C-0, C-1, C-2, C-3, C-4, C-5, C-6, SP-01,
SP-02, SP-03, SP-04, SP-05, SP-06, SP-07, SP-08, SP-09, SP-10, SP-11, SP-12,
SP-13, SP-14, SP-15, SW-1, SW-2, SW-3,
SW-4, SW-5, SW-6, SW-7**

Dated: February 8, 2013 (Stewart) and July 22, 2011 (Broadbrooks Associates)
and the following addenda:

Addendum No	Dated:	Addendum No.	Dated:
_____	_____	_____	_____
Addendum No	Dated:	Addendum No.	Dated:
_____	_____	_____	_____
Addendum No	Dated:	Addendum No.	Dated:
_____	_____	_____	_____

2. That the Party of the First Part shall commence work to be performed under this agreement on a date to be specified in a written order of the Party of the Second Part and shall substantially complete all work hereunder no later than June 30, 2013 to meet grant requirements and July 31, 2013 for final completion of improvements. The Party of the First Part, as one of the considerations for the awarding of this contract, shall furnish to the Party of the Second Part a construction schedule setting forth planned progress of the project broken down by the various divisions or part of the work and by calendar days. If the Party of the First Part fails to begin the work under the contract within the time specified, or the progress of the work is not maintained on schedule, or the work is not completed within the time above specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to ensure the prompt completion of said work, or shall perform the work unsuitably or shall discontinue the prosecution of the work, or if the Party of the First Part shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the work in an acceptable manner, the Party of the Second Part may give notice in writing, sent by certified mail, return receipt requested, to the Party of the First Part and his surety of such delay, neglect or default, specifying the same, and if the Party of the First Part within a period of fifteen (15) days after such notice shall not proceed in accordance therewith, then the Party of the Second Part shall, declare this contract in default, and, thereupon, the surety shall promptly take over the work and complete the performance of this contract in the manner and within the time frame specified. In the event the surety shall fail to take over the work to be done under this contract within fifteen (15) days after being so notified and notify the Party of the Second Part in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Party of the Second Part shall have full power and authority, without violating the contract, to take the prosecution of the work out of the hands of said Party of the First Part, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said contract in an acceptable manner. All costs and charges incurred by the Party of the Second Part, together with the costs of completing the work under contract, shall be deducted from any monies due or which may become due said Party of the First Part and surety. In case the expense so incurred by the Party of the Second Part shall be less than the sum which would have been payable under the contract, if it had been completed by said Party of the First Part, then the said Party of the First Part and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the contract, then the Party of the First Part and the surety shall be liable and shall pay to the Party of the Second Part the amount of said excess.

3. The Party of the Second Part hereby agrees to pay to the Party of the First Part for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of

the United States as follows: _____

_____ (\$ _____).

Summary of Contract Award:

4. On or before the 20th day of each calendar month, the Party of the Second Part shall make payments to the Party of the First Part on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the First Party, less five percent (5%) of the amount of such estimate which is to be retained by the Second Party until all work has been performed strictly in accordance with this agreement and until such work has been accepted by the Second Party. The Second Party may elect to waive retainage requirements after 50 percent of the work has been satisfactorily completed on schedule as referred to in Article 31 of the General Conditions.

5. Upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this agreement shall be made within thirty (30) days after the completion by the First Party of all work covered by this agreement and the acceptance of such work by the Second Party.

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

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

Witness: _____
Contractor: (Trade or Corporate Name)

By: _____
(Proprietorship or Partnership)

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

Attest: (Corporation)

By: _____

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

The Town of Waynesville

(CORPORATE SEAL)

(Agency, Department or Institution)

Witness:

_____ By: _____

Title: _____

FORM OF BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT _____ as
principal, and _____, as surety,
who is duly licensed to act as surety in North Carolina, are held and firmly bound unto
The TOWN OF WAYNESVILLE as obligee, in the penal sum of
_____ DOLLARS, lawful money of the United States of
America, for the payment of which, well and truly to be made, we bind ourselves, our
heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

Signed, sealed and dated this ____ day of ____ 20____

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

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

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of
Contracting Body: _____

Amount of Bond: _____

Project _____

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

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

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

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

Executed in _____ counterparts.

Witness: _____
Contractor: (Trade or Corporate Name)

By: _____
(Proprietorship or Partnership)

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

Attest: (Corporation)

By: _____

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

(Corporate Seal)

(Surety Company)

Witness: By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

(Name and Address-Surety Agency)

(Surety Company Name and NC Regional or Branch Office Address)

FORM OF PAYMENT BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) _____

Name of Surety: _____

Name of
Contracting Body: _____

Amount of Bond: _____

Project _____

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

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

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

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

Executed in _____ counterparts.

Witness: _____
Contractor: (Trade or Corporate Name)

By: _____
(Proprietorship or Partnership)

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

Attest: (Corporation)

By: _____

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

(Corporate Seal)

(Surety Company)

Witness: By: _____

Title: _____
(Attorney in Fact)

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

(Name and Address-Surety Agency)

(Surety Company Name and NC Regional or Branch Office Address)

Sheet for Attaching Power of Attorney

Sheet for Attaching Insurance Certificates

INSTRUCTIONS TO BIDDERS
AND
GENERAL CONDITIONS OF THE CONTRACT

STANDARD FORM FOR CONSTRUCTION PROJECTS

INSTRUCTIONS TO BIDDERS

For a proposal to be considered it must be in accordance with the following instructions:

1. PROPOSALS

Proposals must be made in strict accordance with the Form of Proposal (including the Form of Construction Contract and Bid Form) provided herein, and all blank spaces for bids, alternates, and unit prices applicable to bidder's work shall be properly filled in. When requested alternates are not bid, the proposal may be considered incomplete. The bidder agrees that the bid on the Form of Proposal detached from specifications will be considered and will have the same force and effect as if attached thereto. Photocopied or faxed proposals will not be considered. Numbers shall be stated both in writing and in figures for the base bids and alternates.

Any modifications to the Form of Proposal (including alternates and/or unit prices) will disqualify the bid and may cause the bid to be rejected.

The bidder shall fill in the Form of Proposal as follows:

- a.** If the documents are executed by a sole owner, that fact shall be evidenced by the word "Owner" appearing after the name of the person executing them.
- b.** If the documents are executed by a partnership, that fact shall be evidenced by the word "Co-Partner" appearing after the name of the partner executing them.
- c.** If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
- d.** If the proposal is made by a joint venture, it shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable.
- e.** All signatures shall be properly witnessed.
- f.** If the contractor's license of a bidder is held by a person other than an owner, partner or officer of a firm, then the licensee shall also sign and be a party to the proposal. The title "Licensee" shall appear under his/her signature.

Proposals shall be addressed as indicated in the Advertisement for Bids and/or Notice to Bidders and shall be delivered, enclosed in an opaque sealed envelope, marked as indicated and bearing the title of the work, name of the bidder, and the

contractor's license number of the bidder. Bidders shall clearly mark on the outside of the bid envelope which contract(s) they are bidding.

For projects bid in the single-prime alternative, the names and license numbers of major subcontractors shall be listed on the proposal form.

It shall be the specific responsibility of the bidder to deliver his bid to the proper official at the selected place and prior to the announced time for the opening of bids. Later delivery of a bid for any reason, including delivery by the United States Postal Service, shall disqualify the bid.

Modifications of previously deposited bids will be acceptable only if delivered in writing of by telegram or fax to the place of the bid opening prior to the time for opening bids. Telegraphic and fax modifications must be confirmed in writing within 72 hours of the opening of bids.

Unit prices quoted in the proposal shall include overhead and profit and shall be the full compensation for the contractor's cost involved in the work. See General Conditions, Article 19c-1.

2. EXAMINATION OF CONDITIONS

It is understood and mutually agreed that by submitting a bid the bidder acknowledges that he has carefully examined all documents pertaining to the work, the location, accessibility and general character of the site of the work and all existing buildings and structures within and adjacent to the site, and has satisfied himself as to the nature of the work, the condition of existing buildings and structures, the conformation of the ground, the character, quality and quantity of the material to be encountered, the character of the equipment, machinery, plant and any other facilities needed preliminary to and during prosecution of the work, the general and local conditions, the construction hazards, and all other matters, including, but not limited to, the labor situation which can in any way affect the work under the contract, and including all safety measures required by the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto. It is further mutually agreed that by submitting a proposal the bidder acknowledges that he has satisfied himself as to the feasibility and meaning of the plans, drawings, specifications and other contract documents for the construction of the work and that he accepts all the terms, conditions and stipulations contained therein; and that he is prepared to work in cooperation with other contractors performing work on the site.

Reference is made to contract documents for the identification of those surveys and investigation reports of subsurface or latent physical conditions at the site or otherwise affecting performance of the work which have been relied upon by the designer in preparing the documents. The owner will make copies of all such surveys and reports available to the bidder upon request.

Each bidder may, at his own expense, make such additional surveys and investigations as he may deem necessary to determine his bid price for the performance of the work. Any on-site investigation shall be done at the convenience of the owner. Any reasonable request for access to the site will be honored by the owner.

3. BULLETINS AND ADDENDA

Any addenda to specifications issued during the time of bidding are to be considered covered in the proposal and in closing a contract they will become a part thereof. It shall be the bidder's responsibility to ascertain prior to bid time the addenda issued and to see that his bid includes any changes thereby required.

Should the bidder find discrepancies in, or omission from, the drawings or documents or should be in doubt as to their meaning, he shall at once notify the designer who will send written instructions in the form of addenda to all bidders. Notification should be no later than seven (7) days prior to the date set for receipt of bids. Neither the owner nor the designer will be responsible for any oral instructions.

All addenda shall be acknowledged by the bidder(s) on the Form of Proposal.

4. BID SECURITY

Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company insured by the Federal Insurance Corporation, or a bid bond in an amount equal to not less than five percent (5%) of the proposal, said deposit to be retained by the owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten (10) days after the award or to give satisfactory surety as required by law (G.S. 143-129).

Bid bond shall be conditioned that the surety will, upon demand, forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract. The owner may retain bid securities of any bidder(s) who may have a reasonable chance of award of contract for the full duration of time stated in the Notice to Bidders. Other bid securities may be released sooner, at the discretion of the owner. All bid securities (cash or certified checks) shall be returned to the bidders promptly after award of contracts and no later than seven (7) days after expiration of the holding period stated in the Notice to Bidders. Standard Form of Bid Bond is included in these specifications (Section 304).

5. RECEIPT OF BIDS

Bids shall be received in strict accordance with requirements of the General Statutes of North Carolina. Bid security shall be required as prescribed by statute.

Prior to opening of any bids on the project, the bidder will be permitted to change or withdraw his bid. Guidelines for opening of public construction bids are available from the office of the Engineer.

6. OPENING OF BIDS

Upon opening, all bids shall be read aloud. Once any bid is opened, there shall not be any withdrawal of bids by any bidder and no bids may be returned by the designer to any bidder. After the bid opening, a bidder may request that his bid be withdrawn from consideration without forfeiture of his bid security in accordance with the provisions of the North Carolina General Statute 143-129.1. After the opening of bids, no bid may be withdrawn, except under the provisions of General Statute 143-129.1, for a period of thirty days unless the otherwise specified. Should the successful bidder default and fail to execute a contract, the contract may be awarded to the next lowest and responsible bidder. The owner reserves the unqualified right to reject any and all bids. Reasons for rejection may include, but shall not be limited to, the following:

- a. If the Form of Proposal furnished to the bidder is not used or is altered.
- b. If the bidder fails to insert a price for all bid items, alternate and unit prices requested.
- c. If the bidder adds any provisions reserving the right to accept or reject any award.
- d. If there are unauthorized additions or conditional bids, or irregularities of any kind which tend to make the proposal incomplete, indefinite or ambiguous as to its meaning.
- e. If the bidder fails to complete the proposal form where information is requested so the bid may be properly evaluated by the owner.
- f. If the unit prices contained in the bid schedule are unacceptable to the owner and the Engineer.
- g. If the bidder fails to comply with other instruction stated herein.

7. BID EVALUATION

The award of the contract will be made to the lowest responsible bidder as soon as practical. The owner may award on the basis bid and any alternates the owner chooses.

Before awarding a contract, the owner may require the apparent low bidder to qualify himself to be a responsible bidder by furnishing any or all of the following data:

- a. The latest financial statement showing assets and liabilities of the company or other information satisfactory to the owner.
- b. A listing of completed projects of similar size.
- c. Permanent name and address of place of business.

- d. The number of regular employees of the organization and length of time the organization has been in business under present name.
- e. The name and home office address of the surety proposed and the name and address of the responsible local claim agent.
- f. The names of members of the firms who hold appropriate trade licenses, together with license numbers.

Failure or refusal to furnish any of the above information, if requested, shall constitute a basis for disqualification of any bidder.

In determining the lowest responsive bidder, the owner shall take into consideration the bidder's compliance with the requirements of G.S. 143.128.2(c), the past performance of the bidder on construction contracts with particular concern given to completion times, quality of work, cooperation with other contractors, and cooperation with the designer and owner. Failure of the low bidder to furnish affidavit and/or documentation as required by G.S. 143-128.2(c) may constitute a basis for disqualification of the bid.

Should the owner adjudge that the apparent low bidder is not the lowest responsible, responsive bidder by virtue of the above information, said apparent low bidder will be so notified and his bid security shall be returned to him.

8. PERFORMANCE BOND

The successful bidder, upon award of contract, shall furnish a performance bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

9. PAYMENT BOND

The successful bidder, upon award of contract, shall furnish a payment bond in an amount equal to 100 percent of the contract price. See Article 35, General Conditions.

10. PAYMENTS

Payments to the successful bidders (contractors) will be made on the basis of monthly estimates. See Article 31, General Conditions.

11. PRE BID CONFERENCE

Prior to the date set for receiving bids, the Designer may arrange and conduct a Pre-Bid Conference for all prospective bidders. The purpose of this conference is to review project requirements and to respond to questions from prospective bidders and their subcontractors or material suppliers related to the intent of bid

documents. Attendance by prospective bidders shall be as required by the “Notice to Bidders”.

12. SUBSTITUTIONS

In accordance with the provisions of G.S. 133-3, material, product, or equipment substitutions proposed by the bidders to those specified herein can only be considered during the bidding phase until ten (10) days prior to the receipt of bids when submitted to the Designer with sufficient data to confirm material, product, or equipment equality. Proposed substitutions submitted after this time will be considered only as potential change order.

Submittals for proposed substitutions shall include the following information:

- a. Name, address, and telephone number of manufacturer and supplier as appropriate.
- b. Trade name, model or catalog designation.
- c. Product data including performance and test data, reference standards, and technical descriptions of material, product, or equipment. Include color samples and samples of available finishes as appropriate.
- d. Detailed comparison with specified products including performance capabilities, warranties and test results.
- e. Other pertinent data including data requested by the Designer to confirm product equality.

If a proposed material, product, or equipment substitution is deemed equal by the Designer to those specified, all bidders of record will be notified by Addendum.

GENERAL CONDITIONS

GENERAL CONDITIONS OF THE CONTRACT

The use of reproduction of this document or any part thereof is authorized for and limited to use on projects by STEWART and is distributed by, through and at the discretion of STEWART for that distinct and sole purpose.

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ARTICLE 1 – DEFINITIONS

- a. The **Contract Documents** consist of the Notice to Bidders; Instructions to Bidders; General Conditions of the Contract; special conditions if applicable; supplementary General Conditions; the drawing and specifications, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the documents prior to their execution; the proposal; the contract; the performance bond; the payment bond; and insurance certificates. All of these items together form the contract.
- b. The **owner** is as referred to within this contract.
- c. The **designer(s)** are those referred to within this contract, or their authorized representatives. The designer(s), as referred to herein, shall mean architect and/or engineer. They will be referred to hereinafter as if each were of the singular number, masculine gender.
- d. The **contractor**, as referred to hereinafter, shall be deemed to be either of the several contracting parties called the “Party of the First Part” in either of the several contracts in connection with the total project. Where, in special instances hereinafter, a particular contractor is intended, an adjective precedes the word “contractor” as “general” “heating”, etc. For the purposes of a single prime contract, the term Contractor shall be deemed to be the single contracting entity identified as the “Party of the First Part” in the single Construction Contract. Any references or adjectives that name or infer multiple prime contractors shall be interpreted to mean the single Prime Contractor.
- e. A **subcontractor**, as the term is used herein, shall be understood to be one who has entered into a direct contract with a contractor, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed.
- f. **Written notice** shall be defined as notice in writing delivered in person to the contractor to the contractor, or to a partner of the firm in the case of a partnership, or to a member of the contracting organization, or to an officer of the organization in the case of a corporation, or sent to the last known business address of the contracting organization by registered mail.
- g. **Work**, as used herein as a noun, is intended to include materials, labor, and workmanship of the appropriate contractor.
- h. The **project** is the total construction work to be performed under the contract documents by the several contractors.
- i. **Project Expediter**, as used herein, is an entity stated in the contract documents, designated to effectively facilitate scheduling and coordination of work activities. See Article 14(f) for responsibilities of a Project Expediter. **For the purposes of a**

single prime contract, the single prime contractor shall be designated as the Project Expediter.

- j. **Change order**, as used herein, shall mean a written order to the contractor subsequent to the signing of the contract authorizing a change in the contract. The change order shall be signed by the contractor, designer and the owner, in that order (Article 19).
- k. **Field Order**, as used herein, shall mean a written approval for the contractor to proceed with the work requested by owner prior to issuance of a formal Change Order. The field order shall be signed by the contractor, designer, and the owner.
- l. **Time of completion**, as stated in the contract documents, is to be interpreted as consecutive calendar days measured from the date established in the written Notice to Proceed, or such other date as may be established herein (Article 23).
- m. **Liquidated damages**, as stated in the contract documents, is an amount reasonably estimated in advance to cover the losses incurred by the owner by reason of failure of the contractor(s) to complete the work within the time specified.
- n. **Surety**, as used herein shall mean the bonding company or corporate body which is bound with and for the contractor, and which engages to be responsible for the contractor and his acceptable performance of the work.
- o. **Routine written communications between the Designer and the Contractor** are any communication other than a “request for information” provided in letter, memo, or transmittal format, sent by mail, courier, electronic mail or facsimile. Such communications can not be identified as “request for information”.
- p. **Clarification or Request for information (RFI)** is a request from the Contractor seeking an interpretation or clarification by the Designer relative to the contract documents. The RFI, which shall be labeled (RFI), shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the Contractor’s interpretation or understanding of the contract documents requirements in question, along with reasons for such an understanding.
- q. **Approval** means written or imprinted acknowledgement that materials, equipment or methods of construction are acceptable for use in the work.
- r. **Inspection** shall mean examination or observation of work completed or in progress to determine its compliance with contract documents.
- s. **“Equal to” or “approved equal”** shall mean materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the contract documents.
- t. **“Substitution” or “substitute”** shall mean materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, or aesthetic) from those specified, but which in the opinion of the bidder would improve competition and/or enhance the finished installation.

ARTICLE 2 – INTENT AND EXECUTION OF DOCUMENTS

- a. The drawings and specifications are complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as

- if it were both called for and shown. The intent of the drawings and specifications is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the contract documents, the order of precedence shall be: Form of Contract, specifications, large-scale detail drawings, small-scale drawings.
- b.** The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.
 - c.** The contractor shall execute each copy of the proposal, contract, performance bond and payment bond as follows:
 - 1.** If the documents are executed by a sole owner, that fact shall be evidenced by the word “owner” appearing after the name of the person executing them.
 - 2.** If the documents are executed by a partnership, that fact shall be evidenced by the word “Co-partner” appearing after the name of the partner executing them.
 - 3.** If the documents are executed on the part of a corporation, they shall be executed by either the president or the vice president and attested by the secretary or assistant secretary in either case, and the title of the office of such persons shall appear after their signatures. The seal of the corporation shall be impressed on each signature page of the documents.
 - 4.** If the documents are made by a joint venture, they shall be executed by each member of the joint venture in the above form for sole owner, partnership or corporation, whichever form is applicable to each particular member.
 - 5.** All signatures shall be properly witnessed.
 - 6.** If the contractor’s license is held by a person other than an owner, partner or officer of a firm, then the licensee shall also sign and be a party to the contract. The title “Licensee” shall appear under his/her signature.
 - 7.** The bonds shall be executed by an attorney-in-fact. There shall be attached to each copy of the bond a certified copy of power of attorney properly executed and dated.
 - 8.** Each copy of the bonds shall be countersigned by an authorized individual agent of the bonding company licensed to do business in North Carolina. The title “Licensed Resident Agent” shall appear after the signature.
 - 9.** The seal of the bonding company shall be impressed on each signature page of the bonds.
 - 10.** The contractor’s signature on the performance bond and the payment bond shall correspond with that on the contract.

ARTICLE 3 – CLARIFICATIONS AND DETAIL DRAWINGS

- a.** In such cases where the nature of the work requires clarification by the designer, such clarification shall be furnished by the designer with reasonable promptness by means of written instructions or detail drawings, or both. Clarifications and

drawings shall be consistent with the intent of contract documents, and shall become a part thereof.

- b. The contractor(s) and the designer shall prepare, if deemed necessary, a schedule fixing dates upon which foreseeable clarifications will be required. The schedule will be subject to addition or change in accordance with that schedule. The contractor shall not proceed with the work without such detail drawings and/or written clarifications.

ARTICLE 4 – COPIES OF DRAWINGS AND SPECIFICATIONS

The designer shall furnish free of charge to the contractors copies of plans and specifications as follows:

- a. General contractor – Up to three (3) sets of general contractor drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, upon which the contractor shall clearly and legibly record all work-in-place that is at variance with the contract documents, (as built conditions).
- b. Additional sets shall be furnished at cost, including mailing, to the contractor upon request by the contractor. This cost shall be stated in the bidding documents.
- c. For the purposes of a single-prime contract, the contractor shall receive three (3) sets of drawings and specifications, plus a clean set of black line prints on white paper of all appropriate drawings, which the contractor shall clearly and legibly record all work-in-place that is at variance with the contract documents.

ARTICLE 5 – SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

- a. Within 30 consecutive calendar days after the notice to proceed, each prime contractor shall submit a schedule for anticipated submission of all shop drawings, product data, samples, and similar submittals to the Project Expediter and the Designer. This schedule shall indicate the items, relevant specifications sections, other related submittal, data, and the date when these items will be furnished to the designer.
- b. The Contractor shall review, approve and submit to the Designer all Shop or Setting Drawings, Product Data, Samples, Color Charts, and similar submittal data required or reasonably implied by the Contract Documents shall be noted on the submittals, and copies of all submittals shall be of sufficient quantity for the Designer to retain up to three (3) copies of each submittal for his own use plus additional copies as may be required by the Contractor. Submittals shall be presented to the Designer with reasonable promptness and time so as to cause no delay in the activities of the Owner or of separate Contractors.
- c. The Designer shall review required submittals promptly, noting desired corrections if any, and retaining three (3) copies for his use. The remaining copies of each submittal shall be returned to the Contractor not later than twenty (20) days from the date of receipt by the Designer, for the Contractor's use or for corrections and resubmittal as noted by the Designer. When resubmittals are required, the submittal procedure shall be the same as for the original submittals.

- d. Approval of shop drawings by the Designer shall not be construed as relieving the Contractor from responsibility for compliance with the design or terms of the contract documents nor from responsibility of errors of any sort in the shop drawings, unless such lack of compliance or errors first have been called in writing to the attention of the Designer by the Contractor.

ARTICLE 6 – WORKING DRAWINGS AND SPECIFICATIONS AT THE SITE

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

ARTICLE 7 – OWNERSHIP OF DRAWINGS AND SPECIFICATIONS

All drawings and specifications are instruments of service and remain the property of the designer and the owner. The use of these instruments on work other than this contract without permission of the designer is prohibited. All copies of drawings and specifications other than contract copies shall be returned to the owner, upon request, after completion of the work. Originals of drawings and renderings remain the property of the designer.

ARTICLE 8 – MATERIALS, EQUIPMENT, EMPLOYEES

- a. The Contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, heat, sanitary facilities, water, scaffolding and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied there from, all in accordance with the contract documents.
- b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
- c. Upon notice, the contractor shall furnish evidence as to quality of materials.

- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Request for approval or disapproval; such approval or disapproval shall be made by the designer prior to the opening of bids.
- e. Each contractor shall obtain written approval from the designer for the use of products, materials, equipment, assemblies or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract awards as possible and before any materials are ordered. Applications for approvals shall be made by the contractor and not by subcontractors or material suppliers within thirty (30) days following award of contract. When the submittal schedule provided under Article 5a is approved, no further substitutions will be permitted except in unusual or extenuating circumstances. If no list is submitted, the contractor shall supply materials specified.
- f. The designer is the judge of equality for proposed substitution of products, materials, or equipment.
- g. If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the owner or designer, or if any workman be considered detrimental to the work, the contractor shall order such parties removed immediately from grounds.

ARTICLE 9 – ROYALTIES, LICENSES AND PATENTS

It is the intention of the contract documents that the work covered herein will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. The contractor shall protect and save harmless the owner against suit on account of alleged or actual infringement. The contractor shall pay all royalties and/or license fees required on account of patented articles or processes, whether the patent rights are evidenced hereinafter.

ARTICLE 10 – PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The contractor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the designer in writing. See Instructions to Bidders, Paragraph 3, Bulletins and Addenda. Any necessary changes required after

- contract award shall be made by change order in accordance with Article 19. If the contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the designer, he shall bear all cost arising there from. Additional requirements implemented after bidding will be subject to equitable negotiations.
- b. All work under this contract shall conform to the North Carolina State Building Code and other State, local and national codes as are applicable. The cost of all required inspections and permits shall be the responsibility of the contractor.
 - c. Projects constructed by the State of North Carolina or by any agency or institution of the State are not subject to inspection by any county or municipal authorities and are not subject to county or municipal building codes. The contractor shall, however, cooperate with the county or municipal authorities by obtaining building permits. Permits shall be obtained at no cost.
 - d. Projects involving local funding (community colleges) are subject to county and municipal building codes and inspection by local authorities. The contractor shall pay the cost of these permits and inspections.

ARTICLE 11 – PROTECTION OF WORK, PROPERTY AND THE PUBLIC

- a. The contractors shall be jointly responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the owner or designer, and by laws or ordinances governing such conditions. They shall be responsible for any damage to the owner's property or of that of others on the job, by them, their personnel, or their subcontractors, and shall make good such damages. They shall be responsible for and pay for any damages caused to the owner. All contractors shall have access to the project at all times.
- b. The contractor shall provide cover and protect all portions of the structure when the work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the work on the building, whether set by him, or any of the subcontractors. Any work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the owner.
- c. No fires of any kind will be allowed inside or around the operations during the course of construction without special permission from the designer.
- d. The contractor shall protect all trees and shrubs designated to remain in the vicinity of the operations by building substantial boxes around same. He shall barricade all the walks, roads, etc., as directed by the designer to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the work shall be well barricaded and properly lighted at night.
- e. The contractor shall provide all necessary safety measures for the protection of all persons on the job, including the requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly make or post signs warning of hazards existing, and shall barricade excavations, elevator shafts, stairwells and similar hazards. He shall protect against damage or

injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.

- f. The contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.
- g. The contractor shall designate a responsible member of his organization as safety inspector, whose duties shall include accident prevention on the work project. The name of the safety inspector shall be made known to the designer at the time the work is started.
- h. In the event of emergency affecting the safety of life, the protection of work, or the safety of adjoining properties, the contractor is hereby authorized to act at his own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the contractor on account of such action shall be determined as provided for under Article 19(b).

ARTICLE 12 – SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the contractor(s) in connection with the project shall comply with all erosion control measures set forth in the contract documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B, and 4C, as amended (15 N.C.A.C. 4A, 4B, and 4C).
- b. Upon receipt of notice that a land-disturbing activity is in violation of said act, the contractor(s) shall be responsible for ensuring that all steps or actions necessary to bring the project in compliance with said act are promptly taken.
- c. The contractor(s) shall be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any party or persons described in this article.
- d. To the fullest extent permitted by law, the contractor(s) shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, civil penalties, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of work or failure of performance of work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation shall not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this article.

ARTICLE 13 – INSPECTION OF THE WORK

- a. It is a condition of this contract that the work shall be subject to inspection during normal working hours by the designer, designated official representatives of the owner, and those persons required by state law to test special work for official approval. The contractor shall therefore provide safe access to the work at all times for such inspections.
- b. All instructions to the contractor will be made only by or through the designer or his designated project representative. Observations made by official representatives of the owner shall be conveyed to the designer for review and coordination prior to issuance to the contractor.
- c. Where special inspection or testing is required by virtue of any state laws, instructions of the designer, specifications or codes, the contractor shall give adequate notice to the designer of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the designer. Such special tests or inspections will be made in the presence of the designer, or his authorized representative, and it shall be the contractor's responsibility to serve ample notice of such tests.
- d. All laboratory tests shall be paid by the owner unless provided otherwise in the contract documents except the general contractor shall pay for laboratory tests to establish design mix for concrete, and for additional tests to prove compliance with contract documents where materials have tested deficient except when the testing laboratory did not follow the appropriate ASTM testing procedures.
- e. Should any work be covered up or concealed prior to inspection and approval by the designer, such work shall be uncovered or exposed for inspection, if so requested by the designer in writing. Inspection of the work will be made promptly upon notice from the contractor. All cost involved in uncovering, repairing, replacing, recovering and restoring to design condition, the work that has been covered or concealed will be paid by the contractor involved.
- f. If any portion of the work has been covered which the designer has not specifically requested to observe prior to being covered, the designer may request to see such work and it shall be uncovered by the contractor. If such work be found in accordance with the contract documents, the cost of uncovering and replacement shall, by appropriate change order, be charged to the owner. If such work be found not in accordance with the contract documents, the contractor shall pay such costs unless it be found that this condition was caused by the owner or a separate contractor as provided in Article 15, in which event the owner or the separate contractor shall be responsible for the payment of such costs.

ARTICLE 14 – CONSTRUCTION SUPERVISION AND SCHEDULE

- a. Throughout the progress of the work, each contractor shall keep at the job site, a competent superintendent or supervisory staff satisfactory to the designer. The superintendent shall not be changed without the consent of the designer unless said superintendent ceases to be employed by the contractor or ceases to be competent. The superintendent shall have authority to act on behalf of the contractor, and instructions, directions or notices given to him shall be as binding

as if given to the contractor. However, directions, instructions, and notices shall be confirmed in writing.

- b. The contractor shall examine and study the drawings and specifications and fully understand the project design, and shall provide constant and efficient supervision to the work.
- c. All contractors shall be required to cooperate and consult with each other during the construction of this project. Prior to installation of work, all contractors shall jointly prepare coordination drawings, showing locations of various ductworks, piping, motors, pumps, and other mechanical or electrical equipment, in relation to the structure, walls and ceilings. These drawings shall be submitted to the designer through the Project Expediter for information only. Each contractor shall lay out and execute his work to cause the least delay to other contractors. Each contractor shall be financially responsible for any damage to other contractor's work and for undue delay caused to other contractors on the project.
- d. The contractor is required to attend monthly job site progress conferences as called by the designer. The contractor shall be represented at these job progress conferences by both home office and project personnel. These representatives shall have authority to act on behalf of the contractor. These meetings shall be open to subcontractors, material suppliers and any others who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the project on schedule and to complete the project within the specified contract time. Each contractor shall be prepared to assess progress of the work as required in his particular contract and to recommend remedial measures for correction of progress as may be appropriate. The designer or his authorized representative shall be the coordinator of the conferences and shall preside as chairman.
- e. The contractor(s) shall, if required by the Supplementary General Conditions, employ an engineer or a land surveyor licensed in the State of North Carolina to lay out the work and to establish a bench mark nearby in a location where same will not be disturbed and where direct instruments sights may be taken.
- f. The designer shall designate a Project Expediter on projects involving two or more prime contracts. The Project Expediter shall be designated in the Supplementary General Conditions. The Project Expediter shall have the following responsibilities:
 - 1. Prepare the project construction schedule and shall allow all prime contractors (multi-prime contract) and subcontractors (single-prime contract) performing general, plumbing, HVAC, and electrical work equal input into the preparation of the initial construction schedule.
 - 2. Maintain a project progress schedule for all contractors.
 - 3. Give adequate notice to all contractors to ensure efficient continuity of all phases of the work.
 - 4. Notify the designer of any changes in the project schedule.
 - 5. Recommend to the owner whether payment to contractor shall be approved.

- g. It shall be the responsibility of the Project Expediter to cooperate with and obtain from several prime contractors and subcontractors on the job, their respective work activities and integrate these activities into a project construction schedule in form of a detailed bar chart of Critical Path Method (CPM), schedule. Each prime contractor shall provide work activities within fourteen (14) days of request by the Project Expediter. A “work activity”, for scheduling purposes, shall be any component or contractual requirement of the project requiring at least one (1) day, but not more than fourteen (14) days, to complete or fulfill. The project construction schedule shall graphically show all salient features of the work required to construct the project from start to finish and within the allotted time established in the contract. The time (in days) between the contractor’s early completion and contractual completion dates is part of the project total float time; and shall be used as such, unless amended by a change order. On a multi-prime project, each prime contractor shall review the proposed construction schedule to the designer for comments. The complete Project construction schedule shall be of the type set forth in the Supplementary General Condition or subparagraph (1) or (2) below, as appropriate:
1. For a project with total contracts of \$1,000,000.00 or less, a bar chart schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the work.
 2. For a project with total contracts over \$1,000,000.00, a Critical Path Method (CPM) schedule shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be responsibility of the Project Expediter and shall be paid for by the Owner.

Bar Chart Schedule: Where a bar chart schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, approval of shop drawings by designers, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the Contractor. The Contractor shall allow sufficient time in his schedule for all required inspections. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

CPM Schedule: Where a CPM schedule is required, it shall be in time-scaled precedence format using the Project Expediter’s logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format. The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the work to be performed by the Contractor. The Contractor shall allow sufficient time in his

schedule for all required inspections. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total Float" and "free float" shall be indicated for all activities. Float time shall not be considered for the exclusive use or benefit of either the Owner or the Contractor, but must be allocated in the best interest of completing the work within the Contract time. Extensions to the Contract time, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change. On contracts with a price over \$2,500,000.00, the CPM schedule shall also show what part of the Contract Price is attributable to each activity on the schedule, the sum of which for all activities shall equal the total Contract Price.

Early Completion of Project: The Contractor may attempt to complete the project prior to the Contract Completion Date. However, such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the Owner under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. The Contractor shall not be required to pay liquidated damages to the Owner because of its failure to complete by its planned earlier date. Likewise, the Owner shall not pay the Contractor any additional compensation for early completion nor will the Owner owe the Contractor any compensation should the Owner, its officers, or agents cause the Contractor not to complete earlier than the date required by the Contract Documents.

- h. The proposed project construction schedule shall be presented to the designer no later than thirty (30) days after written notice to proceed until this schedule is accepted by the owner.
- i. The approved project construction schedule shall be distributed to all contractors and displayed at the job site by the Project Expediter.
- j. The several contractors shall be responsible for their work activities and shall notify the Project Expediter of any necessary changes or adjustments to their work. The Project Expediter shall maintain the project construction schedule, making monthly adjustments, updates, corrections, etc., that are necessary to finish the project within the Contract time, keeping all contractors and the designer fully informed. Copy of a bar chart schedule annotated to show the current progress shall be submitted by the Contractor(s) to the designer, along with monthly request for payment. For project requiring CPM schedule, the Contractor shall submit a monthly report of the status of all activities. The bar chart schedule or monthly status report shall show the actual Work completed to date in comparison with the original work scheduled for all activities. If any

activities of the work of several contractors are behind schedule, the contractor must indicate in writing, what measures will be taken to bring each such activity back on schedule and to ensure that the Contract Completion Date is not exceeded. A plan of action and recovery schedule shall be developed and submitted to the designer by the Project Expediter, when (1) the contractor's monthly report indicates delays, that are in the opinion of the designer or the owner, of sufficient magnitude that the contractor's ability to complete the work by the scheduled completion is brought into question; (2) the updated construction schedule is thirty (30) days behind the planned or baseline schedule and no legitimate time extensions are in process; and (3) the contractor desires to make changes in the logic (sequencing of work) or the planned duration of future activities of the CPM schedule which, in the opinion of the designer or the owner, are of a major nature. The plan of action, when required shall be submitted to the Owner for review within two (2) business days of the Contractor receiving the Owner's written demand. The recovery schedule, when required, shall be submitted to the Owner within five (5) calendar days of the Contractor's receiving the Owner's written demand. Failure to provide an updated construction schedule or a recovery schedule may be grounds for rejection of payment applications or withholding of funds as set forth in Article 33.

- k. The Project Expediter shall notify each contractor of such events or time frames that are critical to the progress of the job. Such notice shall be timely and reasonable. Should the progress be delayed due to the work of any of the several contractors, it shall be the duty of the Project Expediter to immediately notify the contractor(s) responsible for such delay, the designer, the owner and other prime contractors. The designer shall determine the contractor(s) who caused the delays and notify the bonding company of the responsible contractor(s) of the delays; and shall make a recommendation to the owner regarding further action.
- l. Designation as Project Expediter entails an additional project control responsibility and does not alter in any way the responsibility of the contractor so designated, nor responsibility of the other contractors involved in the project.

ARTICLE 15 – SEPARATE CONTRACTS AND CONTRACTOR RELATIONSHIPS

- a. The owner reserves the right to prepare separate specifications, receive separate bids, and award separate contracts for such other major items of work as may be in the best interest of the Owner. For the purposes of a single prime contract, refer to Article 1 – Definitions.
- b. All contractors shall cooperate with each other in the execution of their work, and shall plan their work in such manner as to avoid conflicting schedules or delay of the work. See Article 14, Construction Supervision.
- c. If any part of contractor's work depends upon the work of another contractor, defects which may affect that work shall be reported to the designer in order that

prompt inspection may be made and the defects corrected. Commencement of work by a contractor where such condition exists will constitute acceptance of the other contractor's work as being satisfactory in all respects to receive the work commenced, except as to defects which may later develop. The designer shall be the judge as to the quality of work and shall settle all disputes on the matter between contractors.

- d. Any mechanical or electrical work such as sleeves, inserts, chases, openings, penetrations, etc., which is located in the work of the general contractor shall be built in by the general contractor. The respective mechanical and electrical contractors shall set all sleeves, inserts and other devices that are to be incorporated into the structure in cooperation and under the supervision of the general contractor. The responsibility for the exact location of such items shall be that of the mechanical and/or electrical contractor.
- e. The designer and the owner shall have access to the work whenever it is in preparation and progress during normal working hours. The contractor shall provide facilities for such access so the designer may perform his functions under the contract documents.
- f. Should a contractor cause damage to the work or property of another contractor, he shall be directly responsible, and upon notice, shall promptly settle the claim or otherwise resolve the dispute.

ARTICLE 16 – SUBCONTRACTS AND SUBCONTRACTORS

- a. Within thirty (30) days after award of the contract, the contractor shall submit, to the designer and to the owner, a list giving the names and addresses of subcontractors and equipment and material suppliers he proposes to use, together with the scope of their respective parts of the work. Should any subcontractor be disapproved by the designer, the designer shall submit his reason for disapproval in writing to the owner for its consideration with a copy to contractor. If the owner concurs with the designer's recommendation, the contractor shall submit a substitute for approval. The designer shall act promptly in the approval of subcontractors, and when approval of the list is given, no changes of subcontractors will be permitted except for cause or reason considered justifiable by the designer.
- b. The designer will furnish to any subcontractor, upon request, evidence regarding amounts of money paid to the contractor on account of the subcontractor's work.
- c. The contractor is and remains fully responsible for his own acts or omissions as well as those of any subcontractor or of any employee of either. The contractor agrees that no contractual relationship exists between the subcontractor and the owner in regard to the contract, and that the subcontractor acts on this work as an agent or employee of the contractor.

- d. The owner reserves the right to limit the amount of portions of work to be subcontracted as hereinafter specified.

ARTICLE 17 – CONTRACTOR AND SUBCONTRACTOR RELATIONSHIPS

The contractor agrees that the terms of these contract documents shall apply equally to each subcontractor as to the contractor, and the contractor agrees to take such action as may be necessary to bind each subcontractor to these terms. The contractor further agrees to conform to the Code of Ethical Conduct as adopted by the Associated General Contractors of America, Inc., with respect to contractor-subcontractor relationship, and that payments to subcontractors shall be made in accordance with the provision of G.S. 143-134.1 titled Interest on final payments due to prime contractors: payments to subcontractors.

- a. On all public construction contracts which are let by a board or governing body of the state government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be complete in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was construction, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions of the contract document or said prime contractor shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the

contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply.

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

ARTICLE 18 – DESIGNER’S STATUS

- a. The designer shall provide general administration of the performance of construction contracts, including liaison and necessary inspection of the work to ensure compliance with plans and specifications. He is the agent of the owner only for the purpose of constructing this work and to the extent stipulated in the contract documents. He has authority to stop work or to order work removed, or to order corrections of faulty work where such action may be necessary to assure successful completion of the work.
- b. The designer is the impartial interpreter of the contract documents, and, as such, he shall exercise his powers under the contract to enforce faithful performance by both the owner and the contractor, taking sides with neither.

- c. Should the designer cease to be employed on the work for any reason whatsoever, then the owner shall employ a competent replacement who shall assume the status of the former designer.
- d. The designer will make periodic inspections of the project at intervals appropriate to the stage of construction. He will inspect the progress, the quality and the quantity of the work.
- e. The designer and the owner shall have access to the work whenever it is in preparation and progress during normal working hours. The contractor shall provide facilities for such access so the designer may perform his functions under the contract documents.
- f. Based on the designer's inspections and evaluations of the project, the designer shall issue interpretations, directives and decisions as may be necessary to administer the project. His decisions relating to artistic effect and technical matters shall be final, provided such decisions are within the limitations of the contract.

ARTICLE 19 – CHANGES IN THE WORK

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

A FIELD ORDER, TRANSMITTED BY FAX OR HAND DELIVERED MAY BE USED WHERE THE CHANGE INVOLVED IMPACTS THE CRITICAL PATH OF THE WORK. A FORMAL CHANGE ORDER SHALL BE ISSUED WITHIN THE TIME STATED ON THE FIELD ORDER.

In the event of emergency endangering life or property, the contractor may be directed to proceed on a time and material basis whereupon the contractor shall proceed and keep accurately on such form as may be required, a correct account of costs together with all proper invoices, payrolls and supporting data. Upon

completion of the work the change order will be prepared as outlined under either Method “c(1)” or Method “c(2)” or both.

- c. In determining the values of changes, either additive or deductive, contractors are restricted to the use of the following methods:
 - 1. Where the extra work involved is covered by unit prices quoted in the proposal, the value of the change shall be computed by application of unit prices based on quantities, estimated or actual as agreed of the items involved, except in such cases where a quantity exceeds the estimated quantity allowance in the contract by one hundred percent (100%) or more. In such cases, either party may elect to proceed under subparagraph c2 herein. If neither party elects to proceed under c2, then unit prices shall apply.
 - 2. The contracting parties shall negotiate and agree upon the equitable value of the change prior to issuance of the change order, and the change order shall stipulate the corresponding lump sum adjustment to the contract price.
- d. Under paragraph “b” and Methods “c(2)” above, the allowances for overhead and profit combined shall not exceed twenty percent (20%) of **net cost** except where the change involves a subcontractor, allowance shall not exceed fifteen percent (15%) for the subcontractor, and ten percent (10%) for the prime contractor. Under Method “c(1)”, no additional allowances shall be made for overhead and profit. In the case of deductible change orders, under Method “c(2)” and Paragraph (b) above, the contractor shall include no less than five percent (5%) profit, but no allowances for overhead.
- e. The term “net cost” as used herein shall mean the difference between all proper cost additions and deductions. The “cost” as used herein shall be limited to the following:
 - 1. The actual costs of materials and supplies incorporated or consumed as part of the project;
 - 2. The actual cost of labor expended on the project site;
 - 3. The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker’s compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts; the total of which shall not exceed forty percent (40%) of the actual costs of labor;

4. The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the project;
5. The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the project.

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

- f. Should concealed conditions be encountered in the performance of the work below grade, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the contract documents, the contract sum and time for completion may be equitably adjusted by change order upon claim by either party made within thirty (30) days after the condition has been identified. The cost of such change shall be arrived at by one of the foregoing methods.

ALL CHANGE ORDERS SHALL BE SUPPORTED BY A BREAKDOWN SHOWING METHOD OF ARRIVING AT NET COST AS DEFINED ABOVE.

- g. In all change orders, the procedure will be for the designer to request for the change order work in writing. The contractor will provide such proposal and supporting data in suitable format. The designer shall verify correctness. Within fourteen (14) days after receipt of the contractor's proposal, the designer shall prepare the change order and forward to the contractor for his signature or otherwise respond, in writing, to the contractor's proposal. Within seven (7) days after receipt of the change order executed by the contractor, the designer shall, certify the change order by his signature, and forward the change order all supporting data to the owner for the owner's signature. Upon approval by the owner one copy remains with the owner and the remaining copies are sent to the designer for distribution to the contractor(s) and the surety. In case of emergency or extenuating circumstances, approval of changes may be obtained verbally by telephone or field orders approved by all parties, then shall be sustained in writing as outlined under normal procedure.
- h. At the time of signing a change order, the contractor shall be required to certify as follows:

“I certify that my bonding company will be notified forthwith that my contract has been changed by the amount of this change order, and that a copy of the approved change order will be mailed upon receipt by me to my surety.”
- i. A change order, when issued, shall be full compensation, or credit, for the work included, omitted or substituted. It shall show on its face the adjustment in time for completion of the project as a result of the change in the work.

- j. If, during the progress of the work, the owner, may require the contractor to perform such work on a time and material basis in accordance with paragraph “b” above. Without prejudice, nothing in this paragraph shall preclude the owner from performing or to have performed that portion of the work requested in the change order.

ARTICLE 20 – CLAIMS FOR EXTRA COST

- a. Should the contractor consider that as a result of any instructions given in any form by the designer, he is entitled to extra cost above that stated in the contract, he shall give written notice thereof to the designer within seven (7) days without delay, and shall not proceed with the work affected until further advised, except in emergency involving the safety of life or property, which condition is covered in Article 19(b) and Article 11(h). No claims for extra compensation will be considered unless the claim is so made. The designer shall render a written decision within seven (7) days of receipt of claim.
- b. **THE CONTRACTOR SHALL NOT ACT ON INSTRUCTIONS RECEIVED BY HIM FROM PERSONS OTHER THAN THE DESIGNER, AND ANY CLAIMS FOR EXTRA COMPENSATION OR EXTENSION OF TIME ON ACCOUNT OF SUCH INSTRUCTION WILL NOT BE HONORED.** The designer will not be responsible for misunderstandings claimed by contractor of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the contract documents unless such instruction is confirmed in writing and supported by a properly authorized change order.
- c. Should a claim for extra compensation by the contractor be denied by the designer or owner, the contractor may request a mediation in connection with GS 143-128g in the dispute resolution rules adopted by the State Building Commission. If the contractor is unable to resolve its claims as a result of mediation, the contractor may pursue his claim in accordance with the provisions of G.S. 143-135.3.

ARTICLE 21 – MINOR CHANGES IN THE WORK

The designer will have the authority to order minor changes in the work not involving an adjustment in the contract sum or time for completion, and not inconsistent with the intent of the contract documents. Such changes shall be effected by written order, copied to the owner and shall be binding on the owner and the contractor.

ARTICLE 22 – UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged work be considered inadvisable or inexpedient by the owner and the designer, the owner shall be reimbursed by the contractor. A change order will be issued to reflect a reduction in the contract sum.

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

- a. The time of completion is stated in the Supplementary General Conditions and in the Form of Construction Contract. The Project Expediter, upon notice of award of contract, shall prepare a construction schedule to complete the project within the time of completion required by Article 14.
- b. The contractors shall commence work to be performed under this agreement on a date to be specified in a written Notice to Proceed from the designer and shall fully complete all work hereunder within the time of completion stated. For each day in excess of the above number of days, the contractor(s) shall pay the owner the sum stated as liquidated damages reasonably estimated in advance to cover the losses to be incurred by the owner by reason of failure of said contractor(s) to complete the work within the time specified, such time being in the essence of this contract and a material consideration thereof.
- c. The designer shall be the judge as to the division of responsibility between the contractor(s), based on the construction schedule, weekly reports and job records, and shall apportion the amount of liquidated damages to be paid by each of them, according to delay caused by any or all of them.
- d. If the contractor is delayed at any time in the progress of his work by any act or negligence of the owner or the designer, or by any employee of either; by any separate contractor employed by the owner; by changes ordered in the work; by labor disputes at the project site; by abnormal weather conditions not reasonably anticipated for the locality where the work is performed; by unavoidable casualties; by any causes beyond the contractor's control; or by any other causes which the designer and owner determine may justify the delay, then the contract time may be extended by change order for the time which the designer and owner may determine is reasonable.

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

- e. Request for extension of time shall be made in writing within twenty (20) days following cause of delay. In case of continuing cause for delay, the Contractor shall notify the Designer of the delay within 20 days of the beginning of the delay and only one claim is necessary.
- f. The contractor shall notify his surety in writing of extension of time granted.
- g. No claim shall be allowed on account of failure of the designer to furnish drawings or instructions until twenty (20) days after demand for such drawings and/or instructions. See Article 5c.

ARTICLE 24 – PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

- a. The owner may desire to occupy or utilize all or a portion of the project when the work is substantially complete.
- b. Prior to the final payment, the owner, may request the contractor(s) in writing, through the designer if applicable, to permit him to use a specified part of the project which he believes he may use without significant interference with construction of the other parts of the project. If the contractor(s) agree, the designer will schedule a beneficial occupancy inspection after which the designer may issue a certificate of substantial completion. The certificate shall include the following documentation:
 - 1. Date of substantial completion.
 - 2. A tentative list of items to be completed or corrected before final payment.
 - 3. Establishing responsibility between contractor and owner for maintenance, heat, utilities and insurance.
 - 4. Establishing the date for guarantees and warranties under terms of the contract.
 - 5. Consent of surety.
 - 6. Endorsement from insurance company permitting occupancy.
- c. The owner shall have the right to exclude the contractor from any part of the project which the designer has so certified to be substantially complete, but the owner will allow the contractor reasonable access to complete or correct work to bring it into compliance with the contract.
- d. Occupancy by the owner under this article will in no way relieve the contractor from his contractual requirement to complete the project within the specified time.

The contractor will not be relieved of liquidated damages because of beneficial occupancy. The designer may prorate liquidated damages based on the percentage of project occupied.

ARTICLE 25 – FINAL INSPECTOIN, ACCEPTANCE AND PROJECT CLOSEOUT

- a. Upon notification from the contractor(s) that the project is complete and ready for inspection, the designer shall make a preliminary final inspection to verify that the project is complete and ready for final inspection. Prior to final inspection, the contractor(s) shall complete all items requiring corrective measures noted at the preliminary inspection. The designer shall schedule a final inspection at a time and date acceptable to the owner, and contractor(s).
- b. When contractors finish their work prior to completion by other contractors, these contracts shall be closed through the final inspection, acceptance and final payment process on recommendation of the designer and approval by the owner.
- c. At the final inspection, the designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the contract documents. At the conclusion of the final inspection, the designer and the owner shall make the following determinations:
 1. That the project is completed and accepted.
 2. That the project is accepted subject to the list of discrepancies (punch list). All punch list items must be completed within thirty (30) days of acceptance or the owner may invoke Article 28, Owner's Right to Do Work.
 3. That the project is not complete and another date for a final inspection will be established.
- d. Within fourteen (14) days of acceptance per Paragraph c1 or within fourteen (14) days after completion of punch list per Paragraph c2 above, the designer shall certify the work and issue applicable certificate(s) of compliance.
- e. Any discrepancies listed or discovered after the date of final inspection and acceptance under Paragraphs c1 or c2 above shall be handled in accordance with Article 42.
- f. The date of acceptance will establish the following:
 1. The beginning of guarantees and warranties period.
 2. The date on which the contractor's insurance coverage for public liability, property damage and builder's risk maybe be terminated.

3. That no liquidated damages (if applicable) shall be assessed after this date.
4. The termination date of utility cost to the contractor.

ARTICLE 26 – CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Any work, materials, fabricated items or other parts of the work which have been condemned or declared not in accordance with the contract by the designer shall be promptly removed from the work site by the contractor, and shall be immediately replaced by new work in accordance with the contract at no additional cost to the owner. Work or property of other contractors or the owner, damaged or destroyed by virtue of such faulty work, shall be made good at the expense of the contractor whose work is faulty.
- b. Correction of condemned work described above shall commence within twenty-four (24) hours after receipt of notice from the designer, and shall make satisfactory progress until completed.
- c. Should the contractor fail to proceed with the required corrections, then the owner may complete the work in accordance with the provisions of Article 28.

ARTICLE 27 – CORRECTION OF WORK AFTER FINAL PAYMENT

See Article 35, Performance Bond and Payment Bond, and Article 42, Guarantee. Neither the final certificate, final payment, occupancy of the premises by the owner, nor any provisions of the contract, nor any other act or instrument of the owner, nor the designer, shall relieve the contractor from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. He shall correct or make good any defects due thereto and repair any damage resulting therefrom, which may appear during the guarantee period following final acceptance of the work except as stated otherwise under Article 42, Guarantee. The owner will report any defects as they may appear to the contractor and establish a time limit for completion of corrections by the contractor. The owner will be the judge as to the responsibility for correction of defects.

ARTICLE 28 – OWNER'S RIGHT TO DO WORK

If, during the progress of the work or during the period of guarantee, the contractor fails to prosecute the work properly or to perform any provision of the contract, the owner, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the contractor from the designer, may perform or have performed that portion of the work. The cost of the work may be deducted from any amounts due or to become due to the contractor, such action and cost of same having been first approved by the designer. Should the cost of such action of the owner exceed the amount due or to become due the contractor, then the contractor or his surety, or both, shall be liable for and shall pay to the owner the amount of said excess.

ARTICLE 29 – ANNULMENT OF CONTRACT

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

ARTICLE 30 – CONTRACTOR’S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

- a. Should the work be stopped by order of a court having jurisdiction, or by order of any other public authority for a period of three months, due to cause beyond the fault or control of the contractor, or if the owner should fail or refuse to make payment on account of a certificate issued by the designer within thirty (30) days after receipt of same, then the contractor, after fifteen (15) days' written notice sent by certified mail, return receipt requested, to the owner and the designer, may suspend operations on the work or terminate the contract.
- b. The owner shall be liable to the contractor for the cost of all materials delivered and work performed on this contract plus 20 percent overhead and profit and shall make such payment. The designer shall be the judge as to the correctness of such payment.

ARTICLE 31 – REQUEST FOR PAYMENT

- a. Not later than the fifth day of the month, the contractor shall submit to the designer a request for payment for work done during the previous month. The request shall be in the form agreed upon between the contractor and the designer, but shall show substantially the value of work done and materials delivered to the site during the period since the last payment, and shall sum up the financial status of the contract with the following information:
 - 1. Total of contracting including change orders.
 - 2. Value of work completed to date.
 - 3. Less five percent (5%) retainage, provided however, that after fifty percent (50%) of the contractor's work has been satisfactorily completed on schedule, with approval of the owner and written consent of the surety, further requirements for retainage will be waived only so long as work continues to be completed satisfactorily and on schedule.
 - 4. Less previous payments.
 - 5. Current amount due.
- b. The contractor, upon request of the designer, shall substantiate the request with invoices of vouchers or payrolls or other evidence.
- c. Prior to submitting the first request, the contractor shall prepare for the designer a schedule showing a breakdown of the contract price into values of the various parts of the work, so arranged as to facilitate payments to subcontractors in accordance with Article 17, Contractor and Subcontractor Relationships. The contractor(s) shall list the value of each subcontractor and supplier, identifying each minority business subcontractor and supplier as listed in Affidavit C, if applicable.

- d. When payment is made on account of stored materials and equipment, such materials must be stored on the owner's property, and the requests for payments shall be accompanied by invoices or bills of sale or other evidence to establish the owner's title to such materials and equipment. Responsibility for such stored materials and equipment shall remain with the contractor regardless of ownership title. Such stored materials and equipment shall not be removed from the owner's property. Should the space for storage on-site be limited, the contractor, at his option, shall be permitted to store such materials and/or equipment in a suitable space off-site. Should the contractor desire to include any such materials or equipment in his application for payment, they must be stored in the name of the owner in a commercial warehouse approved by the designer and the owner and located as close to the site as possible. The warehouse selected must be approved by the contractor's bonding and insurance companies; the material to be paid for shall be assigned to the owner and shall be inspected by the designer. Upon approval by the designer of the storage facilities and materials and equipment, payment therefore will be certified. Responsibility for such stored materials and equipment shall remain with the contractor. Such stored materials and equipment shall not be moved except for transportation to the project site. Under certain conditions, the designer may approve storage of materials at the point of manufacture, which conditions shall be approved by the designer and the owner prior to approval for the storage and shall include an agreement by the storing party which unconditionally gives the Owner absolute right to possession of the materials at anytime. Bond, security and insurance protection shall continue to be the responsibility of the contractor(s).
- e. In the even of beneficial occupancy, retainage of funds due the contractor(s) may be reduced with the approval of the owner to an equitable amount to cover the list of items to be completed or corrected. Retainage may not be reduced to less than two and one-half (2 ½) times the estimated value of the work to be completed or corrected. Reduction of retainage must be with the consent and approval of the contractor's bonding company.

ARTICLE 32 – CERTIFICATES OF PAYMENT AND FINAL PAYMENT

- a. Within five (5) days from receipt of request for payment from the contractor, the designer shall issue and forward to the owner a certificate for payment. This certificate shall indicate the amount requested or as approved by the designer. If the certificate is not approved by the designer, he shall state in writing to the contractor and the owner his reasons for withholding payment.
- b. No certificate issued or payment made shall constitute an acceptance of the work or any part thereof. The making and acceptance of final payment shall constitute a waiver of all claims by the owner except:
 - 1. Claims arising from unsettled liens or claims against the contractor.

2. Faulty work or materials appearing after final payment.
 3. Failure of the contractor to perform the work in accordance with drawings and specifications, such failure appearing after payment.
 4. As conditioned in the performance bond and payment bond.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the contractor except those claims previously made and remaining unsettled (Article 20(c)).
 - d. Prior to submitting request for final payment to the designer for approval, the contractor shall fully comply with all requirements specified in the “project closeout” section of the specifications. These requirements include but not limited to the following:
 1. Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, Certificates of Inspection or Approval from agencies having jurisdiction. (The designer must approve the Manuals prior to delivery to the owner.)
 2. Transfer of Required attic stock material and all keys in an organized manner.
 3. Record of Owner’s training.
 4. Consent of Surety to Final Payment.
 5. Certificates of Surety to Final Payment.
 - f. The designer will not authorize final payment until the work under contract has been certified by designer, certificates of compliance issued, and the contractor has complied with the closeout requirements. The designer shall forward the contractor’s final application for payment to the owner along with respective certificate(s) of compliance required by law.

ARTICLE 33 – PAYMENTS WITHHELD

- a. The designer with the approval of the owner may recommend withholding payment for the following reasons:
 1. Faulty work not corrected.
 2. The unpaid balance on the contract is insufficient to complete the work in the judgment of the designer.

3. To provide for sufficient contract balance to cover liquidated damages that will be assessed.
- b. The owner may authorize the withholding of payment for the following reasons:
 1. Claims filed against the contractor or evidence that a claim will be filed.
 2. Evidence that subcontractors have not been paid.
- c. When grounds for withholding payments have been removed, payment will be released. Delay of payment due the contractor without cause will make owner liable for payment of interest to the contractor as provided in G.S. 143-134.1.

ARTICLE 34 – MINIMUM INSURANCE REQUIREMENTS

The work under this contract shall not commence until the contractor has obtained all required insurance and verifying certificates of insurance have been approved in writing by the owner. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled, reduced in amount or coverages eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the owner of such alteration or cancellation.

a. Worker's Compensation and Employer's Liability

The contractor shall provide and maintain, during the life of the contract, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

b. Public Liability and Property Damage

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

Bodily Injury:	\$500,000 per occurrence
Property Damage:	\$100,000 per occurrence / \$300,000 aggregate

In lieu of limited listed above, a \$500,000 combined single limit shall satisfy both conditions.

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

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

The contractor shall purchase and maintain property insurance during the life of this contract, upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of the owner, the contractor, the subcontractors and subcontractors in the work and shall insure against the perils of fire, extended coverage, and vandalism and malicious mischief. If the owner is damaged by failure of the contractor to purchase or maintain such insurance, then the contractor shall bear all reasonable costs properly attributable thereto; the contractor shall effect and maintain similar property insurance on portions of the work stored off the site when request for payment per articles so includes such portions.

d. Deductible

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the contractor.

e. Other Insurance

The contractor shall obtain such additional insurance as may be required by the owner or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

f. Proof of Carriage

The contractor shall furnish the owner with satisfactory proof of carriage of the insurance required before written approval is granted by the owner.

ARTICLE 35 – PERFORMANCE AND PAYMENT BOND

- a. Each contractor shall furnish a performance bond and payment bond executed by a surety company authorized to do business in North Carolina. The bonds shall be in the full contract amount. Bonds shall be executed in the form bound with these specifications (Section 307 and Section 308).
- b. All bonds shall be countersigned by an authorized agent of the bonding company who is licensed to do business in North Carolina.

ARTICLE 36 – CONTRACTOR'S AFFIDAVIT

The final payment of retained amount due the contractor on account of the contract shall not become due until the contractor has furnished to the owner through the designer an affidavit signed, sworn and notarized to the effect that all payments for materials, services or subcontracted work in connection with his contract have been satisfied, and that no claims or liens exist against the contractor in connection with this contract. In the event that the contractor cannot obtain similar affidavits from subcontractors to protect the contractor and the owner from possible liens or claims against the subcontractor, the contractor shall state in his affidavit that no claims or liens exist against any subcontractor to the best of his (the contractor's) knowledge, and if any appear afterward, the contractor shall save the owner harmless.

ARTICLE 37 – ASSIGNMENTS

The contractor shall not assign any portion of this contract nor subcontract in its entirety. Except as may be required under terms of the performance bond or payment bond, no funds or sums of money due or become due the contractor under the contract may be assigned.

ARTICLE 38 – USE OF PREMISES

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

ARTICLE 39 – CUTTING, PATCHING AND DIGGING

- a. The contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon or reasonably implied by the drawings and specifications for the completed structure, as the designer may direct.
- b. Any cost brought about by defective or ill-timed work shall be borne by the party responsible therefore.

- c. No contractor shall endanger any work of another contractor by cutting, digging or other means. No contractor shall cut or alter the work of any other contractor without the consent of the designer and the affected contractor(s).

ARTICLE 40 – UTILITIES, STRUCTURES, SIGNS

- a. The project Expediter shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer and other utility services, which may be necessary and required for completion of the project. Any permanent meters installed shall be listed in the Project Expediter's name until his work is fully accepted by the owner. As stipulated in the Supplementary General Conditions, the Owner may: (1) Pay utilities cost directly, (2) the Project Expediter to pay all utilities cost, (3) or reimburse the Project Expediter for the actual cost of utilities. The Owner or Project Expediter, as applicable, may recover actual costs of metered utilities from the responsible party should delays occur in project completion.
- b. Meters shall be relisted in the owner's name on the day following completion and acceptance of the Project Expediter's work, and the owner shall pay for services used after that date.
- c. The owner shall be reimbursed for all metered utility charges after the meter is relisted in the owner's name and prior to completion and acceptance of the work of **all** contractors. Reimbursement to the owner shall be paid by the contractors involved on the basis of assessments by the designer.
- d. Prior to the operation of permanent systems, the Project Expediter will provide temporary power, lighting, water, and heat to maintain space temperature above freezing, as required for construction operations.
- e. All contractors shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time a building is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the contractor(s) and the designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the contractor(s).
- f. The electrical contractor shall have the building's permanent power wiring distribution system in sufficient readiness to provide power as required by the HVAC contractor for temporary climatic control.

- g. The electrical contractor shall have the building's permanent power wiring distribution system ready at the time the general contractor begins interior painting and shall provide adequate lighting in those areas where interior painting and finishing is being performed.
- h. Each prime contractor shall be responsible for his permanently fixed service facilities and systems in use during progress of the work. The following procedures shall be strictly adhered to:
 - 1. Prior to acceptance of work by the owner, each contractor shall remove and replace any parts of the permanent building systems damaged through use during construction.
 - 2. Temporary filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the owner's acceptance of the work.
 - 3. Extra effort shall be maintained to keep the building and the site adjacent to the building clean and under no circumstances shall air systems be operated if finishing and the site work operations are creating dust in excess of what would be considered normal if the building were occupied.
 - 4. It shall be understood that any warranty on equipment presented to the owner shall extend from the day of final acceptance by the owner. The cost of warranting the equipment during operation in the finishing stages of construction shall be borne by the contractor whose system is utilized.
 - 5. The electrical contractor shall have all lamps in proper working condition at the time of final project acceptance.
- i. The Project Expediter shall provide, if required and where directed, a shed for toilet facilities and shall furnish and install in this shed all water closets required for a complete and adequate sanitary arrangement. These facilities will be available to other contractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.
- j. The Project Expediter shall, if required by the Supplementary General Conditions and where directed, erect a temporary field office, complete with lights, telephone, heat and air conditioning. A portion of this office shall be portioned off, of sufficient size, for the use of a resident inspector, should the designer so direct.
- k. The Project Expediter will erect one sign on the project if required. The sign shall be of sound construction, and shall be neatly lettered with black letters on white background. The sign shall bear the name of the project, and the names of prime contractors on the project, and the name of the designer and consultants.

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

ARTICLE 41 – CLEANING UP

- a. The contractors shall keep the building and surrounding area reasonably free from rubbish at all times, and shall remove debris from the site on a timely basis or when directed to do so by the designer or Project Expediter. The Project Expediter shall provide an on site refuse container(s) for the use of all contractors. Each contractor shall remove their rubbish and debris from the building on a daily basis. The Project Expediter shall broom clean the building as required to minimize dust and dirt accumulation.
- b. The Project Expediter shall provide and maintain suitable all-weather access to the building.
- c. Before final inspection and acceptance of the building, each contractor shall clean his portion of the work, including glass, hardware, fixtures, masonry, tile and marble (using no acid), clean and wax all floors as specified, and completely prepare the building for use by the owner, with no cleaning required by the owner.

ARTICLE 42 – GUARANTEE

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

ARTICLE 43 – CODES AND STANDARDS

First Edition September 2009

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

ARTICLE 44 – INDEMNIFICATION

To the fullest extent permitted by law, the contractor shall indemnify and hold harmless the owner, the designer and the agents, consultants and employees of the owner and designer, from and against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from the performance or failure of performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or therefrom, and (2) is caused in whole or in part by any negligent act or omission of the contractor, the contractor's subcontractor, or the agents of either the contractor or the contractor's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this article.

ARTICLE 45 – TAXES [State Work Only]

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

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

Contractors performing contracts for state agencies shall give the state agency for whose project the property was purchased a signed statement containing the information listed in G.S. 105-164.14(e).

The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement as of April 1, 1991 from the contractor setting forth the date, the type of property and the cost of the property purchased from each vendor, the county in which the vendor made the sale and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered should be listed. The contractor should also be notified that the certified statement may be subject to audit.

In the event the contractors make several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, the counties, and the county sales and use taxes paid thereon.

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

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

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

Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant.

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

ARTICLE 46 – EQUAL OPPORTUNITY CLAUSE

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

ARTICLE 47 – EMPLOYMENT OF THE HANDICAPPED

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

ARTICLE 48 – ASBESTOS-CONTAINING MATERIALS (ACM)

The owner has attempted to address all asbestos-containing materials that are to be disturbed in the project. However, there may be other asbestos-containing materials in the work areas that are not to be disturbed and do not create an exposure hazard. Contractors are reminded of the requirements of instructions under Instructions to Bidders and General Conditions of the Contract, titled Examination of Conditions. Statute 130A, Article 19, amended August 3, 1989, established the Asbestos Hazard Management Program that controls asbestos abatement in North Carolina in North Carolina. The latest edition of *Guideline Criteria for Asbestos Abatement* may be obtained from the State Construction Office.

ARTICLE 49 – MINORITY BUSINESS PARTICIPATION [State Work]

GS 143-128.2 establishes a ten percent (10%) goal for participation by minority businesses in total value of work for each State building project. The document *Guidelines for Recruitment and Selection of Minority Businesses for Participation in State Construction Contracts* including Affidavits and Appendix E are hereby incorporated by reference and made a part of this contract.

**REQUEST FOR QUALIFICATIONS
Specialty Skatepark Construction**

SUBMITTAL DUE DATE: 2:00 p.m. on Tuesday, February 12, 2013

QUALIFICATIONS MUST BE MAILED OR DELIVERED TO:

Town of Waynesville
16 South Main Street
P.O. Box 100
Waynesville, NC 28786

EIN/SSN (Required) _____
Federal I.D. Number

COMPANY NAME _____

ADDRESS _____

CITY/STATE/ZIP _____

PHONE _____ FAX _____

PRINTED NAME _____

AUTHORIZED SIGNATURE _____

TITLE _____ EMAIL _____

Signature acknowledges that Proposer: has read the documents thoroughly before submitting a proposal, will fulfill the obligations in accordance to the scope of work, terms and conditions and is submitting without collusion with any other individual or firm. You must submit this page with an authorized signature.

DO NOT CONTACT ANY OTHER TOWN EMPLOYEE OR DEPARTMENT.

FOR QUESTIONS CONTACT THE FOLLOWING:

John Jenkins, P.E.
Stewart Engineering
919 866-4802
JJenkins@stewartinc.com.

Alison Melnikova
Assistant Town Manager
828-452-2491
townmanagerassistant@townofwaynesville.org

MUST SUBMIT PAGE ONE/ SIGNATURE PAGE

REQUEST FOR QUALIFICATIONS SKATE PARK SPECIALTY CONSTRUCTION

Project Description: The Town is seeking to prequalify a Specialty Skate Park Contractor to work under contract of a local general contractor (if necessary) to construct an approximate 8500 sf cast in place concrete skate park on Vance Street, in Waynesville, NC. After prequalification, the Town will provide construction documents and negotiate a price with the successful skate park contractor. The site work, including drainage, paving, concrete flatwork, and landscaping will be bid separately.

Minimum Requirements: The successful firm will demonstrate a proven track record of specialty skate park construction of cast in place concrete with no less than 5 years demonstrated experience and having completed no less than 10 projects for municipalities. The park is intended to be constructed of cast in place concrete. Project experience including wooden or pre-cast structures will not be considered.

Submittals Due: 2:00 p.m. on Tuesday, February 12, 2013

Mark Envelopes: VANCE STREET SKATE PARK SPECIALTY CONTRACTOR

Comments: It is acceptable to provide a pdf copy of the completed response via email. If hard copies are submitted then please provide two (2) copies and a CD with a copy of the proposal for necessary distribution. Late receipt of submittals will not be considered regardless of postmark. Faxes are not acceptable as submittals. All proposals will be validated. Submittals received after the due date will be filed unopened. The Town of Waynesville reserves the right to reject any parts of a submittal and to waive any formalities or irregularities to make an award in the best interest of the Town.

I. THE SELECTION PROCESS:

1. Review Panel: Submittals will be evaluated in accordance with the criteria by the Selection Committee.
2. Oral Interviews: The Town reserves the right to request oral interviews from the top ranking firms. If oral interviews will be conducted it will be in accordance to the anticipated schedule. Interview times and location to be announced at the time of short list.

Key personnel from the firms who will be directly involved with the project should attend the interview. The interview panel will, in particular, be interested in knowing about the project approach and in meeting the individuals who will act as the primary contacts with Town staff.

3. Fee Proposal: The highest ranked firm will be issued a set of construction documents and requested to submit a detailed fee proposal. ***Do not submit any fees with your submittal at this time.***
4. The Town reserves the right to accept or reject any and all Qualifications Submittals and to accept the Submittals which best serves the interest of the Town.
5. The Town reserves the right to both waive any informality in Request for Qualifications and to determine, in its sole discretion, whether or not informality is minor.

REQUEST FOR QUALIFICATIONS SKATE PARK SPECIALTY CONSTRUCTION

II. SUBMITTAL REQUIREMENTS

Firms will be judged not only on their past experience for the type of work involved, but also on their ability to address issues critical to the success of the project. Firms are not to submit fee proposals in their initial submittal. Submittals should be formatted to correspond exactly to the following information requirements. ***Clear and concise responses are appreciated.*** The total all-inclusive page limit is 30 pages (8.5x11).

Elements that will be considered by the selection committee when scoring your submittal:

1. PROJECT TEAM EXPERIENCE

- a. Identify the proposed construction team including the Project Manager, qualifications and relevant experience.
- b. Present a brief discussion regarding the experience and qualifications of the team working on similar projects together.
- c. Provide references for the project and the project manager: Include project name, owner, contact information, final construction costs, and construction completion date.

2. FIRM CAPABILITIES/ PAST PERFORMANCE/ EXPERIENCE

- a. List ten similar projects by your firm, which have been completed within the past five (5) years. Include information regarding any and ALL sub-contractors. Include: project name, owner, designer, design completion date, size, construction completion date, estimated budget, actual project cost and summary of work.
- b. Provide a matrix of in-house services provided. What services do you typically sub out and why?
- c. Recent experience with projects for public clients. State your familiarity with governmental decision-making and review process within the last few years.
- d. Firm's familiarity with the project area and local construction market.
- e. Provide a "Litigation Statement" of no, yes, or pending litigation on any projects in the last five (5) years. If yes, explain.
- f. References: Include the name and current phone number of the owner's project manager for each project you listed in section a. above.

3. INSURANCE

Provide a summary of insurance and statement agreeing to provide and maintain insurance per the Town's standard requirements:

- g. Workers' Compensation: Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employer's liability with a limit of \$100,000 for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury by disease policy limit.
- h. Comprehensive General Liability: Shall have minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors, products and/or completed operations, broad form property damage and explosion, collapse and underground damage coverage, sudden and accidental pollution losses, and a contractual liability endorsement.



Town of Waynesville, NC

Request for Qualifications

Specialty Skatepark Construction

Artisan Skateparks is a comprehensive, World-Class Skatepark firm, specializing in the design and construction of public and private concrete skateboard and action sports facilities. Over the last decade, our professionals have constructed a variety of Skatepark terrains to great acclaim and continue to utilize innovative and state of the art construction methods and techniques. What sets Artisan Skateparks apart from other firms is our attention to detail and aesthetics and our unique understanding of the “skateboarding experience”. All of the Artisan craftsmen are active skateboarders. From the professional level to the novice, we understand the complexities of functionality in these highly specialized interactive concrete facilities. Artisan Skateparks believes in utilizing experienced skateboarders to manage and oversee all construction processes. By combining these real world experiences with the utmost in professional construction methodology, we have become experts in producing high quality, durable, and successful custom concrete Skateparks. This unique approach to custom Skatepark construction allows Artisan Skateparks to consistently produce high quality facilities and to constantly improve and evolve with the ever growing variety of terrain modern skateboarding and action sports demands.

1. Project Team Experience:

- a. Project Manager – Andy Duck, President and General Manager – Andy Duck will be the overall Project Manager on this project. With over 20 years in the construction trade and with 38 years of skateboarding experience, Mr. Duck brings a well rounded approach to the specialty Skatepark construction experience. Mr. Duck has been personally managing custom Skatepark projects for the last decade and has dedicated his time to creating innovative world class facilities that are on time and on budget. The combination of professional construction management and skater-builder experience allows Mr. Duck to seamlessly address the complexities inherent in the construction of successful, durable, and highly functional Skatepark facilities.
- b. Project Manager – Onsite Manager – Mark Gwaltney – Mark Gwaltney will be the overall onsite project manager on this project. Mark has been skateboarding over 30

years and has been building Skateparks for the last 13 years. He brings a passion for specialty Skatepark construction to every project he participates in. His attention to detail and abilities have led him to participating in numerous projects, both in the US and abroad. Mr. Gwaltney is also Artisan's foremost concrete specialist and he will perform and oversee all concrete placement, shaping, and finishing on this project.

- c. Fabrication and Shopwork Director – Bart Kramlik – Bart Kramlik will oversee all pre construction shopwork. From working with Engineers, Architects, and Designers to finalize any and all shop drawings, Mr. Kramlik insures that all steel fabrication and applicable formwork is completed to the highest qualitative standards prior to the onsite team's mobilizing. This prepared approach allows on site team members to move quickly through formwork and steel installation, saving valuable time and money. Mr. Kramlik has been an active skateboarder for the last 15 years and comes to Artisan from NCDOT where he was a certified bridge inspector and repair specialist. He was also certified at NCDOT as a diver and underwater welder.
- d. Site and Framework Director – John Saville – John Saville will perform and direct all sitework and form/framework installation on site. John has been an avid skater for over 30 years and has been with building Skateparks with Artisan for nearly a decade. As a highly skilled formwork carpenter and a certified welder, Mr. Saville has all the necessary skills to complete the layout and pre concrete preparations required to produce the highest quality Skateparks.

The afore mentioned team has successfully completed projects together as a cohesive group for the past 8 years. From working with both public and private clients, both domestically and overseas, this group aptly leads a team of skilled skater-builders to create some of the most progressive and world class qualitative facilities in the industry. Seamless communications with all parties involved the in project allow our Team to manage the complexities of today's Skatepark projects with ease and comprehensive documentation allows the Project Managers/Clients the security that the job is being done right the first time.

2. Performance and Experience

a. 10 Similar Projects

- 1) **Monte Vista, CO – Montez Skatepark** – Designed by Pillar Design Studios in early 2012 and estimated at \$250,000, +12,000 sf project completed Oct. 2012 at a cost of \$261,800.00

Artisan Skateparks was the Specialty Subcontractor that completed all Project Management and construction activities, including, but not limited to, sitework, formwork, steel and rebar installation, shotcrete placement, shaping, and finishing. We managed a local flatwork subcontractor to place and finish the flatwork for this project.

- 2) **Greensburg, PA – Peach Plaza Skatepark** – Phase II – Designed by Pillar Design Studios in 2008. 7000 sf Bowl and Snakerun addition to existing Skatepark. Artisan Skateparks was the Specialty Shotcrete Subcontractor for a local General Contractor we teamed with for the project. Our scope of work included consultation of proper formwork and

preparations for shotcrete, some design consultation with the Designer, and Shotcrete installation, shaping, and finishing and was completed in August 2012 for the sum of \$60,000.

- 3) **Stockholm, Sweden – Highvalley Skateworld** – Designed by Pillar Design Studios in 2011. Artisan Skateparks was selected by a local General Contractor to provide comprehensive Project Management and Specialty Shotcrete work for a 30,000 sf custom concrete Skatepark. This project was started in April 2012 and was completed in early July 2012. Artisan's contract was for \$308,000.00
- 4) **Woodbridge, VA – Veteran's Skatepark** – Designed by American Ramp Company as an 11,000 sf Skatepark. Artisan Skateparks was the Specialty Subcontractor that completed all Project Management and all construction activities, including, but not limited to, sitework, formwork, steel and rebar installation, shotcrete placement, shaping, and finishing. We managed a local flatwork subcontractor to place and finish the flatwork for this project. Artisan's Contract was for \$365,000 and completed this project in early 2012.
- 5) **Kissimmee, FL – Lakeside Skatepark** – Designed by Pillar Design Studios in early 2011. This Project grew from a 4000 sf project to an over 10,000 sf facility during construction. The Client asked for a "Skateable Path" to be added. Artisan worked closely with the Designer to quickly analyze the site and complete a new design addition. Due to sizeable in-kind donations by the City, the Total contracted cost was on \$87,169.00 for construction and was completed in August 2011. Artisan completed all construction activities including, but not limited to, sitework, formwork, steel and rebar installation, shotcrete placement, shaping, and finishing. We managed a local flatwork subcontractor to place and finish the flatwork for this project.
- 6) **Cherokee, NC – EBCI Action Sports Park** – Designed by Pillar Design Studios. Artisan was chosen as the Specialty Skatepark Subcontractor by a local General Contractor. Artisan's contract was for the amount of \$314,896.08 and included consultation, fine grading and excavation, formwork, steel and rebar installation, shotcrete placement, shaping, and finishing. This project was completed in the Summer of 2011.
- 7) **Kitty Hawk, NC – Kitty Hawk Skatepark** – Designed by Pillar Design Studios. A Design/Build Project for \$100,000. Artisan managed every aspect of this project and self performed each and every task oriented to the design. This project was completed in the Summer of 2011.
- 8) **Bedford, VA – Falling Creek Skatepark** – Designed by Pillar Design Studios. A Design/Build Project, Artisan as teamed with a General Contractor. Working with in-kind donations, Artisan worked with the Client and Designer to create a 17,500 sf facility for the cost of \$398,090.65. Artisan's scope for this project included, but was not limited to, sitework, formwork, steel and rebar installation, shotcrete placement, shaping, and finishing. We managed a local flatwork subcontractor to place and finish the flatwork for this project. Total contracted price was \$565,000 and this project was completed in early 2011.

- 9) **Front Royal, VA – Warren County Skatepark** – Designed by Pillar Design Studios. A Design/Build Project. This 150,000 sf facility was contracted for the sum \$549,069.14. Artisan was the Specialty Skatepark contractor and was responsible for all construction work, including, but not limited to, sitework, formwork, steel and rebar installation, shotcrete placement, shaping, and finishing. We managed a local flatwork subcontractor to place and finish the flatwork for this project.
- 10) **Durham, NC – Durham City Skatepark** – Designed by Pillar Design Studios. A Design/Build Project. Artisan was chosen as the Specialty Skatepark Subcontractor to complete all task associated with all shotcrete portions of this project. A Turnkey bowl with pool coping and tile was also part of our scope of work. Contracted price for Artisan was \$98,853.10.

- b. In-House Services:
Artisan Skateparks has the capacity to complete each and every element of a modern Skatepark construction project. We will create shop drawings, complete steel and formwork fabrication, sitework, formwork installation, steel and rebar installation, shotcrete installation, painting, caulking, and clean-up. The only aspect that we routinely use qualified subcontractors for is the placement and finishing of the flatwork. We closely manage these subs to insure our qualitative standards are being met. This enables us to keep our mobilization costs down and it puts project money back into the local community.
- c. Our extensive experience with public client projects has allowed us to move seamlessly through the complexities of custom concrete Skatepark work. We are familiarized with public entities to insure prompt identification and documentation of any changes in scope of work prior to proceeding.
- d. In the past two years, Artisan Skateparks has worked on a variety of projects near to Waynesville. We have worked for the Eastern Band of Cherokee Indians in Cherokee and we have completed and are working on several private projects within two hours drive. Being based in NC and successfully completing projects in the region give us an advantage in knowledge of the local construction markets.
- e. We have never been under any Litigation for any reason.
- f. References
1. City of Monte Vista, CO – Montez Skatepark
Robert Vance – City of Monte Vista – 719-850-0426
 2. City of Greensburg, PA – Peach Plaza Skatepark Addition
Malcolm Sias – City of Greensburg – 724-830-3968
 3. Stockholm, Sweden – Highvalley Skatepark
Andreas Thordewall – Andreas.Thordewall@peab.se - 0733-37 38 01
 4. Woodbridge, VA – Veterans Skatepark
John Lyons – City of Woodbridge – 703-928-6941

5. Kissimmee, FL – Lakeside Skatepark
Steve Lackey – City of Kissimmee – 407-518-2342
6. Cherokee, NC – Cherokee Action Sports Park
John Jenkins – Stewart Engineering – 919-866-4802
7. Kitty Hawk, NC – Kitty Hawk Skatepark
John Delucia – Albemarle Engineering – 252-202-2341
8. Bedford, VA – Falling Creek Skatepark
Brian Hillbish – Project Manager – 434-477-3093
9. Front Royal, VA – Warren County Skatepark
Dan Lenz – Warren County – 540-683-0929
10. Durham, NC – Durham City Skatepark
Henri Prospero – City of Durham – 919-560-4197 ext 21253

3. Insurance

- g. Worker's Compensation – Artisan Concrete Services, Inc., dba Artisan Skateparks carries a policy that meets or exceeds the parameters put forth in the RFQ.
- h. Comprehensive General Liability - Artisan Concrete Services, Inc., dba Artisan Skateparks carries a policy that meets or exceeds the parameters put forth in the RFQ.

**REQUEST FOR QUALIFICATIONS
Specialty Skatepark Construction**

SUBMITTAL DUE DATE: 2:00 p.m. on Tuesday, February 12, 2013

QUALIFICATIONS MUST BE MAILED OR DELIVERED TO:

Town of Waynesville
16 South Main Street
P.O. Box 100
Waynesville, NC 28786

EIN/SSN (Required) 45-3273959
Federal I.D. Number

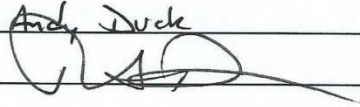
COMPANY NAME ARTISAN CONCRETE SERVICES, Inc, dba ARTISAN SKATEPARKS

ADDRESS 4600 TAMARACK DR.

CITY/STATE/ZIP Kitty Hawk, NC 27949

PHONE 252-202-1333 FAX 252-261-1184

PRINTED NAME Thomas Andy Duck

AUTHORIZED SIGNATURE 

TITLE PRESIDENT EMAIL andy@artisan skateparks.com

Signature acknowledges that Proposer: has read the documents thoroughly before submitting a proposal, will fulfill the obligations in accordance to the scope of work, terms and conditions and is submitting without collusion with any other individual or firm. You must submit this page with an authorized signature.

DO NOT CONTACT ANY OTHER TOWN EMPLOYEE OR DEPARTMENT.

FOR QUESTIONS CONTACT THE FOLLOWING:

John Jenkins, P.E.
Stewart Engineering
919 866-4802
JJenkins@stewartinc.com.

Alison Melnikova
Assistant Town Manager
828-452-2491
townmanagerassistant@townofwaynesville.org

MUST SUBMIT PAGE ONE/ SIGNATURE PAGE

TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: March 26, 2013

SUBJECT: Letter of Support for a 2% Increase in Haywood County Occupancy Tax

AGENDA INFORMATION:

Agenda Location: Unfinished Business
Item Number: 5-C
Department: Administrative Services
Contact: Marcy Onieal, Town Manager
Presenter: Marcy Onieal, Town Manager

BRIEF SUMMARY: On February 26, 2013, the Board of Aldermen adopted Resolution R-05-13 urging the General Assembly to pass local legislation allowing Haywood County to collect an additional 2% (increase from 4% to 6%) in occupancy taxes for the purpose of creating and administering a Tourism Product Development Fund under the authority of the Tourism Development Authority, as advised by a representative Product Development Committee, whose members are to be appointed by the governing bodies of the five local government jurisdictions in Haywood County. All Haywood County local governments, except the Town of Maggie Valley, had supported the original draft legislation. In an effort to submit a bill that would gain Maggie Valley's support as well, TDA amended the draft legislation, which caused concern among the jurisdictions which had only approved an earlier version of the bill. As a result of this lack of consensus, Senator Jim Davis withdrew his support for introducing the bill in General Assembly. In an effort to salvage this proposed source of revenue for the county, the mayors of Canton and Maggie Valley and the Chair of the County Commissioners have drafted a third version of the legislation that does away with the proposed sunset clause in the legislation and more equitably distributes votes among the proposed 15-member Product Development Committee as follows:

- Maggie Valley-5
- Waynesville-3
- Lake Junaluska-1
- Clyde-1
- Canton-1
- Haywood County-4

MOTION FOR CONSIDERATION: *To authorize the mayor to sign and submit a letter to our local delegation of General Assembly on behalf of the Town of Waynesville, supporting the revised draft of local legislation authorizing an increase in Haywood County Occupancy Tax from 4% to 6%, and providing for proportional representation on the TDA Product Development Committee, as amended.*

FUNDING SOURCE/IMPACT: Each 1% in occupancy tax produces approximately \$225,000 in revenue annually. The additional 2% should generate approximately \$450,000 per year (or \$1.35M in total occupancy tax annually).

ATTACHMENTS:

- Draft of Letter supporting revised version of the Occupancy Tax legislation
- HCDTA Tourism Product Development Fact Sheet
- Proposed local legislative bill-General Assembly
- Draft Resolution R-05-13

MANAGER'S COMMENTS AND RECOMMENDATIONS: Adopt as presented.

HCTDA

Tourism Product Development

Fact Sheet

Objective: Increase the current Haywood County Occupancy Tax from 4% to 6% for the purpose of creating a Tourism Product Development Fund. Two additional cents would generate approximately \$450,000 annually. This will be paid by visitors to Haywood County renting overnight accommodations.

Purpose: The Tourism Product Development Fund would provide financial assistance for major tourism projects that increase occupancy in Haywood County accommodations thus creating a positive economic impact.

Strategy: Funds can be awarded to non-profit & for-profit entities as a grant, pledge of debt service or loan guaranty. Legislation would state that funds are to be used for tourism capital projects.

Implementation: A Committee will be appointed by the Haywood County Board of County Commissioners to review funding applications. The Committee will make funding recommendations to the HCTDA Board of Directors.

Funding Criteria: To be a qualified project, the proposed project must demonstrate that it has the potential to significantly increase room nights in Haywood County.

Economic Impact: Bringing additional visitors to Haywood County will increase business to accommodations, restaurants, retail, gas stations, etc. which will generate both direct and indirect economic impacts in addition to increasing the sales tax for the County paid by visitors.

Benefit to Haywood County Citizens: Improves quality of life by providing additional venues for entertainment & sports. Increased awareness of Haywood County promotes pride in the community. Tourism in Haywood County currently saves each Haywood County household \$334.00 in taxes annually.

DRAFT LETTER OF SUPPORT

Revised Legislation Supporting Increase in Haywood County Occupancy Tax

March 26, 2013

Senator Jim Davis
16 W. Jones Street Room 2111
Raleigh, NC 27601-2808

Dear Senator Davis:

On behalf of Haywood County and her Towns Canton, Clyde, Maggie Valley and Waynesville we would like to express our deepest gratitude for your considering our economic development needs through S.B. 318. As was presented to you early on there has been a consensus of all governmental entities that an additional 2% occupancy tax to be used for tourism related capital projects was an outstanding idea. The tax would be paid by those utilizing the service and not be a burden on our Citizens. We realize that a small yet extremely vocal group of citizens have expressed concerns. The majority of these concerns have not been based on facts but rather unfounded opinions, misinformation, and ideologies. Many of those who had voiced the strongest opposition will not collect or pay into the tax.

Subsequent to your conversation with Chairman Swanger and Commissioner Ensley there have been numerous telephone conversations, correspondence, discussions, and meetings. We have reached a consensus of what we believe would best serve the County as a whole. The concept embraces equity while giving due consideration to those who collect the occupancy tax for the County. We will list the points below that we feel would provide a workable bill that insures a reasonable review and distribution process for these much needed capital improvement funds.

We respectfully request that the following items be considered for amendment:

Page 1 line 27-29

We would respectfully request that the definition of net proceeds follow the Bill Drafting's Guidelines for Occupancy Tax Legislation distributed to the County by the NC General Assembly Research Division. This would not affect the net proceeds for administration (line 26).

Page 2 lines 1-9

The Board be expanded from 11 to 15 members by making the currently proposed Ex-Officio members full voting members. This would not affect the 11 other voting members and their distribution on the board. This composition would require that a project is fully and fairly vetted for consideration by the Authority;

Page 2 line 32-33

We feel that a finite expiration date or sunset clause is unnecessary to the purpose of this legislation. It would prohibit long range planning and reduce the effectiveness of the intent of the development fund. NCGS 153A-155 (f) would allow for reduction or repeal by the County Commissioners.

We sincerely appreciate all of your efforts on our behalf and apologize in advance for the small minority that feels as though they must oppose any positive measure. This Bill will have far reaching implications for economic development in Haywood County and no matter where a project is located will directly provide positive impacts on lodging and tourism throughout the County. We would sincerely appreciate any consideration that you can give us as unified governments behind this Bill.

Due to time constraints and in lieu of a single letter signed by all parties we will submit individual letters signed by the Mayors showing those that have to date joined the accord for a unified Haywood County.

Sincerely,

RESOLUTION R-05-13

**A RESOLUTION OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
SUPPORTING AN ACT OF THE NC GENERAL ASSEMBLY
AUTHORIZING HAYWOOD COUNTY
TO LEVY AN ADDITIONAL TWO PERCENT OCCUPANCY TAX
FOR THE PURPOSE OF TOURISM PRODUCT DEVELOPMENT
AND TO MAKE OTHER ADMINISTRATIVE CHANGES**

WHEREAS, the Haywood County Tourism Development Authority was established pursuant to Part V, Chapter 908 of the 1983 Sessions Laws as amended; and

WHEREAS, the Haywood County Tourism Development Authority promotes economic development in Haywood County through advertising and promotion of Haywood County's recreational and tourism-related facilities, services, and amenities; and

WHEREAS, all funding for this effort is generated through transient occupancy taxes paid by users of accommodations; and

WHEREAS, the additional two percent (2%) occupancy tax designated for Tourism Product Development would fund projects demonstrated to increase economic value and significantly increase patronage of lodging facilities in Haywood County; and

WHEREAS, residents of Haywood County would also receive benefits through additional facilities and amenities with no additional local tax burden,

NOW, THEREFORE, BE IT RESOLVED that the Town of Waynesville Board of Aldermen respectfully requests that:

1. The Haywood County Board of Commissioners ask the local delegation representing Haywood County in the North Carolina General Assembly to introduce and support local legislation authorizing the levy of an additional two percent (2%) Occupancy Tax designated for Tourism Product Development through the Haywood County Tourism Development Authority in addition to the existing four percent (4%) Occupancy Tax currently in use, and
2. All members of the North Carolina General Assembly give favorable consideration and expeditious passage of this local legislation.

DULY ADOPTED this 26th day of February, 2013.

ATTEST:

Gavin A. Brown, Mayor

Marcia D. Onieal, Town Manager

Alison Melnikova, Deputy Town Clerk