

Macon County



**MACON COUNTY BOARD OF COMMISSIONERS
DECEMBER 14, 2021
6 P.M.
AGENDA**

1. Call to order and welcome by County Manager Derek Roland
 2. Announcements
 3. Election of board chairman – County Manager Derek Roland
 4. Election of board vice-chairman
 5. Examination of Official Bonds for Public Officials of Macon County
– Finance Director Lori Carpenter
 6. Affirmation of the 2022 regular meeting schedule
 7. Moment of Silence
 8. Pledge of Allegiance
 9. Public Hearing(s) – 6 p.m.
 - (A) Amended and Restated Flood Damage Prevention Ordinance of Macon County
 - (B) Amended and Restated Ordinance Regulating High-Impact Land Uses in Macon County
- NOTE: Following the close of the public hearing(s), the board may choose to act on one or both of the amended and restated ordinances shown above.
10. Public Comment Period
 11. Additions to agenda
 12. Adjustments to and approval of the agenda

13.Reports/Presentations

- (A) Fiscal Year 2021 audit – Jill Vang, Martin Starnes & Associates, CPAs, PA
- (B) Economic Development Administration grant application and request for matching funds – Bob McCollum and Elaine Eisenbraun, Nikwasi Initiative

14.Old Business

15.New Business

- (A) Use of Cowee Bald communications site – Emergency Services Director Warren Cabe
 - (1) Approval of Communications Use Lease with the U.S. Department of Agriculture (U.S. Forest Service)
 - (2) Authorization of sublease with Sutton Broadcasting Corporation
 - (3) Authorization of sublease with Blue Ridge Broadcasting Corporation
- (B) Joint Resolution Adopting and Establishing the Common Boundary Line Between Jackson County and Macon County – Tax Administrator Abby Braswell
- (C) Consideration of refund of taxes – Abby Braswell
- (D) Solid Waste – Director Chris Stahl
 - (1) Recommendation for landfill Phase I and II closure design and construction engineering services
 - (2) Request for exemption of Request for Proposals process for engineering services below \$50,000
- (E) Change Order #13 on Macon Middle School renovation project – Jack Morgan, Director of Planning, Permitting and Development
- (F) Resolution exempting architectural services for the Macon Middle School locker room project – Lori Carpenter, Finance Director
- (G) Franklin High School (FHS) project – County Manager Derek Roland and Finance Director Lori Carpenter
 - (1) Consideration of Budget Amendment #106 for architectural fees, survey fees and engineering fees
 - (2) Resolution exempting surveying services
 - (3) Resolution exempting engineering services
 - (4) Consideration of contract with LS3P Associates, Ltd.
- (H) Update on former National Guard Armory renovation – County Manager Derek Roland

16. Consent Agenda – Attachment #12

All items below are considered routine and will be enacted by one motion. No separate discussion will be held except on request of a member of the Board of Commissioners.

(A) Minutes of the November 9, 2021 regular meeting

(B) Budget Amendments #107-110

(C) Tax releases for November in the amount of \$9,878.33

(D) Monthly ad valorem tax collection report – no action necessary

17. Appointments

(A) Board of Health – 4 seats

18. Closed session as allowed under NCGS (if needed)

19. Adjourn/Recess

MACON COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

CATEGORY – ORGANIZATIONAL MEETING ITEMS

MEETING DATE: December 14, 2021

1. The County Manager will call the meeting to order.
2. The County Manager will ask if there are any announcements.
3. The County Manager will conduct the election for the chair of the board for the next year.
4. The chairman will conduct the election of the vice-chair for the next year.
5. Lori Carpenter has prepared an updated resolution regarding the “Examination of Official Bonds for Public Officials of Macon County,” which the board reviews and approves annually. A copy of the resolution is attached.
6. I have prepared a regular meeting schedule for 2022 based on the assumption that the board will continue to meet once a month on the second Tuesday of the month at 6 p.m. in the commission boardroom. If this is indeed the case, the board can simply affirm the schedule, a copy of which is attached. However, please note that the November 8 meeting date falls on Election Day, and I wanted to make the members aware of this in the event that they would like to consider a change in this particular meeting date before we post the schedule on the county website.
7. We will then return to our “normal” agenda and observe a moment of silence and recite the pledge of allegiance prior to the chair opening the first of the two public hearings.

**RESOLUTION
EXAMINATION OF OFFICIAL BONDS
FOR PUBLIC OFFICIALS OF MACON COUNTY**

WHEREAS, pursuant to North Carolina General Statutes §58-72, the Macon County Board of Commissioners is required each year to examine carefully the bonds of the public officers listed in North Carolina General Statute §58-72-10 and must give bonds with sufficient surety in order for them to qualify for office. The bonds shall be in accordance with varying General Statutes as related to the following positions:

1. **County Finance Officer** – Bond in an amount not less than \$50,000 (N.C.G.S. §159-29(a)). Current surety is The Ohio Casualty Insurance Company, Bond No. 3792517, in the amount of \$250,000.
2. **Tax Collector** – Bond must be given for satisfactory collection of taxes; amount at discretion of Board of Commissioners (N.C.G.S. §105-349(c)). Current surety is The Ohio Casualty Insurance Company, Bond No. 3792517, in the amount of \$250,000.
3. **Register of Deeds** – Bond of not less than \$10,000 nor more than \$50,000, approved by the Board of Commissioners, and payable to the State (N.C.G.S §161-4). Current surety is The Ohio Casualty Insurance Company, Bond No. 3792517, in the amount of \$50,000.
4. **Sheriff** – Bond shall be in an amount not more than \$25,000 (N.C.G.S §162-8). Current surety is Western Surety Company, Bond No. 72097674, in the amount of \$25,000.

WHEREAS, the Macon County Finance Office has secured official bonds from The Ohio Casualty Insurance Company and Western Surety Company for the above referenced public officials for the Macon County Board of Commissioners' consideration and approval;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Macon County Board of Commissioners that official bonds for the public officials referenced above in the recommended amounts from The Ohio Casualty Insurance Company and Western Surety Company are hereby approved.

Adopted this the 14th day of December, 2021.

ATTEST:

Chairman, Macon County Board of Commissioners

(Seal)

Ex Officio Clerk to the Board

Macon County Board of Commissioners Regular Meeting Schedule 2022

Unless otherwise noticed, the members of the Macon County Board of Commissioners will hold their regular monthly meeting on the second Tuesday of each month beginning at 6 p.m. in the commission boardroom on the third floor of the Macon County Courthouse, located at 5 West Main Street, Franklin, NC 28734. Those dates are as follows:

- January 11
- February 8
- March 8
- April 12
- May 10
- June 14
- July 12
- August 9
- September 13
- October 11
- November 8 (Election Day)
- December 13

Mike Decker
Deputy Clerk

MACON COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

CATEGORY – PUBLIC HEARINGS

MEETING DATE: December 14, 2021

We have two public hearings on the agenda involving amendments to existing ordinances.

As you are aware, County Attorney Eric Ridenour has been working to revise the county's ordinances – this time regarding flood damage prevention and the regulation of high-impact land uses – in order to bring them into compliance with North Carolina General Statute 160D.

A copy of each notice of public hearing is included in the agenda packet, and the notices appeared in the December 1, 2021 and December 8, 2021 editions of *The Franklin Press* as required.

Also included in the packet are copies of each amended and restated ordinance in its final form. Copies of “redline” versions of each ordinance are available if needed/requested.

Immediately following the close of the public hearings, the board may consider taking action on one or both of the revised ordinances, and Mr. Ridenour has provided resolutions of approval for each one, copies of which are also included in the packet with the accompanying ordinance for each.

Once approved, the updated ordinances will be filed with the Macon County Register of Deeds and will be made available on the county's website.

NOTICE OF PUBLIC HEARING

Please take notice that the Macon County Board of Commissioners will conduct a public hearing on Tuesday, December 14, 2021 at 6:00 p.m. in the Commission Boardroom located on the third floor of the Macon County Courthouse at 5 West Main Street, Franklin, NC 28734, concerning the proposed "Amended and Restated Flood Damage Prevention Ordinance of Macon County," which amends and restates the presently existing Flood Ordinance of Macon County. Public comment upon the same shall be received at this public hearing. The public is invited to attend this public hearing.

The proposed amendments are for the purpose of bringing the Flood Ordinance of Macon County into compliance with Chapter 160D of the North Carolina General Statutes and Part 6, Article 21 of Chapter 143. The proposed amendments can be viewed on the county website, www.maconnc.org, under "Public Announcements," and a hard copy may be obtained in the lobby at the Courthouse Annex Building, 5 West Main Street, Franklin, North Carolina.

This the 23rd day of November, 2021.

Derek Roland
Ex Officio Clerk to the
Macon County Board of Commissioners

NOTICE OF PUBLIC HEARING

Please take notice that the Macon County Board of Commissioners will conduct a public hearing on Tuesday, December 14, 2021 at 6:00 p.m. in the Commission Boardroom located on the third floor of the Macon County Courthouse at 5 West Main Street, Franklin, NC 28734, concerning the proposed “Amended and Restated Ordinance Regulating High-Impact Land Uses in Macon County,” which amends and restates the presently existing Ordinance Regulating High-Impact Land Uses in Macon County. Public comment upon the same shall be received at this public hearing. The public is invited to attend this public hearing.

The proposed amendments are for the purpose of bringing the Ordinance Regulating High-Impact Land Uses in Macon County into compliance with Chapter 160D of the North Carolina General Statutes. The proposed amendments can be viewed on the county website, www.maconnc.org, under “Public Announcements,” and a hard copy may be obtained in the lobby at the Courthouse Annex Building, 5 West Main Street, Franklin, North Carolina.

This the 23rd day of November, 2021.

Derek Roland
Ex Officio Clerk to the
Macon County Board of Commissioners

**AN ORDINANCE OF THE MACON COUNTY BOARD OF COMMISSIONERS FOR
AN AMENDED AND RESTATED "FLOOD DAMAGE PREVENTION ORDINANCE OF
MACON COUNTY"**

WHEREAS, the Macon County Board of Commissioners originally adopted the Flood Ordinance of Macon County on August 7, 2000; and

WHEREAS, the same has been amended and/or restated from time to time in order to make changes to the same; and

WHEREAS, the Board of Commissioners wishes to make certain specific amendments to the Ordinance in order to bring the Ordinance into compliance with G.S. 160D and Part 6, Article 21 of Chapter 143, and restate such Ordinance in its entirety as set forth hereinafter; and

WHEREAS, the Board of Commissioners has the authority to make such amendments to the Ordinance pursuant to Part 6, Article 21 of Chapter 143 and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes; and

WHEREAS, the required Notice of Public Hearing has been duly given and duly published in accordance with the law and the required Public Hearing in connection with such amendments has been duly held in accordance with law.

NOW, THEREFORE, BE IT ORDAINED by the Macon County Board of Commissioners that:

The Flood Ordinance of Macon County, originally adopted on August 7, 2000 and which has been amended and/or restated from time to time is hereby amended and restated so that the same will hereafter read as follows:

See Exhibit A attached hereto which is incorporated herein by reference as if more fully set forth herein.

This the 14th day of December, 2021.

Chairman, Macon County Board of Commissioner

ATTEST:

Clerk to the Macon County Board of Commissioners

**AMENDED AND RESTATED FLOOD DAMAGE PREVENTION ORDINANCE OF
MACON COUNTY**

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

SECTION A.	STATUTORY AUTHORIZATION
SECTION B.	FINDINGS OF FACT
SECTION C.	STATEMENT OF PURPOSE
SECTION D.	OBJECTIVES

ARTICLE 2. DEFINITIONS

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES
SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS
SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT
SECTION D. COMPLIANCE
SECTION E. ABROGATION AND GREATER RESTRICTIONS
SECTION F. INTERPRETATION.
SECTION G. WARNING AND DISCLAIMER OF LIABILITY
SECTION H. PENALTIES FOR VIOLATION

ARTICLE 4. ADMINISTRATION

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR
SECTION B. APPLICATION, PERMIT & CERTIFICATION REQUIREMENTS
SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR
SECTION D. CORRECTIVE PROCEDURES
SECTION E. VARIANCE PROCEDURES

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS
SECTION B. SPECIFIC STANDARDS
SECTION C. RESERVED
SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS

SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS

SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS

ARTICLE 6. LEGAL STATUS PROVISIONS

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE

SECTION B. SEVERABILITY

SECTION C. EFFECTIVE DATE

SECTION D. ADOPTION CERTIFICATION

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

SECTION A. STATUTORY AUTHORIZATION

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; and Article 7, 9 and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of Macon County, North Carolina, does ordain as follows:

SECTION B. FINDINGS OF FACT

- (1) The flood prone areas within the jurisdiction of Macon County are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural flood plains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets and bridges) that are located in flood prone areas;
- (6) Minimize damage to private and public property due to flooding;
- (7) Make flood insurance available to the community through the National Flood Insurance Program;
- (8) Maintain the natural and beneficial functions of floodplains;
- (9) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (10) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like

qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“Appeal” means a request to the Macon County Planning Board for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Design Flood” See “Regulatory Flood Protection Elevation.”

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Development Activity” means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

“Digital Flood Insurance Rate Map (DFIRM)” means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before August 7, 2000, the initial effective date of the floodplain management regulations adopted by Macon County.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before August 7, 2000, the initial effective date of the floodplain management regulations adopted by the County .

“Existing Recreational Vehicle Park or Subdivision” means a recreational vehicle park or subdivision for which the construction of facilities for servicing the RV parking sites (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before August 7, 2000, the initial effective date of the floodplain management regulations adopted by the County.

“Fill” means any material placed in or on top of the ground to replace, augment, or to build up the in situ, earth, rock, or other natural material which results in an increase of the final grade elevation above the original grade elevation existing prior to any development activity. Material placed in or on top of the ground which is incidental to a development activity will not be considered as fill. Incidental materials are defined as those located on the same parcel within the SFHA and are necessary for driveways, parking areas, drainage culverts, and walls designed under NFIP guidelines, and other similar improvements necessary for access to and occupation of developments within the SFHA.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated (see also DFIRM).

“Flood Insurance Study (FIS)” means an examination, evaluation and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventative measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance, and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. The term describes Federal, State or local regulations, in any combination thereof, which provides standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Flood-resistant material” means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Refer to Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

“Floodway” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved, as shown on the Flood Insurance Rate Map in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as shown on the Flood Insurance Rate Map.

“Floodway encroachment analysis” means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long term storage, manufacture, sales or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“High Impact Land Use” means the use of property considered by the Ordinance Regulating High-Impact Land Uses in Macon County as High-Impact uses including the following:

- (1) Airfields/Airstrips
- (2) Asphalt plants
- (3) Bulk Inflammables, Chemicals and Explosives Manufacturers or Storage Facilities
- (4) Chipmills (wood grinding operations)
- (5) Commercial Incinerators
- (6) Concrete Suppliers
- (7) Helicopter Sightseeing Operations
- (8) Mining and Extraction Operations and Quarries
- (9) Motor Sports Activities
- (10) Sawmills
- (11) Slaughtering and Processing Plants
- (12) Solid Waste Management Facilities

“Historic Structure” means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Level Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Letter of Map Change (LOMC)” means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective national flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revisions (LOMR): A revisions based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

“Light Duty Truck” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

“Lowest Adjacent Grade (“LAG)” means the lowest elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building’s lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

“Map Repository” means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM’s Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

“Materials” means the elements, constituents, or substances of which something is composed or can be made.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after August 7, 2000, the initial effective date of the initial floodplain management regulations adopted by the County and includes any subsequent improvements to such structures.

“Non-Encroachment Area (NEA)” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map (i.e August 7, 2000).

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map (i.e. August 7, 2000).

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and
- (e) Is fully licensed and ready for highway use.

“Recreation Vehicle Park or Subdivision” means a tract or parcel (or contiguous parcels) of land divided into two or more lots or RV parking sites for rent or sale for occupancy by recreational vehicles used as a temporary living quarters or for storage of a recreational vehicle.

“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all the Special Flood Hazard Areas.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas”, this elevation shall be the BFE plus two (2) feet of freeboard.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impact may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries) stream, brook, etc.

“Salvage Yard” shall mean any non-residential property used for the storage, collection and/or recycling of any type of equipment, including but not limited to vehicles, appliances, and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start date means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Storage” means non-transitory, semi-permanent or long-term, containment, holding, leaving, or placement of objects, usually with the intention of retrieving them at a later time.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any correction of existing violations of State or community health, sanitary or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Technical Bulletin and Technical Fact Sheet” means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” means a grant of relief from the requirements of this ordinance.

“Vehicle and Mobile Equipment Storage Facilities” means any commercial land use, excluding agriculture and silviculture, that includes the temporary or long term parking or storage of three (3) or more un-anchored vehicles, boats, trailers, campers, model homes, or any other item capable of becoming buoyant under Base Flood conditions.

“Violation” means the failure of a structure or other development to be fully compliant with the ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all Special Flood Hazard Areas within Macon County excluding the extra-territorial jurisdictions (ETJs) and areas within the corporate limits of the Town of Franklin and the Town of Highlands.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), and associated DFIRM panels, including any digital data developed as part of the FIS for Macon County dated May 4, 2009, which are adopted by reference and declared to be a part of this ordinance, and all revisions thereto.

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article 3, Section B of this ordinance.

SECTION D. COMPLIANCE

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Macon County or by any office or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NCGS 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not

more than \$5,000.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Macon County from taking such other lawful action including civil and equitable enforcement, as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION

SECTION A. DESIGNATION OF FLOODPLAIN ADMINSTRATOR

The Director of Planning, Permitting and Development, or his or her designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community’s overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

SECTION B. FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS

(1) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. No Land Disturbance Permit, Improvement Permit for the installation of a subsurface wastewater disposal system or Building Permit shall be issued for the improvement or development of any lot or parcel of land subject to the application of this ordinance unless proposed development or improvement has been permitted with a current Floodplain Development Permit. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
 - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
 - (v) The Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C; or Article 5, Section D;
 - (vi) The old and new location of any watercourse that will be altered or relocated as a result of the proposed development; and
 - (vii) The certification of the plot plan by a registered land surveyor or professional engineer.

- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE or A will be floodproofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures, and an inspection and maintenance plan that includes, not is not limited to, installation, exercise and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include, but are not limited to:
 - (i) The proposed method of elevation, if applicable (i.e. solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(d) when solid foundation perimeter walls are used in Zone A or AE.
- (e) Usage details of any enclosed areas below the lowest floor.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical and water systems to be located and constructed to minimize flood damage.
- (g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (8) of this ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (j) Emergency Evacuation Plan for RV Park.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc).
- (b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Subsection B.
- (c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- (d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the Special Flood Hazard area, the floodway or non-encroachment area of any watercourse unless the requirements of Article 5, Section F have been met.
- (g) The flood openings requirements.
- (h) Limitations of below BFE enclosure uses (*i.e. parking, building access and limited storage only*).
- (i) A statement, that all materials below BFE/RFPE must be flood resistant materials.
- (j) Approved Emergency Evacuation Plan for RV Park.

(3) **Certification Requirements.**

- (a) Elevation Certificates
 - i. An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such a review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
 - ii. An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean seal level. Any work done within the seven (7) day calendar period and prior to the submission of the certification shall be

at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such a review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make the required corrections shall be cause to issue a stop-work order for the project.

- iii. A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to the Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such a review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. IN addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.

(b) Floodproofing Certificate

- (i) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 86-0-34) with supporting data, an operational plan and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such a review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (ii) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operation plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level NAVD-1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such a review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- (c) If a manufactured home is placed within Zone A or AE, and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).
- (d) If a watercourse is to be altered or relocated, a description of the extent of the watercourse alteration or relocation; a professional engineer's certified report on the effect of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (e) Certification Exemptions. The following structures, if located in Zone A or AE, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - i. Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
 - ii. Temporary Structures meeting requirements of Article 5, Section B(8); and
 - iii. Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(9).

(4) Determinations for existing buildings and structures.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs or substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of

construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

SECTION C. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Article 4, Section B(3).

- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article 4, Section B(3), and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation provided in this ordinance, Article 4, Section D(4).
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (14) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the County at any reasonable hour for the purposes of inspection or other enforcement action, in accordance with G.S. 160D-403(e).
- (15) Issue stop-work orders as required and in accordance with G.S. 160D-404(b). Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The Stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (16) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reasons of the revocation. Permits shall be revoked for any substantial departure from the approved application, plans and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing

the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked. Revocation of a floodplain development permit shall be in accordance with G.S. 160D-403(f).

- (17) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the County. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action, and in accordance with G.S. 160D-403(e).
- (18) Follow through with the corrective procedures of Article 4, Section D.
- (19) Review, provide input, and make recommendations regarding requests for variance requests.
- (20) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM, and other official floods maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (21) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

SECTION D. CORRECTIVE PROCEDURES

- (1) Violations to be corrected: when the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the permit holder and to the landowner of the property involved, if the landowner is not the permit holder, of the violation in accordance with G.S. 160D-404. The permit holder or landowner shall immediately remedy each of the violations of law cited in notification.
- (2) Actions in Event of Failure to Take Corrective Actions: If the permit holder or landowner fails to take prompt corrective action, the Floodplain Administrator shall give the permit holder and landowner, if the landowner is not the permit holder, written notice, by personal delivery, electronic delivery, or first-class mail, stating:
 - (a) That the building or property is in violation of the floodplain management regulations;
 - (b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the permit holder and/or landowner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - (c) That following the hearing, the Floodplain Administrator may issue a written order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood

Damage Prevention Ordinance, he or she shall issue an order in writing to the permit holder and landowner, if the landowner is not the permit holder, requiring the owner to remedy the violations within a specified time period, not less than sixty (60) calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Macon County Planning Board by giving notice of appeal in writing to the Floodplain Administrator and the clerk within thirty (30) days following issuance of the final order in accordance with G.S. 160D-405. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Planning Board shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to N.C.G.S. 143-215.58 and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES

- (1) The Macon County Planning Board, hereinafter referred to as the “appeal board” shall hear and decide requests for variances to the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the Planning Board may appeal such decision to the superior court, as provided in G.S. 160D-406(k).
- (3) Variances may be issued for:
 - (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (b) Functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c) and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (c) Any other type of development, provided it meets the requirements in this Section.
- (4) In passing upon variances, the Planning board shall consider all technical evaluations, all relevant factors, all standards that specified in other sections of this ordinance, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;

- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility in the community;
 - (e) The necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with the existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and waters systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. The decision shall be in accordance with G.S. 160D-406(j). Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:

- (a) Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.
 - (b) Variances shall not be allowed within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - i. A showing of good and sufficient cause;
 - ii. A determination that failure to grant the variance would result in unusual hardship to the owner of the property that was not caused, in whole or in major part, by the property owner; and
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:
- (a) The use serves a critical need in the community.
 - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
 - (d) The use complies with all other applicable federal, state and local laws.
 - (e) The County has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance as least thirty (30) calendar days prior to granting the variance.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all Special Flood Hazard Areas, the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
 - (a) Replacements part of substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
 - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate the infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance (i.e. prior to August 7, 2000) and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the requirements of this ordinance.
- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article 4, Section B(3).

- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those government agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is located in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevations shall apply.
- (16) Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area.
- (17) The placement of fill material of any nature and for any purpose shall be prohibited except in accordance with and pursuant to a plan approved by the Natural Resources Conservation Service or the Soil Conservation Service of the United States Department of Agriculture for the purposes of conservation, stream bank restoration, or watershed protection; or in furtherance of, and to implement the installation of, measures designed by a licensed engineer and permitted with a Macon County Land Disturbance Permit to comply with the *Macon County Soil Erosion and Sedimentation Control Ordinance* or the *Sedimentation Pollution Control Act of 1973 of the State of North Carolina*.
- (18) No new high impact land uses as defined in the *Ordinance Regulating High Impact Land Uses in Macon County* shall be permitted in the SFHA. "Substantial Improvement" of existing high impact land uses shall be prohibited in the SFHA.
- (19) Vehicle and Mobile Equipment Storage Facilities located in the SFHA shall be subject to the same requirements for RV's and RV Parks set forth in Article 5, Section B(6) and (7), unless the subject items are elevated to or above the Regulatory Flood Protection Elevation or securely anchored in place at all times while on the site. For the purposes of this section, wherever the term RV is used it shall also include and may be substituted with vehicles and mobile equipment as applicable.

- (20) All fuel oil storage tanks, including propane gas tanks, must be either elevated above BFE or securely anchored to prevent flotation in accordance with the National Fire Protection Code 58, Section 3-2.2.7 and Article 5, Section B (10).

SECTION B. SPECIFIC STANDARDS

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection elevation, as defined in Article 2 of this ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection elevation, as defined in Article 2 of this ordinance. Structures located in A or AE Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational plan and inspection and maintenance plan.
- (3) Manufactured Homes.
 - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.
 - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
 - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4).

- (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved, or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Macon County Floodplain Administrator and the Macon County Emergency Management Department.
 - (e) The owner of an existing manufactured home park or subdivision for which any part of the property is located in the Special Flood Hazard Area shall prepare an Emergency Evacuation Plan and file it with the Macon County Floodplain Administrator no later than twelve (12) months after the effective date of this ordinance, (i.e. August 7, 2000). After receiving approval of the Emergency Evacuation Plan, the owner or manager/operator of the facility will have seven (7) years to bring the existing manufactured home park or subdivision into compliance with all the requirements of the ordinance. Failure to file an Emergency Evacuation Plan for approval shall be a Violation and subject to the penalties defined in Article 3, Section H.
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The inner portion of such enclosed areas shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - (b) Shall not be temperature-controlled or conditioned;
 - (c) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
 - (d) Shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - i. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - ii. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - iii. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - iv. The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;

- v. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
- vi. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(e) Fill/Grading. Fill is prohibited in the SFHA in accordance with Article 5, Section A(17).

(5) Additions/Improvements

(a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- i. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
- ii. A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.

(b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

(c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- i. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
- ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during five (5) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the five (5) year period begins on the date of the first improvement or repair of that building or structure. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value

of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- (i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
- (ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(6) Recreational Vehicles. Recreational vehicles shall

Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on wheels or a jacking system and is attached to the site only by quick disconnect type utilities, and has no permanently attached additions) and be capable of exiting the Special Flood Hazard Area during a flood event.

(7) Recreational Vehicle Parks or Subdivisions

(a) Prior to the issuance of a floodplain development permit for a Recreational Vehicle Park:

- i. RV Park Developers, Owners, and Operators shall prepare and maintain current a comprehensive Emergency Evacuation Plan defining how, when and where all vehicles are to be removed to a safe location during an approaching storm, flood, or hazard events. The Emergency Evacuation Plan shall be submitted to the Macon County Emergency Management Department and approved prior to the issuance of a floodplain development permit.
- ii. All RV Park Emergency Evacuation Plans must be updated annually and submitted to the Macon County Emergency Management Department for approval.
- iii. The Emergency Evacuation Plan for each RV Park having property in the Special Flood Hazard Area shall be implemented and supported by a written set of park regulations. The park regulations shall be submitted for review and approval along with the Emergency Evacuation Plan prior to the issuance of a floodplain development permit.
- iv. Approval of the Emergency Evacuation Plan and the park regulations do not relieve the RV Park Owner or Land Owner of any responsibility or liability for providing the maximum practical extent of protection against downstream loss of life or property when RV's are resident on the site. Neither does approval of the Emergency Evacuation Plan and the park regulations create or transfer any liability to the County of Macon, any of its employees or agents.

(b) The park regulations shall include at a minimum the following requirements:

- i. A set of keys to the RV and a current contact telephone number must be in the possession of the RV Park Owner or Operator at all times the RV is parked on a site in the Special Flood Hazard area.
 - ii. The owner of the RV must sign a Release of Liability available from the RV Park Owner giving the RV Park Owner or Operator the right to evacuate the owner's RV(s) to a safe location or to anchor/tether the RV(s) in case of a Flood Warning and the owner is away from the site. The release form shall notify the RV owner that under flooding conditions, the RV may be damaged or destroyed.
- (c) Known Hazards Disclosure. The RV Park Owner is responsible for posting a sign at the utility connection station on each RV parking site advising the RV owner that the site is located within a FEMA-designated Special Flood Hazard Area and is subject to damage or loss to property and life during a flood event. Further, the sign on each site shall advise the RV owner of the potential water depth at the site during a Base Flood event (Base Flood Elevation minus the local grade elevation where the RV is parked). If the RV Park Owner elects to state a single water depth to standardize the signs, the maximum water depth on the entire RV Park shall be listed.
- (d) Inspections.
- i. Macon County has the right to access all RV Parks and all RV parking sites at any time for the purpose of a compliance inspection in accordance with G.S. 160D-403(e). A compliance inspection will determine if the requirements of the Emergency Evacuation Plan and the park regulations are current and being enforced by the RV Park Owner or Operator.
 - ii. Non-conforming items or a finding of non-compliance shall result in a written Notice of Violation (NOV), in accordance with Article 4, Section D of the ordinance.
 - iii. Failure to correct an NOV in the prescribed time limit shall result in a fine not to exceed \$5,000 per day for every calendar day that the RV Park is found to be out of compliance with the approved plans and regulations.
 - iv. Nothing herein shall prevent the County from seeking other enforcement remedies as provided in Article 3, Section H.
- (e) The Owner of an existing RV Park or Subdivision for which any part of the property is located in a Special Hazard Flood Area shall prepare an Emergency Evacuation Plan and file it with the Floodplain Administrator and Macon County Emergency Management Coordinator for review and approval no later than twelve months after the effective date of this ordinance (i.e. August 7, 2000). The Known Hazards Disclosure requirements of Article 5, Section B(7)(c) shall be met no later than twelve months after the effective date of this ordinance (i.e. August 7, 2000). After receiving approval of the Emergency Evacuation Plan, the owner (or

manager/operator) of the facility shall have seven (7) years to bring the existing RV Park or Subdivision into compliance with all the requirements of the ordinance (i.e. August 7, 2000). Failure to file an Emergency Evacuation Plan for approval shall be a Violation and subject to the penalties defined in Article 3, Section H.

- (8) Temporary Non-Residential Structures and Stockpiling or Storage of Bulk Materials. Prior to the issuance of a floodplain development permit for a temporary structure or for stockpiling or storing bulk materials, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) or materials in the event of a hurricane, flash flood, or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
 - (b) The name, address, and phone number of the individual responsible for the removal of a temporary structure or materials;
 - (c) The time frame prior to the event at which a structure or materials will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure or materials; and
 - (e) Designation, accompanied by documentation, or a location outside the Special Flood Hazard Area, to which the temporary structure or material will be moved.
- (9) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking, or restroom areas);
 - (b) Accessory structures shall not be temperature controlled;
 - (c) Accessory structures shall be designed to have low flood damage potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A(1);
 - (f) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A(4); and

- (g) Flood openings to facilitate automatic equalization of the hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(d).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Article 5, Section B(2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

- (10) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

- (b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

- (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section B(2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

- (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

- (i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

- (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

- (11) Other Development.

- (a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.

- (b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- (c) Roads and watercourse crossing in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- (d) Commercial storage facilities are not considered “limited storage” as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

SECTION C. RESERVED

SECTION D. STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements, or new development shall be permitted within a distance of fifty (50) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
 - (a) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.
 - (b) When floodway or non-encroachment area data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.
 - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.

- (d) When Base Flood Elevation (BFE) data is not available from a Federal, State or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

SECTION E. STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point.

SECTION F. FLOODWAYS AND NON-ENCROACHMENT AREAS

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Flood Plain Administrator prior to issuance of floodplain development permit; or
 - (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six (6) months of completion of the proposed encroachment.
- (2) If Article 5, Section F(1) above is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes nor RVs shall be permitted in floodways or non-encroachment areas.

ARTICLE 6. LEGAL STATUS PROVISIONS

SECTION A. EFFECT ON RIGHTS AND LIABILITES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted August 7, 2000, as amended, and it is not the intention to repeal, but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Macon County enacted on August 7, 2000, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Macon County is August 7, 2000.

SECTION B. SEVERABILITY

If any section, clause, sentence, or phase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION C. EFFECTIVE DATE

This ordinance shall become effective upon adoption.

SECTION D. ADOPTION CERTIFICATION

I hereby certify that this is a true and correct copy of the amended and restated flood damage prevention ordinance as adopted by the Macon County Board of Commissioners of Macon County, North Carolina, on the ____ of _____, 2021.

WITNESS my hand and the official seal of Macon County,, NC, this, the _____ day of _____, 2021.

County Manager
Clerk to the Board of Commissioners

**AN ORDINANCE OF THE MACON COUNTY BOARD OF COMMISSIONERS FOR
AN AMENDED AND RESTATED “ORDINANCE REGULATING HIGH-IMPACT LAND
USES IN MACON COUNTY”**

WHEREAS, the Macon County Board of Commissioners originally adopted the Ordinance Regulating High-Impact Land Uses in Macon County” on September 12, 2005; and

WHEREAS, the Board of Commissioners wishes to make certain specific amendments to the Ordinance in order to bring the Ordinance into compliance with Chapter 160D of the North Carolina General Statutes and restate such Ordinance in its entirety as set forth hereinafter; and

WHEREAS, the Board of Commissioners has the authority to make such amendments to the Ordinance pursuant to Article 6 of Chapter 160D of the North Carolina General Statutes; and

WHEREAS, the required Notice of Public Hearing has been duly given and duly published in accordance with the law and the required Public Hearing in connection with such amendments has been duly held in accordance with law.

NOW, THEREFORE, BE IT ORDAINED by the Macon County Board of Commissioners that:

The “Ordinance Regulating High-Impact Land Uses in Macon County,” originally adopted on September 12, 2005 is hereby amended and restated so that the same will hereafter read as follows:

See Exhibit A attached hereto which is incorporated herein by reference as if more fully set forth herein.

This the 14th day of December, 2021.

Chairman, Macon County Board of Commissioner

ATTEST:

Clerk to the Macon County Board of Commissioners

**CHAPTER 157:
AMENDED AND RESTATED ORDINANCE REGULATING HIGH-IMPACT LAND
USES IN MACON COUNTY**

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GENERAL PROVISIONS

§157.01 TITLE

This ordinance shall be known and may be cited as the Amended and Restated *Ordinance Regulating High-Impact Land Uses in Macon County*,

§157.02 AUTHORITY AND JURISDICTION

(A) Authority. This ordinance is established by the Macon County Board of Commissioners pursuant to the authority conferred in G.S. §153A-121 (general ordinance-making power), 153A-122 (territorial jurisdiction), 153A-123 (enforcement), 153A-128 (regulation of explosive, corrosive, inflammable, or radioactive substances), 153A-133 (noise regulation), 153A-134 (regulation of businesses), 153A-136 (regulation of solid wastes); and Article 6 of Chapter 160D of the North Carolina General Statutes.

(B) Jurisdiction. The provisions of this ordinance shall apply to all unincorporated areas of Macon County lying outside of the corporate limits and the extraterritorial jurisdiction of any municipality.

§157.03 PURPOSE

The purpose of this ordinance is to promote the health, safety and general welfare of the citizens of Macon County by diminishing the impacts of certain land uses which, by their nature, produce noise, odors, vibrations, fumes, light, smoke, dust and other impacts which interfere with the quiet enjoyment of adjacent lands and disturb the peace and dignity of the County.

§157.04 APPLICABILITY

(A) The provisions of this ordinance shall apply to the following high-impact uses of any land as further defined in §157.05(B) of this ordinance:

- (1) Airfield/Airstrips
- (2) Asphalt plants
- (3) Bulk Inflammables, Chemicals and Explosives Manufacturers or Storage Facilities
- (4) Chip Mills (Wood Grinding Operations)
- (5) Commercial Incinerators
- (6) Concrete Suppliers
- (7) Helicopter Sightseeing Operations
- (8) Mining and Extraction Operations and Quarries
- (9) Motor Sports Activities
- (10) Sawmills
- (11) Slaughtering and Processing Plants
- (12) Solid Waste Management Facilities

(B) The effect of this ordinance, as more specifically set forth herein, is:

- (1) To prohibit the high-impact uses of land, as defined herein, except in conformance with the provisions of this; and
- (2) To provide for the enforcement of the provisions of this ordinance.

(C) The provisions of this ordinance shall not apply to any use of land arising out of or incident to *bona fide* agricultural or forestry operations as defined in G.S. §106-701.

§157.05 INTERPRETATIONS AND DEFINITIONS

(A) For the purposes of this ordinance, certain words shall be interpreted as follows:

- (1) The word “County” shall mean Macon County, North Carolina
- (2) The words “County Commissioners” shall mean the Board of Commissioners of Macon County, North Carolina.
- (3) The words “Planning Board” shall mean the body composed of those members appointed by the Board of Commissioners, created under the authority of Article 3 of Chapter 160D of the North Carolina General Statutes. .
- (4) The word “ordinance” shall mean the Ordinance Regulating High Impact Land Uses in Macon County, North Carolina.
- (5) Words importing the masculine gender include the feminine and neuter.
- (6) Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.
- (7) Words used in the present tense include future tense.
- (8) The word “person” includes a firm, association, organization, corporation, company, trust, and partnership as well as individual.
- (9) The words “may” and “should” are permissive.
- (10) The words “shall” and “will” are always mandatory and not merely directive.
- (11) The words “used” or “occupied” shall mean “intended, designed, and arranged to be used or occupied”.
- (12) The word “lot” shall include the words “plot”, “parcel”, “site”, “acreage” and “premises”.
- (13) The word “structure” shall include the word “building”.

(14) The word “includes” shall not limit the term to specified examples but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(B) The following words shall be specifically defined as follows:

Airfield/Airstrip- Any runway, land area, or other facility designed or used either publicly or privately by any person for landing and take off of aircraft, including all necessary taxiways. “Airfield/Airstrip” is further defined as aircraft storage and tie-down areas, hangars, and other necessary buildings appurtenant to a public airport. Aircraft storage and tie-down areas, hangars and other necessary buildings or uses appurtenant to a private airport are deemed accessory buildings or uses.

Asphalt Plant- The equipment necessary to produce petroleum bitumen, which when mixed with proper amounts of sand or gravel (or both) results in or may be used in producing material suitable for paving and/or roofing.

Buffer- A continuous strip of land, measured from the property lines or from any street bordering or traversing the property (whichever is closer to the principal use or building) in which no development or principal use may occur, but which may contain screening, fencing, interior service roads not intended for patron use, principal use signs, business signs, and gate or security houses. Access road corridors may cross the buffer at entrance and exit points.

Chip Mill- Any non-portable wood-chipping facility that stands alone and apart from a sawmill or a pulp mill, and whose purpose is to provide wood chips to an off-site fabricating facility including but not limited to a paper mill or oriented strand board mill.

Commercial Incinerators- Any enclosed device that burns more than 250 pounds of any material per hour other than the classical boiler fossil fuels, such as natural gas, propane, coal or fuel oil, which is a principal use on any lot or parcel.

Concrete Supplier- An establishment primarily engaged in manufacturing hydraulic cement, including Portland, natural, and masonry cements delivered to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-mixed concrete, shrink mixed concrete, and truck mixed concrete. Also included are the manufacture of concrete products from a combination of cement and aggregate.

Helicopter Sightseeing Operation- Any individual, corporation or commercial enterprise that carries passengers by helicopter for compensation for the purpose of aerial observation of landmarks and other manmade or natural sites, touring, pleasure flying or amusement or for the purpose of transporting passengers for tourist related activities.

High-Impact Use- Any and each of the uses of land to which the provisions of this ordinance are applied and as are specifically defined in this section.

Hours of Operation- The times of day during which an establishment may conduct its principal operations.

Light Mitigation- A good faith effort to reduce the emission of light or diminish the effects that emitted light has on adjacent parcels or the neighborhood.

Manufacturer and/or Storage Facility of Bulk Inflammables (*Fuel Oil, Propane, Gasoline*), Chemicals or Explosives- A facility whose primary purpose is one of the following:

- (1) Manufacturing and/or storage of a chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. This term includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks, but does not include hand-loaded small arms ammunition.
- (2) The production, synthesis, formation, processing, refining, manufacturing, distribution, and/or storage of chemical products in bulk.
- (3) The storage, distribution, mixing or transfer of flammable or combustible liquids or gases received by or transferred by tank vessel, pipelines, tank car, piping, or portable tank or container except such storage, distribution, mixing or transfer of flammable or combustible liquids or gasses shall not include filling stations or convenience centers used solely for retail distribution to individual customers.

Mining & Extraction Operation- Any establishment or business primarily engaged in dressing and beneficiating of ores; the breaking, washing and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand, gravel, and nonmetallic chemical and fertilizer minerals. This definition specifically excludes gem mines and other recreational mining operations.

Motor Sport Activities- The use of any parcel by an establishment or business for the operation, for more than two hours during any eight (8) hour time period, of more than three (3) motor propelled conveyances powered by internal combustion engines including, but not limited to automobiles, motorcycles, and all terrain vehicles.

Noise Mitigation- A good faith effort to reduce the emission of noise or diminish the effects that emitted noise has on adjacent parcels or the neighborhood.

Ordinance Administrator- The Macon County employee holding the position of employment that is designated by the Board of Commissioners as the county official with responsibility for administration and enforcement of this Ordinance.

Perennial Stream- A natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths sufficient to preclude the growth of rooted plants. The water body must be part of a natural drainage way (e.g. connected by surface flow to stream).

Primary Public Airport- An airport operated by a municipal government, county government, or public airport authority and regulated by the Federal Aviation Administration.

Principal Use- A primary purpose for which land, buildings or other improvements is arranged, designed, intended or used, including the storage or use of supplies, inventory, materials, equipment, or products associated therewith.

Sawmill- Any commercial operation established for a period of six months or more where timber is customarily processed into raw lumber, finished wood products, or other wood products, regardless of whether the products are sold on premises or transferred to another facility for storage and sales. This definition includes the reprocessing of lumber and wood planing operations.

Screening- The use of any device or natural growth including but not limited to fencing, walls, berms, vegetation, or any combination thereof that serves as a barrier of vision between adjoining properties. Screening may be partial or full as may be required by the Ordinance Administrator.

Separation- Where separation restrictions are required, no portion of the property on which the regulated use is located shall be situated within the stated distance from the protected use(s) whether such protected use(s) are located within or outside Macon County.

Setback- A continuous strip of land, measured from the property lines or from any street boarding or traversing the property (whichever is closer to the principal use or building) in which no principal use is permitted. Limited development, including buffers and related development, parking lots and accessory structures and buildings, access road corridors, and interior service roads, may occur within the setback.

Slaughtering and Processing Plant- An establishment primarily engaged in slaughtering, dressing, packing, freezing, canning, cooking and/or curing animals or poultry or their by-products or processing or manufacturing products from such animals or poultry or their by-products; and establishments primarily engaged in the collection and/or processing of the inedible portion(s) of animals or poultry or their carcasses. This definition specifically excludes: slaughtering and processing activities performed for personal use

only and those slaughtering and processing plants processing less than 100 animals per month for other than personal use.

Solid Waste Management Facility- Land and equipment, other than incinerators, used in the management of solid waste, including transfer stations, landfills, and recycling facilities which are not owned or operated by a unit of local government.

§157.05-§157.09 RESERVED

REGULATIONS APPLICABLE TO USES FOR AVIATION ACTIVITIES

§157.10 MINIMUM STANDARDS FOR CONSTRUCTION AND OPERATION OF AIRPORTS/AIRSTRIPS

No airport/airstrip shall be permitted, constructed, maintained or operated except in accordance with all Federal Aviation Administration regulations.

§157.11 HELICOPTER SIGHTSEEING BUSINESSES

Helicopter sightseeing businesses shall not be permitted to operate except in accordance with the following:

- (A) Helicopter sightseeing business shall only be operated out of primary public airport with written consent or by contract with the appropriate owner or lessee of the airport.
- (B) Helicopter sightseeing operation hours of operation shall be limited to daylight hours.
- (C) This Ordinance shall not apply to helicopter sightseeing operations conducted as special non-profit or fundraising events operated no more than two consecutive days in any given six-month period.

§157.12-§157.19 RESERVED

REGULATIONS APPLICABLE TO OTHER HIGH-IMPACT USES

§157.20 LOCATIONAL, SCREENING AND MITIGATION REQUIREMENTS

No high-impact use of a parcel or parcels of land shall be permitted, constructed, operated or maintained except in accordance with the following standards:

- (A) Separation. The location of the closest point of a building, structure or outdoor storage of a high-impact use shall be the minimum distance specified in §157.21 of this ordinance from the nearest property line for the following protected uses: existing school, child care

home, child care institution, day care center, hospital, nursing care home, or nursing care institution. In order to establish permitted locations, measurement shall be made in a straight line from the closest or nearest portion of the building, structure, or outdoor storage of the high-impact use to the nearest property line of the premises of the above listed protected facilities. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this Section.

- (B) Dust Mitigation. Permanent roads used continuously (for vehicular traffic once per any 72 hour period of time excluding Saturdays and Sundays, or holidays) in excess of six (6) months within the property site shall be surfaced with a dust-free material (i.e. soil cement, Portland cement, bituminous concrete).

- (C) Vegetative Buffer. A continuous vegetative buffer shall be maintained along any property line of a high-impact use which is adjacent to a public right of way or adjacent to property on which is located any of the following protected uses: a commercial use, school, child care home, child care institution, day care center, church, hospital, nursing care home, nursing care institution, or residential use. The vegetative buffer strip shall not be less than fifteen (15) feet in width at maturity and shall be composed of evergreen trees or shrubs of a type which at planting shall be a minimum of five (5) feet in height and which at maturity shall not be less than ten feet in height. The buffer strip should consist of three rows of evergreen trees or shrubs planted in a staggered pattern. In each row the trees or shrubs should be spaced no more than ten (10) feet apart (from the base of tree to base of tree) and the rows should be no more than five (5) feet apart. Alternative spacing of trees or shrubs is acceptable to improve the growth of vegetation so long as the buffer strip is a minimum of fifteen (15) feet in width and the density of the buffer is sufficient to provide adequate screening. Plans for buffering shall be provided with the permit application. Plants required in the buffer shall be carefully planted and shall be maintained in good condition. Failure to maintain the buffer in good condition shall constitute a violation of this ordinance. This planting requirement may be modified by the ordinance administrator where adequate buffering exists in the form of natural vegetation or terrain.

- (D) Stream Setback. The closest point of building, structure or outdoor storage of a high-impact use shall be set back from all perennial waters the minimum distance specified in §157.21 of this ordinance..

- (E) Principal Use Setback. All buildings, structures, or other improvements constituting the principal use for any high-impact use shall be set back from the property lines of the high-impact use the minimum distances specified in §157.21 of this ordinance.

- (F) Buffer or Buffer Yard. All high-impact uses shall maintain a screening buffer or buffer yard along all adjoining property lines of the minimum width specified in §157.21 of this ordinance.

- (G) Screening. All high-impact uses other than aviation activities shall be screened. The screening may be located within any required buffer or buffer yard or setback. The screening may consist of the required continuous vegetative buffer described in subsection (C) of this section, or, upon approval of the Ordinance Administrator, a combination of the vegetative buffer and opaque wooden fences, masonry walls, or landscaped earthen berms.
- (H) Noise Mitigation. No high-impact use shall commence operations prior to submitting a Noise Mitigation Plan which demonstrates that the methods for reducing or containing noise generated by the use meet commonly recognized industry standards for that particular use.
- (I) Light Mitigation. No high-impact use shall commence operations prior to submitting a Light Mitigation Plan which demonstrates that the methods for reducing or containing light generated by the use meet commonly recognized industry standards for that particular use.
- (J) Hours of Operation. High-impact uses shall conduct operations only between the hours of six o'clock a.m. and ten o'clock p.m.
- (K) High-Impact Use Clusters. To encourage the clustering of high-impact uses, no minimum building setbacks, buffer yards or vegetative buffers shall apply to the common property lines shared by different high-impact uses.
- (L) Setback Uses. Any commercial uses may be located within the building setbacks of any high-impact use located on the same parcel of land.
- (M) Safety Fencing. Safety fencing shall be installed around the principal use or building containing the principal use of all high-impact uses. The safety fencing shall be chain link or equivalent, at least six (6) feet in height and gated in order that it can be secured at all times the high-impact use is not conducting operations.

§157.21 SPECIFICATIONS FOR SEPARATIONS, SETBACK AND BUFFERS

Specifications for the separation distances prescribed in §157.20(A), the stream setbacks prescribed in §157.20(D), the principal use setbacks prescribed in §157.20(E), and the buffer widths prescribed in §157.20(F) for each high-impact use are set forth in the following table:

HIGH-IMPACT USE	Separation Distance	Stream Setback	Principal Use Setback	Buffer Width
Asphalt Plants	1000 ft	150 ft	250 ft	100 ft
Bulk Inflammables, Chemicals, and Explosive	1500 ft	75 ft	500 ft	75 ft

Manufacturers or Storage Facilities				
Chipmills (Wood Grinding Operations)	1500 ft	75 ft	750 ft	100 ft
Commercial Incinerators	1500 ft	150 ft	500 ft	100 ft
Concrete Suppliers	1000 ft	100 ft	250 ft	100 ft
Mining and Extraction Operations and Quarries	1500 ft	150 ft	500 ft	100 ft
Motor Sports Activities	1500 ft	100 ft	750 ft	100 ft
Sawmills	1000 ft	100 ft	250 ft	75 ft
Slaughtering & Processing Plants	1000 ft	75 ft	250 ft	75 ft
Solid Waste Management Facilities	1000 ft	150 ft	750 ft	100 ft

§157.22-§157.29 RESERVED

EXISTING NONCONFORMING HIGH-IMPACT USES

§157.30 APPLICATION TO EXISTING NONCONFORMING HIGH-IMPACT USES.

- (A) Any high-impact use legally in existence on the effective date of this ordinance (i.e. September 12, 2005), which does not conform to the requirements of this ordinance, is declared non-conforming.
- (B) Any nonconforming high-impact use as described above may continue so long as the use is not discontinued for more than six (6) months. In cases where repair or renovation is necessary to re-occupy a vacant building that is part of a high-impact use facility, such construction must commence within six (6) months of last occupancy and proceed continuously to completion.
- (C) Expansion of nonconforming high-impact uses shall only be allowed to the extent that the degree of nonconformity is not increased. In addition, the expansion shall comply with the standards set forth in this ordinance, and the nonconforming high-impact use shall comply with the standards of this ordinance to the extent physically practicable as determined by the Ordinance Administrator.
- (D) In cases of damage to nonconforming buildings to the extent of seventy-five percent (75%) or less of the replacement value, repairs may be made, provided the original foundation footprint is maintained. If such damage exceeds seventy five percent (75%) of the replacement value, repairs may be made only if the original foundation footprint is

maintained and the standards of this ordinance are met to the extent physically practicable as determined by the Ordinance Administrator. Compliance with a requirement of this ordinance is not physically practicable if compliance cannot be achieved without adding additional land to the lot where the nonconforming high-impact use is maintained or requires the movement of a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting requirements does not constitute grounds for finding that compliance is not physically practicable.

§157.31-§157.39 RESERVED

ADMINISTRATION AND PERMITTING

§157.40 ENFORCEMENT; PERMITTING

- (A) After the effective date of this ordinance (i.e. September 12, 2005), all new high-impact uses as well as any nonconforming high-impact uses which are moved, altered or enlarged shall conform to the provisions contained in this ordinance except as set forth in the provisions of §157.30.
- (B) The provisions of this ordinance shall be administered and enforced by the Ordinance Administrator. The Ordinance Administrator shall have full authority to enter any building or structure or premises in accordance with G.S. 160D-403(e), to perform any duty imposed on him or her by this ordinance, and to use all procedures established in this ordinance for the enforcement of its provisions.
- (C) No building or other structure subject to this ordinance shall be erected, moved, added to, or structurally altered without a Development Permit having been issued by the Ordinance Administrator. No building permit shall be issued except in conformity with the provisions of this ordinance.
- (D) Applications for Development Permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any buildings already existing; the location and dimensions of the proposed building or alteration; and compliance with the standards established in this ordinance. The application shall include such other information as may reasonably be required by the Ordinance Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings and land; conditions existing on the land or parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this ordinance. One copy of the plans shall be returned to the applicant by the Ordinance Administrator, marked either as approved or disapproved and attested to by his signature on such copy and in accordance with G.S. 160D-403. The second copy of the plans, also so marked, shall be retained by the Ordinance Administrator.

- (E) The Ordinance Administrator shall maintain a record of all Development Permits and copies shall be furnished upon request to any interested person.
- (F) Any order, requirement, decision or determination of the Ordinance Administrator adverse to the interest of an applicant for a Development Permit shall be provided to the applicant in writing and in accordance with G.S. 160D-403.
- (G) The failure to obtain any required Development Permit shall be a violation of this ordinance. Further, Development Permits shall issue on the basis of applications approved by the Ordinance Administrator and shall authorize only the use, arrangement and construction applied for and approved. Any use, arrangement or construction not in compliance with that authorized shall be a violation of this ordinance.
- (H) Upon a request made in writing by any high-impact user which has been granted a Development Permit, the Ordinance Administrator may consider granting a temporary waiver of the requirements of §157.20(H), §157.20(I), or §157.20(J) for a period of time not to exceed six (6) consecutive months. In order to grant such temporary waiver, the Ordinance Administrator must find that the request for the temporary waiver demonstrates at least one of the following circumstances:
 - (1) The necessity for the temporary waiver is occasioned by the efforts of the high-impact user making the request to alter, repair, or improve any portion of the facility in compliance with this ordinance.
 - (2) The necessity for the temporary waiver is occasioned by a casualty, disaster, or economic condition that is detrimental to the high-impact user making the request.

§157.41-§157.49 RESERVED

VARIANCES, APPEALS AND PENALTIES

§157.50 APPEAL FROM A DECISION OF THE ORDINANCE ADMINISTRATOR

- (A) Any order, requirement, decision or determination made by the Ordinance Administrator adverse to the interest of an applicant for a Development Permit may be appealed to and decided by the Macon County Planning Board.
- (B) Notice of an appeal to the Planning Board shall be in writing, shall state the grounds for the appeal with specificity, and shall be submitted to the Clerk of the Planning Board within thirty (30) calendar days from the receipt of the written decision by the Ordinance Administrator. Notice given pursuant to G.S. 160D-403(b) by first class mail is deemed

received on the third business day following deposit of the notice for mailing with the United State Postal Service.

- (C) The Chairman of the Planning Board shall fix a reasonable time for hearing the appeal, give notice thereof to the parties, and shall hear and decide the matter within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney. Hearings shall be held in accordance with G.S. 160D-406. The Planning Board shall give written notice of its decision in accordance with G.S. 160D-406(j).

§157.51 REQUEST FOR A VARIANCE

- (A) A request for a variance must be submitted to the Clerk of the Planning Board, within thirty calendar days from the receipt of a written decision by the Ordinance Administrator denying an application for a Development Permit. Notice given pursuant to G.S. 160D-403(b) by first class mail is deemed received on the third business day following deposit of the notice for mailing with the United State Postal Service. The request for a variance must be in writing and shall state the reason for the request with specificity.
- (B) The Chairman of the Planning Board shall fix a reasonable time for hearing the request for a variance, give notice thereof to the parties, and shall hear and decide the matter within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney. The Planning Board shall give written notice of its decision in accordance with G.S. 160D-406(j).
- (C) In accordance with G.S. 160D-705(d), when unnecessary hardships would result from carrying out the strict letter of the ordinance, the Planning Board shall vary any of the provisions of this ordinance upon a showing of all of the following:
- (1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (2) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
 - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

(D) The Planning Board may impose appropriate conditions on any variance, provided that the conditions are reasonably related to the variance. No change in permitted uses may be authorized by variance.

§157.52 PROCEEDINGS OF THE PLANNING BOARD

All proceedings of the Planning Board shall be conducted in accordance with the provisions of G.S. §§160D-406.

§157.53 APPEAL FROM THE PLANNING BOARD

Appeals from the Planning Board must be filed with the Superior Court of Macon County in accordance with G.S. 160D-406(k) and subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

§157.54 PENALTIES, REMEDIES AND ENFORCEMENT

(A) A violation of any of the provisions of this ordinance shall be a misdemeanor subject to the penalties and enforcement provisions of G.S. §153A-123 and G.S. 14-4.

(B) Each day's continuing violation of any of the provisions in this ordinance shall constitute a separate and distinct offense.

(C) The provisions of this ordinance may be enforced by any one or more of the remedies authorized by G.S. §153A-123 and G.S. 14-4.

§156.55 SEVERABILITY

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Effective upon adoption this 14th day of December 2021.

MACON COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

CATEGORY – REPORTS/PRESENTATIONS

MEETING DATE: DECEMBER 9, 2021

13A. Jill Vang with Martin Starnes & Associates will present the firm's findings from the county's Fiscal Year 2020-2021 audit, and will share that information in a PowerPoint presentation on Tuesday.

13B. Bob McCollum, the co-chair of the Nikwasi Initiative, has requested time on the agenda to brief the board members on the initiative's economic development administration grant application and to request help with matching funds for the grant. Per Mr. McCollum, Elaine Eisenbraun, the executive director of the Nikwasi Initiative, will join him for the presentation. Mr. McCollum has also provided a handout in regard to the grant opportunity, a copy of which will be included in the agenda packet. Per that handout, the initiative is seeking \$100,000 from the county to help meet the 20 percent match on the \$5-million grant.

Economic Development Administration Grant Opportunity For Macon County

Since the 2019 transfer of the real property deed for Nikwasi Mound, Nikwasi Initiative, Eastern Band of Cherokee Indians, Macon County, Franklin, Mainspring, Folk Heritage Association, and several other partners have developed initial systems to support and honor Nikwasi. Recently, a rare opportunity arose that could allow for further development in the triangle of land around the Mound and construction of the first public facility, a "Learning Center", on the site of the old Dan's Auto building.

The opportunity is a grant offering through the Economic Development Agency under the federal American Rescue Act Plan. Nikwasi Initiative is applying for funding to move forward on the publicly generated plans for the site so that the collective vision for Nikwasi can begin to be achieved. The funds are offered through the Economic Adjustment Assistance Notice of Funding Opportunity (EDA-2021-ARPAEAA).

This project and location are particularly suited to the grant parameters which call for, 'regions to devise and implement long-term economic recovery strategies through a variety of projects to assist areas impacted by the coronavirus pandemic.' The offering also seeks to help 'Coal Impacted' communities, of which Franklin is one, due to the shutdown of the Caterpillar plant in 2015. This history gives Franklin a competitive advantage in the application process.

Nikwasi Initiative plans to apply for a grant in the amount of \$5,000,000 for acquisition of additional real property, architectural and engineering designs, and construction at the first building (Dan's Auto) as Stage I of the project. The grant requires a 20% match. Please see the attached detail sheets for an initial financial description of the project.

This project offers the local region a chance to host a nationally unique attraction. Already, the Smithsonian Institution is planning to highlight the local efforts in a 6-year long exhibit. The Mound and area around Nikwasi can continue to be a shining "Star Place" that provides spiritual, educational, and economic value to the entire region, if we all work together to capture the opportunity that is before us.

This grant opportunity is a rare chance to take a major step forward with this vision.

For further questions or communication, please contact:

Elaine Eisenbraun 828-226-7523

Juanita Wilson 828- 788-2579

Bob McCollum 828-507-5760

Match Funding Sources for EDA \$5 Million Grant

Dogwood Health Trust	\$160,000
Nikwasi Initiative	\$100,000
Cultural Landscape Foundation	\$20,000
Community Funds	\$10,000
Town of Franklin	\$10,000
Southwestern Commission	\$30,000
Z. Smith Reynolds	\$10,000
NC Dept. of Agriculture	<u>\$21,265</u>
Total	\$361,265

Pending:

Macon County	\$100,000
Eastern Band Cherokee Indians	\$450,000
Folk Heritage Association	\$50,000

Pending funds not available until after the grant match deadline:

NC Dept. of Commerce	\$1,000,000
NC Park Service	\$50,000

MACON COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

CATEGORY – NEW BUSINESS

MEETING DATE: December 14, 2021

15(A). Emergency Services Director Warren Cabe is seeking approval of three items involving the Cowee Bald communications tower. Mr. Cabe will first be requesting board approval of the “Communications Use Lease” for the Cowee Bald site between the U.S. Department of Agriculture (U.S. Forest Service) and the county. This site provides emergency communications for the northern and central parts of the county. A copy of that document will be included in the packet. In addition, two public notices have been published in regard to the county subleasing space on the communications tower. Those notices involve the sublease of space at the site to (1) Sutton Broadcasting Corporation and (2) Blue Ridge Broadcasting Corporation. Copies of those public notices are attached and both appeared in the November 10, 2021 edition of *The Franklin Press* pursuant to North Carolina General Statute 160A-272. Included in the packet will be resolutions, with the respective sublease agreements attached, that will have the board declare the “property” (each broadcaster’s radio transmitter site on the tower and the use of the associated transmitter building) to be surplus and to approve the sublease of the same by the county to each broadcaster. Certificates of Liability Insurance have been received from both corporations and are on file in the Deputy Clerk’s office. The lease with the U.S. Forest Service will be good through December 31, 2041, and the annual rent payment is \$1,600.64. The sublease with Sutton Broadcasting will be good through December 31, 2031, and the monthly rental fee is \$500. The lease with Blue Ridge Broadcasting is also good through December 31, 2031, with a monthly rental fee of \$250.

15(B). Tax Administrator Abby Braswell will present a joint resolution with Jackson County adopting and establishing the common boundary line between the two counties. Per Angie Winchester, the Clerk to the Board in Jackson County, the commissioners there unanimously passed the resolution at their meeting on December 7th. A copy of the unexecuted document will be placed in the agenda packet. In addition to the resolution, Mrs. Braswell has also provided a copy of a preliminary map showing the resurveyed county line as well as an outline of a letter to property owners affected by the resurvey. **There is another, more detailed electronic version of the county boundary that will be forwarded to you in a separate email due to its size.** Mrs. Braswell can provide additional details at the meeting.

15(C). Mrs. Braswell will also be requesting a refund of taxes on behalf of William F. Mull stemming from a boat that has “situs” in Craven County but was listed in Macon County. The amount of the refund would be \$879.74, per a memo from Mrs. Braswell to the board, a copy of which is included in the agenda packet. Again, she can provide greater detail at the meeting.

15(D). Solid Waste Director Chris Stahl has two items for the board’s consideration. The first one involves his recommendation for closure design and construction engineering services for Phase I and Phase II of the county’s municipal solid waste (MSW) landfill. Per Mr. Stahl, “The Macon County MSW Landfill Phases I & II have reached capacity, and must be formally closed in accordance with NCAC, Title 15A, Chapter 13B 0.1600 rules. As such, Macon County issued a Request for Qualifications (RFQ), soliciting a statement of qualifications from interested firms, licensed in North Carolina, to perform design and construction management services. The submittal period closed on December 1, 2021, at 4:00 p.m. Macon County received three (3) proposals (copies of those proposals can be provided upon request). Based on this evaluation it is my recommendation that the board approve the engineering firm selected, McGill Associates/BLE, and authorize the county to enter into negotiations with the same for approval of a contract for these services.”

The second item involves a request to approve an exemption to the Request for Proposals (RFP) process for engineering services below \$50,000, and to authorize the county manager to enter into a contract with BLE for services outlined in a contract that will be included in the agenda packet. Mr. Stahl

explained further, as follows: "Please see the attached memo to Derek Roland, dated 12-7-2021, for a full description of the events that led to the need for this request. Also, note from the memo that there will be three (3) additional proposals from BLE for the development of reports to be submitted to NCDEQ on behalf of Macon County; one each for the MSW Landfill, Old Franklin Landfill, and Old Highlands/Highlands C&D Landfill. The multiple proposals are a matter of executing this project as quickly as possible, and not to avoid a formal RFQ process as the aggregate of all four proposals will remain under the allowable exemption limit. I am requesting that the board of commissioners approve this exemption and authorize the county manager to execute the contract from Bunnell Lammons (BLE) so that we may begin this project as soon as possible." A copy of Mr. Stahl's memo to Mr. Roland will also be included with the contract.

15(E). Planning, Permitting and Development Director Jack Morgan will present change order PCO #013 on the Macon Middle School (MMS) renovation project, and a copy of the change order in the amount of \$17,396 will be included in the agenda packet. Mr. Morgan can provide additional details at the meeting.

15(F). Finance Director Lori Carpenter will present a resolution exempting architectural services for the MMS locker room facility, and a copy of that resolution is included in the packet. Mrs. Carpenter can provide additional details at the meeting.

15(G). There are four items on the agenda involving the Franklin High School (FHS) project, and they will be presented by Mrs. Carpenter and Mr. Roland. The first is Budget Amendment #106, a copy of which will be included, that would transfer \$660,000 from contingency for architect, survey and engineering fees for the project. Secondly and thirdly, there are resolutions exempting surveying and engineering services for the project, respectively, and copies of those will also be in the packet. Finally, the packet contains a proposed contract with LS3P Associates Ltd., in the amount of \$605,000 that will cover the design of a new stadium and field house and a comprehensive facility study of the existing campus versus a new building. Mr. Roland and Mrs. Carpenter can share more at the meeting.

15(H). Mr. Roland will provide the board with an update on the renovations to the former National Guard Armory facility.

Auth ID: NAN102
Contact Name: MACON, COUNTY OF
Expiration Date: 12/31/2041
Use Code: 815

FS-2700-10b (V.01/17)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
COMMUNICATIONS USE LEASE
AUTHORITY:**

**Section 501(a)(5) of the Federal Land Policy and Management Act,
43 U.S.C. 1761(a)(5)**

MACON, COUNTY OF of 5 W. MAIN ST. FRANKLIN, NC UNITED STATES 28734.

This lease is issued by the United States of America, acting through the United States Department of Agriculture, Forest Service (hereinafter the "United States" or "Forest Service"), as authorized by section 501(a)(5) of the Federal Land Policy and Management Act, 43 U.S.C. 1761(a)(5), to MACON, COUNTY OF, its agents, successors, and assigns (hereinafter the "lessee").

The United States and the lessee are jointly referred to in this lease as the "parties." The term "authorized officer" refers to the Forest Service official having the delegated authority to execute and administer this lease. Generally, unless otherwise indicated, this authority may be exercised by the Forest Supervisor or District Ranger of the NATIONAL FORESTS IN NORTH CAROLINA in which the following described lands are located.

The United States, in consideration of the terms and conditions in this lease and the payment to the United States of rent in advance by the lessee, hereby issues the lessee a lease for the following described communications facility in MACON county of NORTH CAROLINA, (hereinafter called the "lease area"). The lessee accepts this lease and possession of the lease area, subject to any valid existing rights, and agrees to use the lease area only for construction, operation, maintenance, and termination of a communications facility. Authorized facilities under this lease include:

Cowee Bald Communication Site:

Equipment shelters	10' x 30' concrete building
Antenna support structures	100' lattice freestanding tower 70' lattice freestanding tower 50' pole
Ancillary improvements	8 kw generator 1000 gallon LP tank

The location of the lease area is described or shown generally in the Cowee Bald Communication Site Management Plan, which is attached as Appendix A of this lease. This and any other appendices are hereby incorporated into this lease.

Any additional appendices to this lease are incorporated into and made a part of this instrument as fully and effectively as if they were set forth herein in their entirety.

This lease is issued subject to the following terms and conditions.

I. TENURE, RENEWAL AND TRANSFERABILITY

A. This lease shall terminate at one minute after midnight on 12/31/2041. Termination at the end of the lease term shall occur by operation of law and shall not require any additional notice or documentation by the authorized officer. This lease is not renewable, but the lessee has the right to request a new lease.

B. If the lessee desires a new lease upon termination of this lease, the lessee shall notify the authorized officer accordingly, in writing. The notice must be received by the authorized officer at least one year prior to the end of the lease term. The authorized officer shall determine if the use should continue and, if it is to continue, if a new lease should be issued to the lessee and under what conditions. The authorized officer shall require payment of any amounts owed the United States under any Forest Service authorization before issuance of another authorization.

C. This lease is assignable with prior written approval of the authorized officer, except when rent has been exempted or waived in whole or in part. Renting of space does not constitute an assignment under this clause.

II. RENT

A. The lessee shall pay rent annually in advance as determined by the authorized officer in accordance with law, regulation, and policy. The annual rent shall be adjusted by the authorized officer to reflect changes in fair market value, annual adjustments using the Consumer Price Index-Urban (CPI-U), changes in tenant occupancy, or phase-in rent, if applicable.

B. Rent is due at the close of business on January 1 of each year for which a payment is due. Payments in the form of a check, draft, or money order are payable to USDA, Forest Service. If the due date for the rent falls on a non-work day, the charges shall not apply until the close of business on the next workday. This lease shall terminate if rent is not received by the Forest Service within 90 calendar days of the due date.

C. Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any rent not paid within 30 days from the date the rental or rental calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register

and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the rent is due. In addition, an administrative penalty at a percentage rate prescribed by law or regulation will be assessed for failure to pay any portion of the debt that is more than 90 days past due. This paragraph shall survive the termination or revocation of this lease, regardless of cause.

D. Disputed rent is due and payable by the due date. No appeal of rent shall be considered by the Forest Service without full payment of the disputed amount.

III. RESPONSIBILITIES OF THE LESSEE

A. The lessee is authorized to rent space and provide other services to customers and tenants and shall charge each customer and tenant a reasonable rent without discrimination for the use and occupancy of the facilities and services provided. The lessee shall not impose unreasonable restrictions or restrictions restraining competition or trade practices. By October 15 of each year, the lessee shall provide the authorized officer a certified statement listing all tenants and customers by category of use in the authorized facilities on September 30 of that year.

B. All development, operation and maintenance of the authorized facilities, improvements, and equipment located in the lease area shall be in accordance with stipulations in the applicable communications site management plan approved by the authorized officer. If required by the authorized officer, all plans for development, layout, construction, or alteration of improvements in the lease area, as well as revisions of those plans, must be prepared by a licensed engineer, architect, and/or landscape architect. These plans must be approved in writing by the authorized officer before commencement of any work. After completion, as-built plans, maps, surveys, or other similar information shall be provided to the authorized officer and appended to the communications site management plan.

C. The lessee shall comply with applicable federal, state, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this lease. The obligations of the lessee under this lease are not contingent upon any duty of the authorized officer or other agent of the United States to inspect the authorized facilities or lease area. A failure by the United States or other governmental officials to inspect is not a defense to noncompliance with any of the terms and conditions of this lease. The lessee waives all defenses of laches or estoppel against the United States. The lessee shall at all times keep the title of the United States to the lease area free and clear of all liens and encumbrances.

D. Use of communications equipment in the lease area is contingent upon possession of a valid Federal Communication Commission (FCC) license or Director of Telecommunications Management/Interdepartmental Radio Advisory Committee (DTM/IRAC) authorization and operation of the equipment in strict compliance with applicable requirements of the FCC or IRAC. A copy of each applicable license or authorization shall at all times be maintained by the lessee for each transmitter being operated. The lessee shall provide the authorized officer, when requested, with current copies of all FCC licenses and DTM/IRAC authorizations for equipment in or on facilities covered by this lease.

E. The lessee shall ensure that equipment within facilities authorized by this lease (including tenant and customer equipment) operates in a manner that will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site covered by this lease. If the authorized officer or authorized official of the FCC determines that the lessee's use interferes with existing equipment, the lessee will promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the authorized officer or FCC official.

F. When requested by the authorized officer, the lessee shall furnish technical information concerning the equipment located in the lease area.

IV. LIABILITIES

A. The lessee assumes all risk of loss to the authorized facilities and ancillary improvements.

B. The lessee shall comply with all applicable federal, state, and local laws, regulations, and standards, including but not limited to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation and maintenance of any facility, improvement, or equipment in the lease area.

C. The lessee shall indemnify, defend, and hold harmless the United States for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the lessee's use or occupancy of the lease area. The lessee's indemnification of the United States shall include any loss of personal injury, loss of life or damage to property in connection with the occupancy or use of the lease area during the term of this lease. Indemnification shall include but not be limited to the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third-party claims and judgments; and all administrative, interest, and other legal costs. This clause shall survive the termination or revocation of this lease, regardless of cause.

D. The Forest Service has no duty, either before or during the lease term, to inspect the lease area or to warn of hazards and, if the Forest Service inspects the lease area, it shall incur no additional duty nor any liability for hazards not identified or discovered through those inspections. This paragraph shall survive the termination or revocation of this lease, regardless of cause.

E. The lessee has an affirmative duty to protect from damage the land, property, and interests of the United States.

F. In the event of any breach of the lease by the lessee, the authorized officer may, on reasonable notice, cure the breach at the expense of the lessee. If the Forest Service at any time pays any sum of money or does any act which will require payment of money or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, or defending any action or proceeding to enforce the United States' rights hereunder, the sums paid by the United States, with all interests, costs, and damages, shall at the election of the Forest Service be deemed to be additional rent under this lease and shall be due from the lessee to the Forest Service on the first day of the month following that election.

V. MISCELLANEOUS PROVISIONS

A. Nondiscrimination. The lessee and its employees shall not discriminate against any person on the basis of race, color, sex (in educational and training programs), national origin, age, or disability or by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, the lessee and its employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended, and the Age Discrimination Act of 1975, as amended.

B. Revocation, Termination and Suspension

1. General. For purposes of this lease, termination, revocation, and suspension refer to the cessation of uses and privileges under the lease.

"Revocation" refers to an action by the authorized officer to end the lease because of noncompliance with any of the prescribed terms, abandonment, or for reasons in the public interest. Revocations are appealable.

"Termination" refers to the cessation of the lease under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the lease, a fixed or agreed upon condition, event, or time occurs. For example, the lease terminates at expiration. Terminations are not appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

2. This lease may be suspended or revoked upon breach of any of the conditions herein or upon nonuse. Nonuse refers to a failure to operate the authorized facilities on the property for a period of 2 years.

3. Except in emergencies, the authorized officer shall give the lessee written notice of the grounds for revocation or suspension and a reasonable time, not to exceed 90 days, to complete the corrective action. After 90 days, the Forest Service is entitled to such remedies as provided herein.

4. This lease may be revoked at the discretion of the Forest Service when in the public interest. When revoked in the public interest, the lessee shall be compensated subject to the availability of appropriated funds. Compensation shall be based upon the initial cost of improvements located on the lease, less depreciation as allocated over the life of the authorized facilities, based on the Lessee's federal tax amortization schedules.

5. Written decisions by the authorized officer relating to administration of this lease are subject to administrative appeal pursuant to 36 CFR 214.

6. If upon expiration of this lease the authorized officer decides not to issue a new lease, or the lessee does not desire a new lease, the authorized officer and the lessee shall, within six months prior to the termination date of this lease, agree upon a mitigation plan to restore and stabilize the site lease area.

7. Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 *et seq.* Delinquencies may be subject to any or all of the following conditions:

a. Administrative offset of payments due the lessee from the Forest Service.

b. Delinquencies in excess of 60 days shall be referred to United States Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

c. The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720 *et seq.*) If this lease is revoked for noncompliance, the lessee shall remove all authorized structures and improvements, except those owned by the United States, within 90 days, and shall restore the site as nearly as reasonably possible to its original condition unless this requirement is waived in writing by the authorized officer.

If the lessee fails to remove all authorized structures or improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States.

C. No member of or delegate to Congress or resident commissioner shall benefit from this lease whether directly or indirectly, other than to the extent the lease provides a general benefit to a corporation.

D. This lease is issued subject to the following reservations by the United States:

1. The right of the United States to all natural resources now or hereafter located in the lease area unless stated otherwise, and the right to utilize or dispose of those resources insofar as the rights of the lessee are not unreasonably affected.

2. The right of the United States to modify the communications site management plan as deemed necessary.

3. The right of the United States to enter the lease area and inspect all authorized facilities to ensure compliance with the terms and conditions of this lease.

4. The right of the United States to require common use of the lease area and the right to authorize use of the lease area for compatible uses.

E. The Forest Service and the lessee shall keep each other informed of current mailing addresses.

F. This lease supersedes a special use authorization designated #PREV_REISSUE_HOLDER#, #PREV_AUTH_ID#, dated #PREV_REIS_ISSUE_DATE#.

G. If there is any conflict between any of the preceding printed clauses and any of the following clauses the preceding printed clauses shall control.

THIS LEASE IS GRANTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.

BEFORE ANY LEASE IS ISSUED TO AN ENTITY, DOCUMENTATION MUST BE PROVIDED TO THE AUTHORIZED OFFICER OF THE AUTHORITY OF THE SIGNATORY FOR THE ENTITY TO BIND IT TO THE TERMS AND CONDITIONS OF THE LEASE.

=====

Derek Roland
Manager, Macon County, NC

DATE

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

Lori Carpenter
Finance Officer, Macon County, NC

DATE

=====

APPROVED:

TROY ASKEY
District Ranger, USFS

DATE

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average one (1) hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer. The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

PUBLIC NOTICE

Please take notice that the Macon County Board of Commissioners, at their regularly scheduled meeting on Tuesday December 14, 2021 at 6:00 PM, in the Commissioner's Board Room located on the third floor of the Macon County Courthouse, located at 5 West Main Street, Franklin, NC 28734, will consider authorization of a lease with Sutton Broadcasting Corporation for use of space on a communications tower and associated space for transmitter(s) within a communications building located on the Cowee Bald Electronic Site, Macon County, NC. The annual lease sum payments are proposed to be \$6000 and the Macon County Board of Commissioners will consider a resolution authorizing such lease at that time.

This the 8th day of November 2021.

PUBLIC NOTICE

Please take notice that the Macon County Board of Commissioners, at their regularly scheduled meeting on Tuesday December 14, 2021 at 6:00 PM, in the Commissioner's Board Room located on the third floor of the Macon County Courthouse, located at 5 West Main Street, Franklin, NC 28734, will consider authorization of a lease with Blue Ridge Broadcasting Corporation for use of space on a communications tower and associated space for transmitter(s) within a communications building located on the Cowee Bald Electronic Site, Macon County, NC. The annual lease sum payments are proposed to be \$3000 and the Macon County Board of Commissioners will consider a resolution authorizing such lease at that time.

This the 8th day of November 2021.

STATE OF NORTH CAROLINA
COUNTY OF MACON

**RESOLUTION OF THE MACON COUNTY BOARD OF COUNTY COMMISSIONERS
DECLARING PROPERTY TO BE SURPLUS AND APPROVING SUBLEASE OF THE
SAME BY MACON COUNTY TO SUTTON BROADCASTING CORPORATION.**

THAT WHEREAS, Macon County leases certain real property being described in the Sublease Agreement to Sutton Broadcasting Corporation, a South Carolina Business Corporation, a copy of which is attached hereto; and

WHEREAS, Macon County does not presently have a use for the same and will not need the same for and during the term of the attached sublease; and

WHEREAS, Macon County desires to declare the same to be surplus for and during the term of the sublease and authorized the entry of the Sublease to Sutton Broadcasting Corporation, a South Carolina Business Corporation, a copy of which is attached hereto; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-272, Macon County is authorized to enter into the Sublease to Sutton Broadcasting Corporation, a South Carolina Business Corporation, a copy of which is attached hereto, upon the passing of a Resolution authorizing the same and duly advertising notice of its intent to enter the same at the Regular Meeting.

NOW THEREFORE, upon Motion of Commissioner _____, seconded by Commissioner _____, and duly approved, be it hereby resolved by the by the Macon County Board of Commissioners as follows:

RESOLVED, that Macon County does hereby declare the real property described in the Sublease to Sutton Broadcasting Corporation, a South Carolina Business Corporation, a copy of which is attached hereto and incorporated herein by reference, to be surplus property and it will not be needed by Macon County during the term of the sublease; and

RESOLVED, that Macon County does hereby authorize the entry into the Sublease to Sutton Broadcasting Corporation, a South Carolina Business Corporation, a copy of which is attached hereto and incorporated herein by reference; and

RESOLVED, that Derek Roland, Macon County Manager, is hereby authorized and directed to fill in any blanks upon the same and execute said Sublease to Sutton Broadcasting Corporation, a South Carolina Business Corporation, on behalf of Macon County; and

RESOLVED, that Macon County gave due notice of its Intent enter such Sublease as required by N.C. Gen. Stat § 160-272.

Adopted at the December 14, 2021, Regular Meeting of the Macon County Board of Commissioners.

Jim Tate, Chairman, Macon County Board of
County Commissioners

ATTEST:

Derek Rowland, Macon County Manager
And Clerk to the Board

STATE OF NORTH CAROLINA
COUNTY OF MACON

**USE OF SPACE ON COMMUNICATIONS TOWER AND USE OF
ASSOCIATED TRANSMITTER BUILDING SUBLEASE AGREEMENT
AMENDMENT**

This Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement Amendment is made and entered into this the 14th day of December, 2021, by and between Macon County, North Carolina, a North Carolina County and Body Politic (hereinafter referred to as the “Sublessor”), and Sutton Radiocasting Corporation, a South Carolina Business Corporation (hereinafter referred to as the “Sublessee”).

THAT WHEREAS, Sublessee presently holds the Federal Communication Commission (FCC) licenses for Class A FM Station WNCC-FM (FCC Facility Identification Number 14551) assigned to the community of Franklin, North Carolina, FM Translator Station W285FD (FCC Facility Identification Number 155806) assigned to the community of Franklin, North Carolina (hereinafter referred to as the “Stations”); and

WHEREAS, Sublessor presently has a Lease with the United States of America, acting through the Forest Service, Department of Agriculture, for the Cowee Bald Communications site as shown therein, a copy of said Lease is attached hereto and incorporated herein by reference as if more fully set forth herein; and

WHEREAS, Sublessee desires to obtain from Sublessor, a use of space on communications tower and use of associated transmitter building sublease agreement from the Sublessor which will permit the location of the antenna and the use of the associated transmitter building for the Stations at Cowee Bald Communications site as referenced in the Lease above referenced; and

WHEREAS, Sublessor is willing to enter this Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement with Sublessee, subject to the terms and conditions set forth hereinbelow.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, the parties hereto do agree as follows:

- I. SUBLEASEHOLD INTEREST. Sublessor sublets to Sublessee, and the Sublessee subleases from Sublessor the following:
 - A. Those sections of the Tower (which Tower is colored in yellow on the Cowee Bald Communication Site Plan attached to the Lease Agreement referenced above) which are not being used by either Macon County or Jackson County and which are necessary for operation by Lessee's Stations and such related equipment as is required for the efficient and effective operation of the Stations, and which are specifically approved of by Sublessor and, to the extent necessary, which are specifically approved of in writing by the United State of America, acting through the Forest Service, Department of Agriculture. Such rights of use by Sublessee shall be non- exclusive and shall in no way interfere with the broadcast signals or other rights of existing users of the Cowee Bald Communications Site;
 - B. The non-exclusive right-of-way space on said Tower and non-exclusive right-of-way space to and from the Transmitter Building (which Building is numbered "1" and is colored in orange on the Cowee Bald Communication Site Plan attached to the Lease Agreement referenced above) for the connection, and passage by cables, wires and transmission lines and any transmission equipment required for the operation of the Stations. Such rights of use by Sublessee shall be non-exclusive and shall in no way interfere with the broadcast signal or rights of existing users of the Cowee Bald Communications Site;
 - C. The non-exclusive access to said Tower and said Transmitter Building for the purpose of operating broadcast equipment owned or operated by Lessee located there. Such rights of use by Sublessee shall be non-exclusive and shall in no way interfere with the broadcast signal or other rights of existing users of the Cowee Bald Communications Site;
 - D. Sublessor and Sublessee recognize and agree that the Cowee Bald Communication Site is primarily an emergency communication site and as such, Sublessor specifically reserves the right to cancel this Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement, without liability, should it hereafter determine within its discretion the need to do so in order to maintain and use the Cowee Bald Communication Site as an emergency communications site. Sublessor reserves the right to cancel this Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement without liability should it determine within its discretion that the use made or to be made by Sublessee interferes or will interfere with the rights of existing users of the Cowee Bald Communications Site;
 - E. If Sublessee does cause inference with the broadcast signal of existing users of the Cowee Bald Communications Site, then Sublessor Lessee shall have the right to immediately terminate this Use of Space on Communications Tower and Use

of Associated Transmitter Building Sublease Agreement;

- F. Sublessee shall operate its Station in full compliance with all FCC Rules and Regulations;
 - G. It is agreed and understood that Sublessee shall, at its sole cost, undertake a tower study/engineering study prior making any significant changes to the site equipment such as new antennae, new transmitters, etc., hereunder to determine if the same will interfere with the broadcast signal of existing users of the Cowee Bald Communications Site. The same must show that all planned use by Sublessee hereunder will not interfere with the broadcast signal of existing users of the Cowee Bald Communications Site. A copy of the same shall be delivered unto Sublessor upon completion. All use by Sublessee hereunder must be in full compliance with FCC Rules and Regulations, all other State and Federal Regulations, and approved by the United States Forestry Service if such approval is necessary;
2. TERM OF SUBLEASE. Upon all the terms and conditions of this Sublease, Sublessee shall have and hold the non-exclusive rights provided for herein for the period extending from the date hereof to and including midnight, on December 31, 2031, unless this Sublease is sooner terminated as specifically hereinafter provided. Prior to the end of the Term of this Sublease, Sublessee shall cause all of its fixtures and property to be removed from the subleased premises at its sole expense and shall cause any and all repairs that are necessary to retore the subleased premises to the conditions which existed immediately preceding the beginning of this sublease, reasonable wear and tear excepted;
 3. RENT. Sublessee will continue to pay the Sublessor rent in the amount of \$500.00 per month on the first date of each month, during the term of this lease. The parties hereto do understand and agree that the United States Forest Service reserves the right to change what it charges unto Macon County in connection with its Lease with the United States of America as above-referenced. As a consequence, the parties hereto agree that the monthly rent of \$500.00 per month provided for herein may be and shall be adjusted upward during the term hereof in the event that the United States Forest Service or other agent of the United States of America assesses a fee to Macon County for the use by Sublessee hereunder which exceeds the sum of \$6,000.00 per year. In this event, the monthly rental to be paid by Sublessee hereunder shall be increased by 1/12 of the amount that the annual sum assessed to Macon County for the use of the Sublessee hereunder which exceeds \$6,000.00 per year.
 4. ASSIGNMENT. The Sublessee shall have no right to assign this Sublease and its rights under the Sublease to any affiliate or subsidiary of the Sublessee or subsequent owner of Lessee's Stations, without the consent of Sublessor and the United States of America, acting through the Forest Service, Department of Agriculture;
 5. REPAIRS AND MAINTENANCE. Sublessee shall be responsible for all maintenance

and repair of the Tower and the Tower supporting structures and the Transmitter Building to be used hereunder by the Sublessee;

6. PAYMENT OF TAXES. Sublessee shall be responsible for the payment of any personal property taxes imposed against the fixtures or equipment on the subleased premises which are owned by Sublessee;
7. UTILITIES. Sublessor shall pay when due all electric and other utility charges made against the subleased premises during the term of this sublease;
8. INSURANCE. Sublessor shall maintain adequate insurance coverage against fire, storm or other casualty loss or damage to Sublessor's property, as well as liability insurance against personal injury or property damage. Such insurance shall specifically provide for coverage for the repair and replacement of all structures, machinery and equipment owned by Sublessor located on or adjacent to, the Tower.

Sublessee shall maintain adequate insurance coverage against fire, storm or other casualty loss or damage to Sublessee's property, as well as general liability insurance against personal injury of not less than One Million Dollars (\$1,000,000.00). Evidence of said insurance shall be provided to Sublessor upon request of Sublessor. Failure to maintain said general liability policy by Sublessee shall result in the immediate termination of this Lease;

9. DAMAGE TO OR DESTRUCTION OF THE TOWER. If the Tower subject to this Sublease or any part thereof, or any equipment thereon shall be wholly or materially damaged or destroyed, at the sole option of the Sublessor, the Sublessor may repair, restore and/or replace the same, at the expense of Sublessor, to the condition which existed immediately prior to the occurrence of such casualty.

However, in the event the damage to the Tower subject to this Sublease or any part thereof, or any equipment thereon, cannot be repaired within sixty (60) days (as reasonably estimated by Sublessor as soon as practicable after the occurrence of such damage) Sublessor may terminate this Lease as of the date of such damage;

10. EMINENT DOMAIN. If the Tower subject to this Sublease and/or the Transmitter Building Parcel subleased hereunder shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Sublease shall be terminated as of the date of such taking and Sublessee shall thereupon be released from any further liability hereunder. The date of such taking shall be the date on which legal title shall vest in the condemning authority;
11. ACCESS TO LEASED PREMISES. It is mutually understood and agreed between the parties that Macon County, Jackson County and Sublessee may maintain broadcast apparatus on the Tower subject to this Sublease. Sublessor, Sublessee and all others

having the right to use such Tower shall have the right to non-exclusive access to such Tower for the purpose of operating, maintaining, inspecting and repairing such broadcast apparatus;

12. **USE OF TOWER.** Sublessee shall not take any action which will cause or permit electrical interference to the broadcast signal of any existing electronic communications apparatus on the Tower subject to this Sublease or otherwise interfere with the broadcast signal or rights of any of the existing users of the Cowee Bald Communications Site. Sublessee shall be liable to Sublessor and shall indemnify Sublessor for any loss or damage to Sublessor's equipment, or for destructive electrical interference to the communications signals of Sublessor, consequential or otherwise, occasioned by, growing out of, or arising from any act or failure to act by Sublessee, its agents or employees, including such acts or failures to act which Lessee shall suffer to exist or continue to exist on the real property of Sublessor or such Tower.

Any breach by Sublessee of Sublessor's right of use of the Tower as defined herein, shall confer upon the Sublessor the right to immediately terminate this Sublease without liability. Such rights shall be in addition to, and exclusive of such other rights contained in this Sublease or such rights at law or equity which Sublessor may possess.

13. **INDEMNIFICATION OF PARTIES.** Sublessor shall have no liability for any loss or damage due to personal injury, property damage, libel or slander, or electrical interference, caused by Sublessee its agents, or employees, and Sublessee will indemnify and save Sublessor harmless from any loss, damage or liability, consequential or otherwise occasioned by, growing out of, or arising, or resulting in connection with, Sublessee or any act or failure to act by Sublessee, its agents, or employees. Sublessee shall have no liability for any loss or damage due to personal injury, property damage, libel or slander, or electrical interference caused by Sublessor;
14. **AUTHORIZATION.** Sublessor and Sublessee respectively represent and warrant to the other that all necessary approvals and/or corporate action has been duly taken to authorize the execution and delivery of this Sublease and the performance or observance of the provisions of this Sublease. Additionally, Sublessor represents and warrants to the Sublessee that the necessary consent and/or approval of this Sublease have been obtained from the United States of America, acting through the Forest Service, Department of Agriculture, owner of the real property in which such tower and transmitter building parcel are situate. Absence of the landowner's consent and/or approval at any time during the Term shall grant the Sublessor and the Sublessee the right to immediately terminate the Lease without further liability;
15. **NO WAIVER.** Failure or delay on the part of either Sublessor or Sublessee to exercise any right, power, or privilege hereunder shall not operate as a waiver thereof;
16. **NOTICE.** Any and all notices, demands or other communications required by this Lease or by law, or desired to be given hereunder, by any party shall be in writing and shall be validly given or made to another party if served either personally or if deposited in the United States mail, certified, postage prepaid, return receipt requested. If such notice, demand or other communication be given by mail, such shall be conclusively deemed

given as of the date shown on the return receipt if the same is deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth:

If to Lessor:
Macon County
Attention: County Manager
5 West Main Street Franklin, North Carolina 28734

If to Lessee:
Georgia-Carolina Radiocasting Companies
Attention: Douglas M. Sutton, Jr.
Post Office Drawer E
Toccoa, Georgia 30577

Any party hereto may change its address for the purpose of receiving notice, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party or parties hereto;

17. AGENTS AND PARTIES. From time to time Lessor or Lessee by notice as aforesaid may appoint one or more agents to act for them;
18. ATTACHMENTS, SCHEDULES AND EXHIBITS. All Exhibits, Appendices and Schedules attached to this Lease shall be deemed part of this Lease and incorporated herein, where applicable, as if fully set forth herein.
19. THAT THE LEASE BETWEEN THE UNITED STATES OF AMERICA, ACTING THROUGH THE FOREST SERVICE, DEPARTMENT OF AGRICULTURE, AND MACON COUNTY, AND THE TERMS AND CONDITIONS THEREOF, A COPY OF SAID LEASE BEING ATTACHED HERETO ARE INCORPORATED HEREIN BY REFERENCE AS IF MORE FULLY SET FORTH HEREIN. TO THE EXTENT THAT ANY OF THE FOREGOING TERMS AND CONDITIONS OF THIS USE OF SPACE ON COMMUNICATIONS TOWER AND USE OF ASSOCIATED TRANSMITTER BUILDING SUBLEASE AGREEMENT CONFLICT WITH OR ARE INCONSISTENT WITH SAID LEASE AGREEMENT, THEN THE TERMS OF SAID LEASE AGREEMENT SHALL PREVAIL, IT BEING THE SPECIFIC INTENT OF BOTH PARTIES HERETO NOT TO SUBLEASE INCONSISTENTLY WITH SAID LEASE.
20. ADDITIONAL RESPONSIBILITIES OF THE SUBLESSEE.
 - a. All development, operation and maintenance by Sublessee of the authorized facility, improvements, and equipment located on the property shall be in accordance with stipulations in the communications site plan approved by the Authorized Officer of the United States Forest Service. If required by Authorized Officer of the United States Forest Service, all plans for development, layout, construction, or alteration of

improvements on the property, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect. Such plans must be approved in writing by the Authorized Officer of the United States Forest Service before commencement of any work. After completion, as-built plans, maps, surveys, or other similar information will be provided to the Authorized Officer of the United States Forest Service and appended to the communications site plan;

- b. The Sublessee will comply with applicable Federal, State, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this Sublease. The obligations of the Sublessee under this lease are not contingent upon any duty of the Authorized Officer of the United States Forest Service, or other agent of the United States, to inspect the premises. A failure by the United States, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms or conditions of this lease. Sublessee waives all defenses of laches or estoppel against the United States. The Sublessee shall at all times keep the title of the United States to the property free and clear of all liens and encumbrances;
- c. Use of communications equipment is contingent upon the possession of a valid Federal Communication Commission (FCC) or Director of Telecommunications Management/Interdepartmental Radio Advisory Committee (DTM/IRAC) authorization, and the operation of the equipment is in strict compliance with applicable requirements of FCC or IRAC. A copy of each applicable license or authorization shall at all times be maintained by the Sublessee for each transmitter being operated. The Sublessee shall provide the Authorized Officer of the United States Forest Service, and the Sublessor, when requested, with current copies of all licenses for equipment in or on facilities covered by this lease;
- d. The Sublessee shall ensure that equipment within its facility operates in a manner which will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site. If the Authorized Officer of the United States Forest Service or authorized official of the Federal Communication Commission (FCC) determines that the Sublessee's use interferes with existing equipment, the Sublessee will promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the Authorized Officer of the United States Forest Service or FCC official;
- e. When requested by the Authorized Officer of the United States Forest Service, the Sublessee will furnish technical information concerning the equipment located on the property;

21. OTHER PROVISIONS.

The provisions of Paragraph "V. OTHER PROVISIONS" as contained in the Lease

between Macon County and the United States of America, acting through the Forest Service, Department of Agriculture, a copy of which is attached hereto and incorporated herein by reference, shall apply to the Sublessee named herein and Sublessee shall at all times be bound by, subject to and comply with the same.

22. LIABILITIES.

- a. The Sublessee assumes all risk of loss to the authorized improvements by Sublessee;
- b. The Sublessee shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation and maintenance of any facility, improvement, or equipment on the property made by Lessee or its agents hereunder;
- c. The Lessee shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the Sublessee's use or occupancy of the property. The Sublessee's indemnification of the United States shall include any loss of personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this Sublease. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this lease, regardless of cause;
- d. The United States Forest Service has no duty, either before or during this Sublease term, to inspect the property or to warn of hazards and, if the United States Forest Service inspects the property, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This paragraph shall survive the termination or revocation of this lease, regardless of cause;
- e. The Sublessee has an affirmative duty to protect from damage the land, property, and interests of the United States;
- f. In the event of any breach of the sublease by the Sublessee, the Authorized Officer of the United States Forest Service may, on reasonable notice cure the breach for the account at the expense of the Sublessee. If the United States Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights

hereunder, the sum or sums so paid by the United States, with all interests, costs and damages shall, at the election of the Forest Service, be deemed to be additional rental hereunder and shall be due from the Sublessee to the United States Forest Service on the first day of the month following such election;

- 23. COUNTERPARTS. This Sublease may be signed by any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument.
- 24. HEADINGS. The headings of the paragraphs of this Sublease are inserted as a matter of convenience and for reference purposes only and in no way define, limit or describe the scope of this Sublease or the intent of any paragraph hereof.
- 25. ENTIRE AGREEMENT. This Sublease is the only Agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof.
- 26. MODIFICATION OR AMENDMENT. No amendment, change or modification of this Sublease shall be effective unless in writing stating that it amends this document and signed by each of the parties hereto.
- 27. GOVERNING LAW. This Sublease shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the day and year first above written.

SUBLESSOR: Macon County

By: _____
Derek Roland, Manager

SUBLESSEE: Sutton Radiocasting Corporation

By: _____

STATE OF NORTH CAROLINA
COUNTY OF MACON

**RESOLUTION OF THE MACON COUNTY BOARD OF COUNTY COMMISSIONERS
DECLARING PROPERTY TO BE SURPLUS AND APPROVING SUBLEASE OF THE
SAME BY MACON COUNTY TO BLUE RIDGE BROADCASTING CORPORATION.**

THAT WHEREAS, Macon County leases certain real property being described in the Sublease Agreement to Blue Ridge Broadcasting Corporation, a North Carolina non-profit corporation, a copy of which is attached hereto; and

WHEREAS, Macon County does not presently have a use for the same and will not need the same for and during the term of the attached sublease; and

WHEREAS, Macon County desires to declare the same to be surplus for and during the term of the sublease and authorized the entry of the Sublease to Blue Ridge Broadcasting Corporation, a North Carolina non-profit corporation, a copy of which is attached hereto; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160A-272, Macon County is authorized to enter into the Sublease to Blue Ridge Broadcasting Corporation, a North Carolina non-profit corporation, a copy of which is attached hereto, upon the passing of a Resolution authorizing the same and duly advertising notice of its intent to enter the same at the Regular Meeting.

NOW THEREFORE, upon Motion of Commissioner _____,
seconded by Commissioner _____, and duly approved, be it hereby
resolved by the by the Macon County Board of Commissioners as follows:

RESOLVED, that Macon County does hereby declare the real property described in the Sublease to Blue Ridge Broadcasting Corporation, a North Carolina non-profit corporation, a copy of which is attached hereto and incorporated herein by reference, to be surplus property and it will not be needed by Macon County during the term of the sublease; and

RESOLVED, that Macon County does hereby authorize the entry into the Sublease to Blue Ridge Broadcasting Corporation, a North Carolina non-profit corporation, a copy of which is attached hereto and incorporated herein by reference; and

RESOLVED, that Derek Roland, Macon County Manager, is hereby authorized and directed to fill in any blanks upon the same and execute said Sublease to Blue Ridge Broadcasting Corporation, a North Carolina non-profit corporation, on behalf of Macon County; and

RESOLVED, that Macon County gave due notice of its Intent enter such Sublease as required by N.C. Gen. Stat § 160-272.

Adopted at the December 14, 2021, Regular Meeting of the Macon County Board of Commissioners.

Jim Tate, Chairman, Macon County Board of
County Commissioners

ATTEST:

Derek Rowland, Macon County Manager
And Clerk to the Board

STATE OF NORTH CAROLINA
COUNTY OF MACON

**USE OF SPACE ON COMMUNICATIONS TOWER AND USE OF
ASSOCIATED TRANSMITTER BUILDING SUBLEASE AGREEMENT
AMENDMENT**

This Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement Amendment is made and entered into this the 14th day of December, 2021, by and between Macon County, North Carolina, a North Carolina County and Body Politic (hereinafter referred to as the "Sublessor"), and Blue Ridge Broadcasting Corporation, a North Carolina non-profit corporation (hereinafter referred to as the "Sublessee").

THAT WHEREAS, Sublessee presently holds the Federal Communication Commission (FCC) license for FM Translator Station W267AD (FCC Facility Identification Number 30442) assigned to the community of Cherokee, North Carolina (hereinafter referred to as the "Station"); and

WHEREAS, Sublessor presently has a Lease with the United States of America, acting through the Forest Service, Department of Agriculture, for the Cowee Bald Communications site as shown therein, a copy of said Lease is attached hereto and incorporated herein by reference as if more fully set forth herein; and

WHEREAS, Sublessee desires to obtain from Sublessor, a use of space on communications tower and use of associated transmitter building sublease agreement from the Sublessor which will permit the location of the antenna and the use of the associated transmitter building for the Station at Cowee Bald Communications site as referenced in the Lease above referenced; and

WHEREAS, Sublessor is willing to enter this Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement with Sublessee, subject to the terms and conditions set forth hereinbelow.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, the parties hereto do agree as follows:

1. SUBLEASEHOLD INTEREST. Sublessor sublets to Sublessee, and the Sublessee subleases from Sublessor the following:
 - A. Those sections of the Tower (which Tower is colored in yellow on the Cowee Bald Communication Site Plan attached to the Lease Agreement referenced above) which are not being used by either Macon County or Jackson County and which are necessary for operation by Lessee's Station and such related equipment as is required for the efficient and effective operation of the Station, and which are specifically approved of by Sublessor and, to the extent necessary, which are specifically approved of in writing by the United State of America, acting through the Forest Service, Department of Agriculture. Such rights of use by Sublessee shall be non-exclusive and shall in no way interfere with the broadcast signals or other rights of existing users of the Cowee Bald Communications Site;
 - B. The non-exclusive right-of-way space on said Tower and non-exclusive right-of-way space to and from the Transmitter Building (which Building is numbered "1" and is colored in orange on the Cowee Bald Communication Site Plan attached to the Lease Agreement referenced above) for the connection, and passage by cables, wires and transmission lines and any transmission equipment required for the operation of the Station. Such rights of use by Sublessee shall be non-exclusive and shall in no way interfere with the broadcast signal or rights of existing users of the Cowee Bald Communications Site;
 - C. The non-exclusive access to said Tower and said Transmitter Building for the purpose of operating broadcast equipment owned or operated by Lessee located there. Such rights of use by Sublessee shall be non-exclusive and shall in no way interfere with the broadcast signal or other rights of existing users of the Cowee Bald Communications Site;
 - D. Sublessor and Sublessee recognize and agree that the Cowee Bald Communication Site is primarily an emergency communication site and as such, Sublessor specifically reserves the right to cancel this Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement, without liability, should it hereafter determine within its discretion the need to do so in order to maintain and use the Cowee Bald Communication Site as an emergency communications site. Sublessor reserves the right to cancel this Use of Space on Communications Tower and Use of Associated Transmitter Building Sublease Agreement without liability should it determine within its discretion that the use made or to be made by Sublessee interferes or will interfere with the rights of existing users of the Cowee Bald Communications Site;
 - E. If Sublessee does cause inference with the broadcast signal of existing users of the Cowee Bald Communications Site, then Sublessor Lessee shall have the right to immediately terminate this Use of Space on Communications Tower and Use

of Associated Transmitter Building Sublease Agreement;

- F. Sublessee shall operate its Station in full compliance with all FCC Rules and Regulations;
 - G. It is agreed and understood that Sublessee shall, at its sole cost, undertake a tower study/engineering study prior making any significant changes to the site equipment such as new antennae, new transmitters, etc. hereunder to determine if the same will interfere with the broadcast signal of existing users of the Cowee Bald Communications Site. The same must show that all planned use by Sublessee hereunder will not interfere with the broadcast signal of existing users of the Cowee Bald Communications Site. A copy of the same shall be delivered unto Sublessor upon completion. All use by Sublessee hereunder must be in full compliance with FCC Rules and Regulations, all other State and Federal Regulations, and approved by the United States Forestry Service if such approval is necessary;
- 2. **TERM OF SUBLEASE.** Upon all the terms and conditions of this Sublease, Sublessee shall have and hold the non-exclusive rights provided for herein for the period extending from the date hereof to and including midnight, on December 31, 2031, unless this Sublease is sooner terminated as specifically hereinafter provided. Prior to the end of the Term of this Sublease, Sublessee shall cause all of its fixtures and property to be removed from the subleased premises at its sole expense and shall cause any and all repairs that are necessary to restore the subleased premises to the conditions which existed immediately preceding the beginning of this sublease, reasonable wear and tear excepted;
 - 3. **RENT.** Sublessee will continue to pay the Sublessor rent in the amount of \$250.00 per month on the first date of each month, during the term of this lease. The parties hereto do understand and agree that the United States Forest Service reserves the right to change what it charges unto Macon County in connection with its Lease with the United States of America as above-referenced. As a consequence, the parties hereto agree that the monthly rent of \$250.00 per month provided for herein may be and shall be adjusted upward during the term hereof in the event that the United States Forest Service or other agent of the United States of America assesses a fee to Macon County for the use by Sublessee hereunder which exceeds the sum of \$6,000.00 per year. In this event, the monthly rental to be paid by Sublessee hereunder shall be increased by 1/12 of the amount that the annual sum assessed to Macon County for the use of the Sublessee hereunder which exceeds \$6,000.00 per year.
 - 4. **ASSIGNMENT.** The Sublessee shall have no right to assign this Sublease and its rights under the Sublease to any affiliate or subsidiary of the Sublessee or subsequent owner of Lessee's Station, without the consent of Sublessor and the United States of America, acting through the Forest Service, Department of Agriculture;
 - 5. **REPAIRS AND MAINTENANCE.** Sublessee shall be responsible for all maintenance and repair of the Tower and the Tower supporting structures and the Transmitter Building

to be used hereunder by the Sublessee;

6. PAYMENT OF TAXES. Sublessee shall be responsible for the payment of any personal property taxes imposed against the fixtures or equipment on the subleased premises which are owned by Sublessee;
7. UTILITIES. Sublessor shall pay when due all electric and other utility charges made against the subleased premises during the term of this sublease;
8. INSURANCE. Sublessor shall maintain adequate insurance coverage against fire, storm or other casualty loss or damage to Sublessor's property, as well as liability insurance against personal injury or property damage. Such insurance shall specifically provide for coverage for the repair and replacement of all structures, machinery and equipment owned by Sublessor located on or adjacent to, the Tower.

Sublessee shall maintain adequate insurance coverage against fire, storm or other casualty loss or damage to Sublessee's property, as well as general liability insurance against personal injury of not less than One Million Dollars (\$1,000,000.00). Evidence of said insurance shall be provided to Sublessor upon request of Sublessor. Failure to maintain said general liability policy by Sublessee shall result in the immediate termination of this Lease;

9. DAMAGE TO OR DESTRUCTION OF THE TOWER. If the Tower subject to this Sublease or any part thereof, or any equipment thereon shall be wholly or materially damaged or destroyed, at the sole option of the Sublessor, the Sublessor may repair, restore and/or replace the same, at the expense of Sublessor, to the condition which existed immediately prior to the occurrence of such casualty.

However, in the event the damage to the Tower subject to this Sublease or any part thereof, or any equipment thereon, cannot be repaired within sixty (60) days (as reasonably estimated by Sublessor as soon as practicable after the occurrence of such damage) Sublessor may terminate this Lease as of the date of such damage;

10. EMINENT DOMAIN. If the Tower subject to this Sublease and/or the Transmitter Building Parcel subleased hereunder shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Sublease shall be terminated as of the date of such taking and Sublessee shall thereupon be released from any further liability hereunder. The date of such taking shall be the date on which legal title shall vest in the condemning authority;
11. ACCESS TO LEASED PREMISES. It is mutually understood and agreed between the parties that Macon County, Jackson County and Sublessee may maintain broadcast apparatus on the Tower subject to this Sublease. Sublessor, Sublessee and all others having the right to use such Tower shall have the right to non-exclusive access to such

Tower for the purpose of operating, maintaining, inspecting and repairing such broadcast apparatus;

12. **USE OF TOWER.** Sublessee shall not take any action which will cause or permit electrical interference to the broadcast signal of any existing electronic communications apparatus on the Tower subject to this Sublease or otherwise interfere with the broadcast signal or rights of any of the existing users of the Cowee Bald Communications Site. Sublessee shall be liable to Sublessor and shall indemnify Sublessor for any loss or damage to Sublessor's equipment, or for destructive electrical interference to the communications signals of Sublessor, consequential or otherwise, occasioned by, growing out of, or arising from any act or failure to act by Sublessee, its agents or employees, including such acts or failures to act which Lessee shall suffer to exist or continue to exist on the real property of Sublessor or such Tower.

Any breach by Sublessee of Sublessor's right of use of the Tower as defined herein, shall confer upon the Sublessor the right to immediately terminate this Sublease without liability. Such rights shall be in addition to, and exclusive of such other rights contained in this Sublease or such rights at law or equity which Sublessor may possess.

13. **INDEMNIFICATION OF PARTIES.** Sublessor shall have no liability for any loss or damage due to personal injury, property damage, libel or slander, or electrical interference, caused by Sublessee its agents, or employees, and Sublessee will indemnify and save Sublessor harmless from any loss, damage or liability, consequential or otherwise occasioned by, growing out of, or arising, or resulting in connection with, Sublessee or any act or failure to act by Sublessee, its agents, or employees. Sublessee shall have no liability for any loss or damage due to personal injury, property damage, libel or slander, or electrical interference caused by Sublessor;
14. **AUTHORIZATION.** Sublessor and Sublessee respectively represent and warrant to the other that all necessary approvals and/or corporate action has been duly taken to authorize the execution and delivery of this Sublease and the performance or observance of the provisions of this Sublease. Additionally, Sublessor represents and warrants to the Sublessee that the necessary consent and/or approval of this Sublease have been obtained from the United States of America, acting through the Forest Service, Department of Agriculture, owner of the real property in which such tower and transmitter building parcel are situate. Absence of the landowner's consent and/or approval at any time during the Term shall grant the Sublessor and the Sublessee the right to immediately terminate the Lease without further liability;
15. **NO WAIVER.** Failure or delay on the part of either Sublessor or Sublessee to exercise any right, power, or privilege hereunder shall not operate as a waiver thereof;
16. **NOTICE.** Any and all notices, demands or other communications required by this Lease or by law, or desired to be given hereunder, by any party shall be in writing and shall be validly given or made to another party if served either personally or if deposited in the United States mail, certified, postage prepaid, return receipt requested. If such notice, demand or other communication be given by mail, such shall be conclusively deemed given as of the date shown on the return receipt if the same is deposited in the United

States mail addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth:

If to Lessor:

Macon County

Attention: County Manager

5 West Main Street Franklin, North Carolina 28734

If to Lessee:

Billy Graham Evangelistic Association

Attention: Justin T. Arnot, General Counsel

1 Billy Graham Parkway

Charlotte, NC 28201

Any party hereto may change its address for the purpose of receiving notice, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party or parties hereto;

17. AGENTS AND PARTIES. From time to time Lessor or Lessee by notice as aforesaid may appoint one or more agents to act for them;
18. ATTACHMENTS, SCHEDULES AND EXHIBITS. All Exhibits, Appendices and Schedules attached to this Lease shall be deemed part of this Lease and incorporated herein, where applicable, as if fully set forth herein.
19. THAT THE LEASE BETWEEN THE UNITED STATES OF AMERICA, ACTING THROUGH THE FOREST SERVICE, DEPARTMENT OF AGRICULTURE, AND MACON COUNTY, AND THE TERMS AND CONDITIONS THEREOF, A COPY OF SAID LEASE BEING ATTACHED HERETO ARE INCORPORATED HEREIN BY REFERENCE AS IF MORE FULLY SET FORTH HEREIN. TO THE EXTENT THAT ANY OF THE FOREGOING TERMS AND CONDITIONS OF THIS USE OF SPACE ON COMMUNICATIONS TOWER AND USE OF ASSOCIATED TRANSMITTER BUILDING SUBLEASE AGREEMENT CONFLICT WITH OR ARE INCONSISTENT WITH SAID LEASE AGREEMENT, THEN THE TERMS OF SAID LEASE AGREEMENT SHALL PREVAIL, IT BEING THE SPECIFIC INTENT OF BOTH PARTIES HERETO NOT TO SUBLEASE INCONSISTENTLY WITH SAID LEASE.
20. ADDITIONAL RESPONSIBILITIES OF THE SUBLESSEE.
 - a. All development, operation and maintenance by Sublessee of the authorized facility, improvements, and equipment located on the property shall be in accordance with stipulations in the communications site plan approved by the Authorized Officer of the United States Forest Service. If required by Authorized Officer of the United States Forest Service, all plans for development, layout, construction, or alteration of improvements on the property, as well as revisions of such plans, must be prepared by

- a licensed engineer, architect, and/or landscape architect. Such plans must be approved in writing by the Authorized Officer of the United States Forest Service before commencement of any work. After completion, as-built plans, maps, surveys, or other similar information will be provided to the Authorized Officer of the United States Forest Service and appended to the communications site plan;
- b. The Sublessee will comply with applicable Federal, State, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this Sublease. The obligations of the Sublessee under this lease are not contingent upon any duty of the Authorized Officer of the United States Forest Service, or other agent of the United States, to inspect the premises. A failure by the United States, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms or conditions of this lease. Sublessee waives all defenses of laches or estoppel against the United States. The Sublessee shall at all times keep the title of the United States to the property free and clear of all liens and encumbrances;
 - c. Use of communications equipment is contingent upon the possession of a valid Federal Communication Commission (FCC) or Director of Telecommunications Management/Interdepartmental Radio Advisory Committee (DTM/IRAC) authorization, and the operation of the equipment is in strict compliance with applicable requirements of FCC or IRAC. A copy of each applicable license or authorization shall at all times be maintained by the Sublessee for each transmitter being operated. The Sublessee shall provide the Authorized Officer of the United States Forest Service, and the Sublessor, when requested, with current copies of all licenses for equipment in or on facilities covered by this lease;
 - d. The Sublessee shall ensure that equipment within its facility operates in a manner which will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site. If the Authorized Officer of the United States Forest Service or authorized official of the Federal Communication Commission (FCC) determines that the Sublessee's use interferes with existing equipment, the Sublessee will promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the Authorized Officer of the United States Forest Service or FCC official;
 - e. When requested by the Authorized Officer of the United States Forest Service, the Sublessee will furnish technical information concerning the equipment located on the property;

21. OTHER PROVISIONS.

The provisions of Paragraph "V. OTHER PROVISIONS" as contained in the Lease between Macon County and the United States of America, acting through the Forest

Service, Department of Agriculture, a copy of which is attached hereto and incorporated herein by reference, shall apply to the Sublessee named herein and Sublessee shall at all times be bound by, subject to and comply with the same.

22. LIABILITIES.

- a. The Sublessee assumes all risk of loss to the authorized improvements by Sublessee;
- b. The Sublessee shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation and maintenance of any facility, improvement, or equipment on the property made by Lessee or its agents hereunder;
- c. The Lessee shall indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the Sublessee's use or occupancy of the property. The Sublessee's indemnification of the United States shall include any loss of personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this Sublease. Indemnification shall include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph shall survive the termination or revocation of this lease, regardless of cause;
- d. The United States Forest Service has no duty, either before or during this Sublease term, to inspect the property or to warn of hazards and, if the United States Forest Service inspects the property, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This paragraph shall survive the termination or revocation of this lease, regardless of cause;
- e. The Sublessee has an affirmative duty to protect from damage the land, property, and interests of the United States;
- f. In the event of any breach of the sublease by the Sublessee, the Authorized Officer of the United States Forest Service may, on reasonable notice cure the breach for the account at the expense of the Sublessee. If the United States Forest Service at any time pays any sum of money or does any act which will require payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and

damages shall, at the election of the Forest Service, be deemed to be additional rental hereunder and shall be due from the Sublessee to the United States Forest Service on the first day of the month following such election;

- 23. COUNTERPARTS. This Sublease may be signed by any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument.
- 24. HEADINGS. The headings of the paragraphs of this Sublease are inserted as a matter of convenience and for reference purposes only and in no way define, limit or describe the scope of this Sublease or the intent of any paragraph hereof.
- 25. ENTIRE AGREEMENT. This Sublease is the only Agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof.
- 26. MODIFICATION OR AMENDMENT. No amendment, change or modification of this Sublease shall be effective unless in writing stating that it amends this document and signed by each of the parties hereto.
- 27. GOVERNING LAW. This Sublease shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the day and year first above written.

SUBLESSOR: Macon County

By: _____

Derek Roland, Manager

SUBLESSEE: Blue Ridge Broadcasting Corporation

By: _____

Macon County



JOINT RESOLUTION ADOPTING AND ESTABLISHING THE COMMON BOUNDARY LINE BETWEEN JACKSON COUNTY AND MACON COUNTY

WHEREAS, North Carolina General Statute §153A-18 provides that if two or more counties are uncertain as to the exact boundary between them, they may cause the boundary to be surveyed, marked and mapped; and

WHEREAS, pursuant to a Resolution approved by the Macon County Board of Commissioners on July 9, 2013 and the Jackson County Board of Commissioners on August 19, 2013, the North Carolina Geodetic Survey was authorized to locate and survey the boundary line between Jackson County and Macon County; and

WHEREAS, as part of the preliminary survey work completed by North Carolina Geodetic Survey, it was determined that Jackson County and Macon County had been using a boundary established by recorded deeds and plats depicting the location of the ridgeline separating Jackson County and Macon County; and

WHEREAS, North Carolina Geodetic Survey has prepared an official survey of the Jackson County and Macon County common boundary for adoption and ratification by the Jackson County and Macon County Board of Commissioners.

WHEREAS, now that the boundary has been established by official survey, Jackson County and Macon County mutually desire to finalize the location of the common boundary shared between them; and

NOW THEREFORE, BE IT RESOLVED by the Jackson County Board of Commissioners and the Macon County Board of Commissioners that the survey completed by the North Carolina Geodetic Survey attached hereto as *Exhibit A* is hereby ratified and adopted for the purpose of locating the common boundary between Jackson County and Macon County.

BE IT FURTHER RESOLVED that upon adoption of this Resolution, Jackson County and Macon County will work together to reconcile county services to affected properties such as board of elections, zoning, building permitting, emergency response, and tax assessments.

BE IT FURTHER RESOLVED that following adoption of this Resolution, the North Carolina Geodetic Survey will be registered with the Register of Deeds in Jackson County and the Register of Deeds in Macon County and the Secretary of State's office and that upon adoption of this Resolution, staff is directed to register a copy of the same with the Register of Deeds in Jackson County and the Register of Deeds in Macon County.

[Signature pages for Jackson County and Macon County intentionally placed on separate pages.]

JACKSON COUNTY

ADOPTED this the 7th day of December, 2021.

By:

Brian Thomas McMahan, Chairman
Jackson County Board of Commissioners

Attest:

Angela M. Winchester, Clerk to Board

NORTH CAROLINA
JACKSON COUNTY

I, _____, a Notary Public, do hereby certify that BRIAN THOMAS MCMAHAN personally appeared before me this day, who, being by me duly sworn, says that he is the Chairman of the Jackson County Board of Commissioners and signed his name as said Chairman, and I do further certify that ANGELA M. WINCHESTER personally appeared before me this day, who, being by me duly sworn, says that she is the Clerk to the Jackson County Board of Commissioners and that BRIAN THOMAS MCMAHAN is Chairman of said Board of Commissioners and that she knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal of said Board; that the name of the Board was subscribed thereto by said Chairman and said common seal was affixed, all by order of the Board, and said instrument is the act and deed of said Board.

WITNESS my hand and Notarial Seal, this the 7th day of December, 2021.

NOTARY PUBLIC

My Commission Expires:

MACON COUNTY

ADOPTED this 14th day of December, 2021, at the Regular Meeting of the Macon County Board of Commissioners.

James Tate, Chairman, Macon County Board of
County Commissioners

Attest:

(Official Seal)

Derek Roland, Macon County Manager and Clerk to the Board

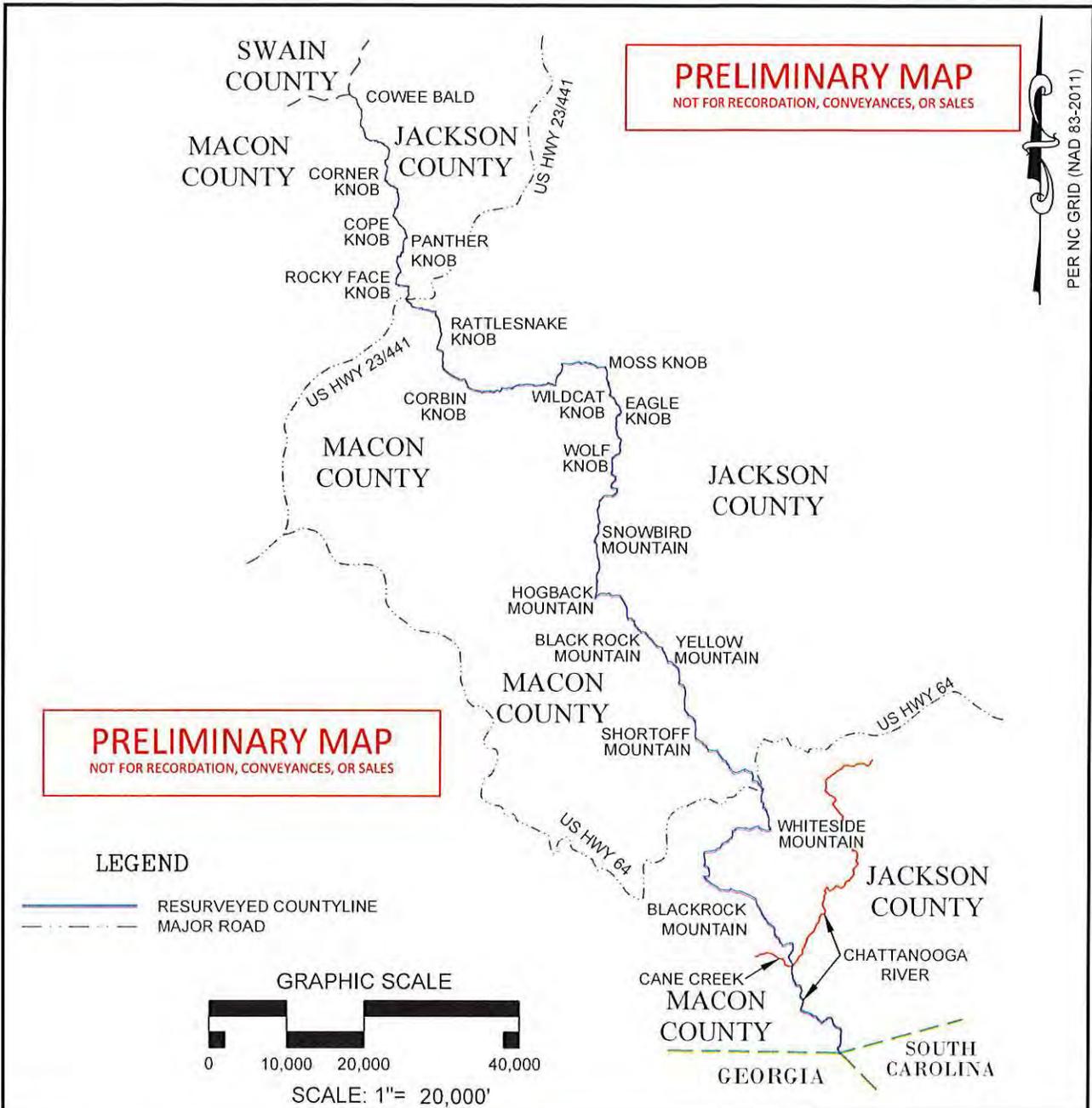
NORTH CAROLINA
MACON COUNTY

I, _____, a Notary Public, do hereby certify that JAMES TATE personally appeared before me this day, who, being by me duly sworn, says that he is the Chairman of the Macon County Board of Commissioners and signed his name as said Chairman, and I do further certify that DEREK ROLAND personally appeared before me this day, who, being by me duly sworn, says that he is the Clerk to the Macon County Board of Commissioners and that JAMES TATE is Chairman of said Board of Commissioners and that he knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal of said Board; that the name of the Board was subscribed thereto by said Chairman and said common seal was affixed, all by order of the Board, and said instrument is the act and deed of said Board.

WITNESS my hand and Notarial Seal, this the 14th day of December, 2021.

NOTARY PUBLIC

My Commission Expires:



PER NC GRID (NAD 83-2011)



EXHIBIT FOR THE RESURVEY OF THE
JACKSON AND MACON COUNTY LINE

LOCATION: JACKSON/MACON COUNTY LINE	DATE: 10/29/2021	DRAWN BY: DJF	CHECKED BY: RRH
		SCALE: 1"=20,000'	SHEET 1 OF 1

Dear Property Owner:

_____ and _____ counties requested the assistance of the North Carolina Geodetic Survey (North Carolina Emergency Management/Risk Management) to reestablish their county boundary. North Carolina Geodetic Survey has completed the resurvey and _____ and _____ counties adopted resolutions ratifying the survey as authorized in North Carolina General Statute 153A-18.

You are receiving this letter because your property has been identified as being impacted by the survey to reestablished the _____ - _____ county boundary.

The survey plats have been recorded in the Register of Deeds offices in _____ and _____ counties and provided to the North Carolina Secretary of State

_____ County
Plat Book _____ Page _____

_____ County
Plate Book _____ Page _____

If you have questions about the impact to your property you can contact:

_____ County
Contact Name _____
_____ County Tax Administrator
Email _____
Phone Number _____
Address _____

_____ County
Contact Name _____
_____ County Tax Director
Email _____
Phone Number _____
Address _____

If you have any questions or if you need any additional information concerning the survey to reestablish the _____ - _____ county boundary, you can contact Gary Thompson at gary.thompson@ncdps.gov.

Sincerely

Gary W. Thompson PLS
Deputy Risk Management Chief
Chief, North Carolina Geodetic Survey



Macon County Tax Office
5 West Main St.
Franklin, NC 28734

MEMORANDUM

TO: Macon County Board of County Commissioners
FROM: Abby Braswell, Macon County Tax Administrator
cc: Derek Roland, Mike Decker
Date: December 7, 2021
Re: Refund of Taxes

A refund was requested by William F. Mull for the 2021 taxes on a 2008 Seville Mariner 37ft boat that has situs in Craven County but was listed to Macon County.

On September 1, 2021 Mr. Mull paid his Macon County tax bill of \$879.74 for the boat stated above. On August 25, 2021 he received a bill from Craven County the actual situs of the boat.

N.C.G.S 105-381 (a)(1)a. state a valid defense for refund shall include:

A. a tax imposed through clerical error. B. An illegal tax C. A tax levied for an illegal purpose. I do not believe this is a clerical error since North Carolina Courts have ruled that clerical errors only apply to a transcription error. I believe this is an illegal tax since it was a tax on a boat that did not have situs in Macon County but does have situs in Craven County and should be taxed in Craven County.

Please consider my recommendation that the amount of \$879.74 be refunded based on the fact that the boat situs was Craven county and not Macon County and the tax levied was an illegal tax.

Thank you for your consideration.

Abby Braswell
Macon County Tax Administrator



Macon County Department of Solid Waste Management

109 Sierra Drive, Franklin, North Carolina 28734

Phone: (828) 349-2100; Fax: (828) 349-2185

Email: cstahl@maconnc.org

December 7, 2021

To: Derek Roland, County Manager

From: Chris Stahl, Director of Solid Waste Management

RE: Groundwater Monitoring Requirements at the Macon County MSW; Old Franklin; Old Highlands; and Highlands Construction and Demolition Landfills.

The Solid Waste Department has had a long-standing relationship with REIC Labs for required groundwater monitoring and reporting at the current MSW Landfill, as well as the three closed landfills in the post-closure care period. In 2019, REIC was acquired by Pace Labs. Our relationship continued under the new ownership through the 2nd semi-annual monitoring event in October, 2021. However, while REIC's services included all facets of the groundwater monitoring program, Pace Labs sole focus is on sample collection and analysis. Our required reporting to NCDEQ of each sampling event has not, therefore, been completed for the past four sampling events. Both the Pace representative, Mike Hofe, and myself have remained in contact with NCDEQ regarding this issue, and therefore, no Notice of Violation for noncompliance in reporting has been issued.

Last week, I was notified by Mr. Hofe that he was leaving his employment with Pace Labs. I understand that in part, his leaving involved the differing priorities, and Mike's inability to continue to provide complete groundwater monitoring services to his remaining REIC clients. The result for Macon County is that we will be seeking a new firm to provide this service before the first sampling event in April. More importantly, we need to get back into compliance for the past four reporting periods.

As a result, I have reached out to Andy Alexander with Bunnell Lammons (BLE). I have asked him to provide a proposal for hydro-geotechnical engineering services, to collect and review sampling data, and draft reporting information that was not provided by REIC. I believe that I should have a proposal for, at least, the data collection and evaluation piece of the project in time for the December Board meeting next week. From discussions with Mr. Alexander, I believe that BLE will address this projects in a total of four separate proposals. The first will involve the background work of obtaining and evaluating multiple years of sampling data, as well as review of historic data at each of the sites. The remaining three represent the submittal of groundwater monitoring reports to NCDEQ for the MSW Landfill; Old Franklin Landfill, and Old Highlands/Highlands C&D Landfills. Please note that the multiple proposals represent expediency, and internal processes at BLE. The proposals are not being divided to avoid formal RFQ procedures. I have been assured that the aggregate of the four proposals will remain well below the \$50,000.00 threshold, and as such, I will be requesting that the Board of Commissioners adopt a resolution exempting these services from the formal RFQ process.

Two final items regarding this issue. First, our contracted fees for monitoring with REIC were for sampling and analysis only. Additional work, including routine reporting and any additional services needed by Macon County regarding groundwater compliance were included in the sampling price. I would add that REIC has on multiple occasions provided additional services to Macon County in these regards over the years. Therefore, monies paid to REIC/Pace are, in my mind, duly earned per the contract. Second, I reached out to BLE because of their institutional knowledge of the MSW Landfill facility. BLE actually designed the groundwater monitoring system for Phase III of the landfill as part of the permitting process of the new cell. I feel like this will not only allow us to expedite the entire project, but more importantly, the reporting for Phase III as the four delinquent reports encompass the four sampling events since opening Phase III of the landfill.

I believe that this is our best path forward, and will remain in contact with Elizabeth Werner, Hydrogeologist for NCDEQ, with jurisdiction over the Macon County landfill facilities. I have already discussed my intentions, as laid out in this memo, and Ms. Werner is approving of the plan, and amiable to helping us get back into compliance without issuing a Notice of Violation, or penalties to the County. Please contact me at your convenience with any questions or comments regarding this issue.



**BUNNELL
LAMMONS
ENGINEERING**

December 7, 2021

Macon County Solid Waste Management Department
109 Sierra Drive
Franklin, NC 28734

Attention: Mr. M. Chris Stahl
Director

Subject: **Contract for Water Quality Report and Data Transmittal
Through Spring 2021**

Macon County Solid Waste Facilities [4 Landfills]
Macon County, North Carolina

Macon County LF - Permit 5703-MSWLF-1992 [BLE Contract No. J21-1101-18]

Old Franklin LF - Permit 5701-MSWLF-1989 [BLE Contract No. J21-17143-01]

Old Highlands LF - Permit 5702-MSWLF-1985 [BLE Contract No. J21-17144-01]

Highlands C&D LF - Permit 5704-MSWLF-1993 [BLE Contract No. J21-17144-01]

Dear Mr. Stahl:

Bunnell-Lammons Engineering, Inc. (BLE) is pleased to submit this contract to Macon County to provide consulting services associated with the subject Macon County facilities. This contract addresses the requirements for semi-annual reporting of water quality data as set forth by the North Carolina Department of Environmental Quality, Division of Waste Management (DWM) – Solid Waste Section (SWS). Included herein is a brief description of the background project information, a general description of our contract scope of services with related fee estimate, and authorization information.

BACKGROUND INFORMATION

The project information below was provided by Pace Analytical (Pace) and by Macon County. Additional information was obtained from our project records from previous work performed by BLE.

Macon County owns and operates an active solid waste facility [Macon County Landfill] and provides post-closure care for three (3) closed solid waste facilities including the Old Franklin Landfill, Old Highlands Landfill, and the Highlands C&D Landfill. Semi-annual sampling and reporting is required at all four (4) facilities. These services were provided by REIC of Beaver, West Virginia in the past. REIC was purchased by Pace approximately four (4) years ago. As part of the purchase, Pace continued sampling and analytical services but did not submit semi-annual water quality reports or data to the SWS as reporting is not a typical Pace service line.

Macon County requested that BLE audit the facility records, identify missing reports and data, solicit any missing information from Pace, contact the SWS to develop a plan to resolve the issue, and to prepare data submittals to the SWS for any missing information through the Spring 2021 events. This contract meets the scope of services requested by Macon County. Note that services to provide reports of the Fall 2021 sampling events will be provided under separate contract.



6004 Ponders Court, Greenville, SC 29615 ☎ 864.288.1265 📠 864.288.4430 ✉ info@blecorp.com

BLECORP.COM

SCOPE OF SERVICES

Task 1 – Records Audit, Review, Solicitation, and SWS Consultation

BLE obtained site records from Macon County, Pace, and from the NC DWM Portal. BLE reviewed the documents and identified missing data for each facility. BLE prepared a comprehensive list of the missing data and solicited Pace to provide the documents. Pace is actively accumulating the missing data (in progress). BLE contacted the SWS to discuss the issue. The SWS agreed that BLE could provide data submittals of the missing information (on behalf of the county) which will comply with the solid waste rules. The SWS indicated that they will not issue a notice of violation because the circumstances were beyond the control of Macon County and because of Macon County's proactive efforts to resolve the issue. The tasks below include the services necessary to meet the SWS requirements to update the facility records through the Spring 2021 sampling events.

Task 2 – MCLF (Phase 1 and 2) Water Quality Report & Data Submittals

Water Quality Reports (WQR) for Phase 1 and 2 have been prepared by others for the semi-annual sampling events that occurred in October 2019, June 2020, October 2020, and May 2021.

BLE will review the four (4) reports and confirm that they have been prepared in general accordance with North Carolina's Solid Waste Management Rules (15A NCAC 13B). If all the required information and data are present within the reports, BLE will transmit the October 2019, June 2020, October 2020, and May 2021 reports to SWS on behalf of Macon County. Additionally, BLE will convey the corresponding NC EDD files provided by Pace as part of the transmittal. Please note that corrections to the EDD files (if required by the SWS) will be performed by Pace.

Task 3 – MCLF (Phase 3) Laboratory Data and NC EDD File Submittal

We understand that twelve (12) water quality sampling events have been performed since 2017 for the Phase 3 waste unit. The groundwater monitoring wells sampled as part of these events include MW-24, MW-25, MW-26, and MW-27. Four (4) base line sampling events were conducted in 2017 and two semi-annual sampling events were conducted each year after (2018-2021).

BLE will collect digital and analog copies of the water quality data from Pace for the twelve (12) events for Phase 3. BLE will prepare a cover letter and issue a data transmittal of the laboratory results and NC EDD files for eleven (11) of the twelve (12) events listed above to NC SWS. The laboratory results and NC EDD files for the October 2021 sampling event will be submitted as part of water quality report issued under separate contract.

Task 4 – Old Franklin Landfill Water Quality Report & Data Submittals

Water Quality Reports (WQR) have been prepared by others for the semi-annual sampling events that occurred in October 2019, June 2020, October 2020, and May 2021.

BLE will review the four (4) reports and confirm that they have been prepared in general accordance with North Carolina's Solid Waste Management Rules (15A NCAC 13B). If all the required information and data are present within the reports, BLE will transmit the October 2019, June 2020, October 2020, and May 2021 reports to SWS on behalf of Macon County. Additionally, BLE will convey the corresponding NC EDD files provided by Pace as part of the transmittal. Please note that corrections to the EDD files (if required by the SWS) will be performed by Pace.



Task 5 – Old Highlands and Highlands C&D Landfills Water Quality Report & Data Submittals

Water Quality Reports (WQR) have been prepared by others for the semi-annual sampling events that occurred in October 2019, June 2020, October 2020, and May 2021.

BLE will review the four (4) reports and confirm that they have been prepared in general accordance with North Carolina's Solid Waste Management Rules (15A NCAC 13B). If all the required information and data are present within the reports, BLE will transmit the October 2019, June 2020, October 2020, and May 2021 reports to SWS on behalf of Macon County. Additionally, BLE will convey the corresponding NC EDD files provided by Pace as part of the transmittal. Please note that corrections to the EDD files (if required by the SWS) will be performed by Pace.

FEE ESTIMATE

We understand that Macon County has requested that we prepare this contract for the five (5) tasks described herein. BLE's fee for all combined tasks will be a lump sum of **\$14,900**. Invoices will be issued monthly on a percent complete basis.

SCHEDULE

The data submittals will be issued to the SWS within 3 weeks after BLE has received and reviewed the data provided by Pace.

AUTHORIZATION

As our written authorization for the above scope of services, please execute the attached acceptance sheet and return the acceptance copy of this contract to BLE.

Any exceptions to this contract or special requirements not covered in the contract should be attached to the returned acceptance copy for the mutual consideration of both parties. Please note that the Terms and Conditions are a part of this contract. Any Purchase Order issued to authorize this project should reference this document and BLE Contract Numbers J21-1101-18, J21-17143-01, and J21-17144-01).



Contract for Water Quality Report and Data Transmittal
Macon County Solid Waste Facilities

December 7, 2021
BLE Project Number [Various]

CLOSING

We appreciate the opportunity to serve as your consultant at this site. If you have any questions, please do not hesitate to contact us at (864) 288-1265.

Sincerely,
BUNNELL-LAMMONS ENGINEERING, INC.


Riley L. Blais, G.F.T.
Staff Hydrogeologist


Andrew W. Alexander, P.G., RSM
Consultant Hydrogeologist

Attachments: Contract Acceptance Sheet with Terms and Conditions

\\blegvlfs1\solidwasteprojects\macon county landfill active, nc\1101-18 wqr october 2021\02 contract all sites draft contract for macon county sw 1101-18 and 2 others.docx

**ACCEPTANCE SHEET WITH
TERMS AND CONDITIONS**



PROPOSAL ACCEPTANCE SHEET

The purpose of this sheet is to obtain your written authorization for our services and confirm the terms and conditions under which these services are provided as shown below.

Compensation for services rendered will be based on the attached schedule of fees (or as otherwise indicated below) which are part of this work authorization. If we are requested to modify the scope of work at your request or determine during the execution of the work that a modification of scope is required, we will promptly seek and confirm in writing a mutually agreeable revision of the scope of work and associated charges. All testing will be performed in accordance with the applicable specifications unless otherwise noted and test results apply only to the materials actually tested.

Project Name and Proposal Number: Contract for Water Quality Report and Data Transmittal - Through Spring 2021
BLE Contract No. J21-1101-18, J21-17143-01, & J21-17144-01

Project Location: Macon County [4 Solid Waste Facilities]
Macon County, North Carolina

WORK AUTHORIZED BY:

Signature _____ Date _____
Print Name and Title - *Signatory warrants his/her authority to bind the entity represented here.*

Company Name _____
Address _____
City _____ State _____ Zip Code _____

FOR PAYMENT OF CHARGES: (BLE should send invoices to)

Firm: _____ Attention: _____
Address: _____
City, State: _____ Zip Code: _____ Phone Number: _____
Email Address: _____ Fax Number: _____

SPECIAL INSTRUCTIONS: _____



TERMS AND CONDITIONS

WHEREAS, CLIENT is seeking engineering and/or environmental or other consulting services in regards to services associated with a property or properties ("Subject Property") and/or services associated with a specific activity or activities; and Bunnell-Lammons Engineering, Inc., (hereinafter "BLE") is an independent consultant. Therefore, CLIENT and BLE (collectively, the "Parties") agree as follows (the "Agreement").

1. **SERVICES TO BE PROVIDED.** BLE through and by its officers, employees and subcontractors, is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in BLE's proposal. No third party beneficiaries are intended by this agreement.

2. **PAYMENT TERMS.** Client agrees to pay BLE's invoice upon receipt. If payment is not received within 30 days from the Client's receipt of invoice, Client agrees to pay a service charge on the past due amount at the greater of 1.5% per month or the allowable legal rate, including attorney's fees and expenses if BLE's fee is collected through an attorney. No deduction shall be made from invoice on account of liquidated damages unless expressly included in the Agreement. BLE may suspend services until paid on any project where payment of invoiced amounts not reasonably in dispute is not received by BLE within 60 days of Client's receipt of BLE's invoice. Invoices will be sent approximately monthly for the services performed.

3. **STANDARD OF CARE.** BLE will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of BLE's profession practicing in the same or similar locality at the time of service. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY BLE'S PROPOSAL OR BY BLE'S ORAL OR WRITTEN REPORTS. Nothing in this agreement or in the services provided by BLE is intended to create, nor shall it be construed to create, a fiduciary relationship owed by either party to one another.

4. **INSURANCE.** BLE maintains insurance coverage as follows:

- a. Worker's Compensation Insurance.
- b. Employers Liability Insurance.
- c. Commercial General Liability Insurance.
- d. Professional Errors and Omissions Insurance.

Certificates of Insurance can be provided upon acceptance of this agreement and upon request.

5. **PROFESSIONAL LIABILITY.** FOR ADDITIONAL CONSIDERATION FROM BLE OF \$10.00, RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, CLIENT AGREES THAT BLE'S LIABILITY, AND THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND SUBCONTRACTORS, TO CLIENT OR ANY THIRD PARTY DUE TO ANY NEGLIGENT PROFESSIONAL ACTS, ERRORS OR OMISSIONS OR BREACH OF CONTRACT BY BLE WILL BE LIMITED TO AN AGGREGATE OF \$50,000 OR BLE'S TOTAL CHARGES, WHICHEVER IS GREATER. IF CLIENT PREFERS TO HAVE HIGHER LIMITS OF PROFESSIONAL LIABILITY, BLE AGREES TO INCREASE THE AGGREGATE LIMIT, UP TO A MAXIMUM OF \$100,000, UPON CLIENT'S WRITTEN REQUEST AT THE TIME OF ACCEPTING BLE'S PROPOSAL, PROVIDED CLIENT AGREES TO PAY AN ADDITIONAL CONSIDERATION OF 5% OF TOTAL CHARGES, OR \$500, WHICHEVER IS GREATER. THE ADDITIONAL CHARGE FOR THE HIGHER LIABILITY LIMIT IS BECAUSE OF THE GREATER RISK ASSUMED BY BLE AND IS NOT A CHARGE FOR ADDITIONAL PROFESSIONAL LIABILITY INSURANCE. IN ADDITION, CLIENT FURTHER AGREES THAT NEITHER BLE NOR ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND/OR SUBCONTRACTORS SHALL BE LIABLE TO CLIENT FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OTHERWISE. THE LIMITATIONS SET OUT HEREIN SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

6. **SITE OPERATIONS.** Client will arrange for right-of-entry to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

BLE's field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated location. BLE's field personnel will avoid hazards or utilities which are visible to them at the site. If BLE is advised in writing of the presence or potential presence of underground or above ground obstructions, such as utilities, BLE will give special instructions to BLE's field personnel. BLE is not responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions owned by Client or third parties, except to the extent such damage or loss is a result of BLE's negligence. Otherwise, Client agrees for the additional consideration of \$1.00, the receipt and sufficiency being hereby acknowledged, to defend, indemnify and hold BLE, its directors, officers, employees, agents and subcontractors harmless, from any such claims, suits or losses, including related reasonable attorney's fees.

BLE will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in BLE's proposal, BLE's charges do not include cost

of restoration due to any related damage which may result. If Client requests BLE to repair such damage, BLE will do so at an appropriate additional cost.

Field tests or boring locations described in BLE's report or shown on sketches are based on specific information furnished by others or estimates made in the field by BLE personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in BLE's proposal or report.

7. **FIELD REPRESENTATIVE.** The presence of BLE or its subcontractor's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation and/or field testing of specific aspects of the project as authorized by Client. Should a contractor(s) not retained by BLE be involved in the project, Client will advise such contractor(s) that BLE's services do not include supervision or direction of the means, methods or actual work of the contractor(s), its employees or agents. Client will also inform contractor that the presence of BLE's field representative for project administration, assessment, observation or testing will not relieve the contractor of its responsibilities for performing the work in accordance with the plans and specifications.

If a contractor (not a subcontractor of BLE) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for working conditions on the job site and/or Subject Property, including security and safety of all persons and property during performance of the work, and compliance with all Client safety requirements and OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that BLE will not be responsible for job or site safety or security on the project, other than for BLE's employees and subcontractors, and that BLE does not have the duty or right to stop the work of the contractor, the Client or other third parties.

8. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing BLE's services. If this occurs, BLE will promptly notify and consult with Client, but will act based on BLE's sole judgment where risk to BLE personnel is involved. Possible actions could include:

- a. Complete the original Scope of Services in accordance with the procedures originally intended in BLE's proposal, if practicable in BLE's judgment;
- b. Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
- c. Terminate the services effective on the date specified by BLE in writing.

9. **SAMPLE DISPOSAL.** Test specimens or samples generally are consumed or substantially altered during testing and any remnants are disposed of immediately upon completion of tests. Remaining drilling samples and other specimens are disposed of 30 days after submission of BLE's report. In the event that test samples contain toxic or hazardous constituents as defined by applicable law, upon completion of any testing and temporary storage by BLE and per Client's stated preference, BLE will return such samples to Client for proper disposal.

10. **WASTE DISPOSAL.** If Client requests BLE to containerize drilling wastes and/or fluids produced by BLE's activity ("Wastes"), Client will provide a secure temporary storage location at or near the project site to prevent tampering with such containerized Wastes. Non-hazardous Wastes will be disposed of by BLE for an additional charge at an appropriately licensed facility. Any hazardous Wastes will be disposed of under manifest executed by Client at any properly licensed facility selected by Client with BLE's assistance. At no time will BLE take title to such hazardous Wastes.

11. ***CLIENT DISCLOSURE.** Client agrees to advise BLE upon execution of this Agreement of any hazardous substance or any condition, known or that reasonably should be known by Client, existing in, on, or near the site that presents a potential danger to human health, the environment, or BLE's equipment. Client agrees to provide BLE continuing related information as it becomes available to the Client. By virtue of entering into this Agreement or providing services hereunder, BLE does not assume control of or responsibility as an operator or otherwise for the site or the person(s) in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment. Client agrees under advice of its counsel to notify the appropriate federal, state or local public agencies as required by law; or otherwise to disclose, in a timely manner, any information that may be necessary to prevent damage to human health, safety, or the environment.



12. *ENVIRONMENTAL INDEMNITY In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by law and for separate and valuable consideration of \$1.00, the receipt and sufficiency being hereby acknowledged, Client agrees to defend, hold harmless and indemnify BLE from and against any and all claims, liabilities, or judgments, except to the extent finally determined as being caused by BLE's negligence or willful misconduct, resulting from:

a. Client's violation of any federal, state, or local statute, regulation or ordinance relating to the management or disposal of toxic or hazardous substances or constituents;

b. Client's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at the site;

c. Toxic or hazardous substances or constituents introduced at the site by Client or third persons before, during or after the completion of BLE's services;

d. Allegations that BLE is a handler, generator, operator, treator, storer, transporter, or disposer under the Resource Conservation and Recovery Act of 1976 as amended or any other similar federal, state or local regulation or law due to the BLE's services unless expressly retained by Client for such services; or,

e. Any third party suit or claim for damages against BLE alleging strict liability, personal injury (including death) or property damage from exposure to or release of toxic or hazardous substances or constituents at or from the project site before, during or after completion of BLE's services under this Agreement.

13. *EQUIPMENT CONTAMINATION. BLE will endeavor to clean its laboratory and field equipment which may become contaminated in the conduct of BLE's services. Occasionally, such equipment cannot be completely decontaminated because of the type of hazards encountered. If this occurs, it will be necessary to dispose of the equipment in a manner similar to that indicated for hazardous samples or waste and to charge Client for the loss. Client agrees to pay the fair market value of any such equipment and reasonable disposal costs.

14. DOCUMENTS. BLE will furnish Client the agreed upon number of written reports and supporting documents. These instruments of services are furnished for Client's exclusive internal use and reliance, use of Client's counsel, use of Client's qualified bidders (design services only) and for regulatory submittal in connection with the project or services provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

a. All documents generated by BLE under this Agreement shall remain the sole property of BLE. Any unauthorized use or distribution of BLE's work shall be at Client's and recipient's sole risk and without liability to BLE. BLE may retain a confidential file copy of its work product and related documents it receives or relies upon so that BLE can support and/or defend its work.

b. If Client desires to release, or for BLE to provide, BLE's report(s) to a third party not described above for that party's reliance, BLE will agree to such release provided BLE receives a written request from Client and a written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement (e.g. Secondary Client Agreement). Reports provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that BLE's report(s) reflects conditions only at the time of the study and may not reflect conditions at a later time. Client further acknowledges that such request for release creates a potential conflict of interest for BLE and by making such a request, Client waives any such claim if BLE complies with the request.

c. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by BLE pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without BLE's prior written approval.

d. Client shall furnish documents or information reasonably within Client's control and deemed necessary by BLE for proper performance of BLE's services. BLE may rely upon Client-provided documents in performing the services required under this Agreement; however, BLE assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client, but BLE may retain confidential file copies to support its report.

e. Upon Client's request, BLE's work product may be provided on magnetic media or submitted electronically. By such request, Client agrees that the written copy retained by BLE in its files shall be the official base document. BLE makes no warranty or representation to Client that the magnetic/electronic copy is accurate or complete, but will correct in good faith any omissions or errors brought to BLE's attention by Client. Any modifications of such magnetic copy/electronic by Client shall be at Client's risk and

without liability to BLE. Such magnetic copy/electronic is subject to all other conditions of this Agreement.

15. CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit including use of mediation, prior to filing of any suit. However, in the event that a claim results in litigation, then the prevailing party shall be entitled to recover from the non-prevailing party the prevailing party's reasonable legal fees and expenses associated with such litigation. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. OPINIONS OF COST. If requested, BLE will use its best efforts and experience on similar projects to provide realistic opinions or estimates of costs for remediation or construction as appropriate based on reasonably available data, BLE's designs or BLE's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation unless specifically agreed otherwise, in writing with BLE. Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond BLE's control.

17. TESTIMONY. Should BLE or any BLE employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing, or trial, in relation to services provided under this Agreement, and BLE is not a party in the dispute, then BLE shall be compensated by Client for the associated reasonable expenses and labor for BLE's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides BLE such compensation, Client will receive a credit or refund on any related double payments to BLE.

18. CONFIDENTIALITY. BLE will maintain as confidential any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction.

19. GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of South Carolina.

20. PRIORITY OVER FORM AGREEMENT/PURCHASE ORDERS. The Parties agree that the provisions of these terms and conditions shall control over and not be superseded by any provisions of any other documents or writings and may be amended only by written instrument signed by both Client and BLE. Client may issue purchase orders to BLE to satisfy Client's purchasing requirements. It is agreed that the terms and conditions included in such purchase orders shall be considered deleted in their entirety and such terms and conditions shall be void.

21. SURVIVAL. All provisions of this Agreement for payment, indemnity or allocation of responsibility or liability between Client and BLE shall survive the completion of the services and the termination of this Agreement.

22. SEVERABILITY. In the event any provision of this Agreement is found to be void or unenforceable under law, the court shall instead reform or replace any void or unenforceable provision with a valid and enforceable provision that gives meaning to the intention of the provision or shall strike the provision from the Agreement. The remaining provisions shall continue in full force and effect.

23. ASSIGNMENT. This Agreement may not be assigned by either party without the prior permission of the other.

24. CONSIDERATION. The parties agree that the charges for BLE's services are sufficiently adjusted to include any specific consideration payable to Client under these terms and conditions.

25. INTEGRATION. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

26. FORCE MAJEURE. Any failure of performance under this Agreement shall not constitute breach if said failure of performance is due to an event or events beyond the reasonable control of the Parties or either of them; such events of force majeure shall include, but not be limited to, acts of God, natural disasters, war and strikes.

If an event of force majeure occurs, BLE shall notify CLIENT, identify the event of force majeure and specify the anticipated time when the Work can be continued. Timely notification of an event of force majeure shall extend the completion date of this Agreement for a time equal to the continuation of the force majeure plus any reasonable time necessary to resume Work. CLIENT agrees to pay BLE for all reasonable costs incurred associated with labor and equipment, including subcontractor services, necessary to resume Work.



27. CONFIDENTIALITY. BLE and CLIENT recognize that each of them may encounter written or unwritten confidential information regarding the other Party during the course of the services set forth in the Proposal. Confidential information means all technical, economic, financial, pricing, marketing or other information that has not been published and/or is not otherwise available to members of the public and includes, without limitation, trade secrets, proprietary information, customer lists, scientific, technical and business studies, analyses, processes, methods, procedures, policies and information. The Party receiving such confidential information agrees to hold as confidential and not to disclose such information.

All drawings, specifications, technical documents of any nature, and copies thereof, prepared pursuant to this Agreement shall be the property of BLE and are to be treated as confidential. They are not to be disclosed to others without BLE prior written approval. BLE shall treat as confidential all documents and records (the "Documents") belonging to CLIENT or a third party that BLE reviews during the performance of services set forth in the Proposal. BLE shall not disclose the Documents to any third party without the prior written consent of the Documents' owner or owners. No articles, papers or treatises related to or in any way associated with the services set forth in the Proposal shall be submitted for publication without BLE's prior written consent. BLE may retain copies of all such documents for archival purposes and to support or defend its work. The confidentiality restrictions herein shall not apply to information that: (1) the Parties had in their possession prior to disclosure; (2) becomes public knowledge through no act or fault of the receiving Party; (3) the receiving Party lawfully acquires from a third party which does not have a confidentiality obligation to the Party to which the information pertains; (4) is independently developed by the receiving Party; or (5) is required to be disclosed by law. Without the express written consent of BLE, this Agreement creates no duties or liabilities of BLE to third parties who may rely on the Work provided or the documents delivered hereunder. The Parties agree that although CLIENT may provide copies of BLE's reports to prospective property purchasers and their agents, no party other than CLIENT, its counsel or appropriate regulatory bodies may rely on the contents of BLE's reports.

28. INDEMNITY. If CLIENT or any of its directors, officers, shareholders, employees, agents, attorneys, successors, assigns and affiliates (collectively, the "CLIENT Affiliates") become subject to any liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs and expenses (including, without limitation, fees and disbursements of attorneys and consultants) (collectively, "Claims"), arising from, related to or in connection with:

- a. the negligence, gross negligence or willful misconduct of BLE or its directors, officers, employees, subcontractors, agents and affiliates (collectively, the "Representatives");
- b. a violation of a statute or regulation by BLE or its Representatives; and/or
- c. a breach of this Agreement by BLE or its Representatives;

BLE shall indemnify and hold harmless CLIENT and its Affiliates from and against any and all Claims. For purposes of the preceding sentence, "negligence" shall be deemed to include both negligent acts and omissions, but this indemnification shall only extend to the proportional extent of BLE's violation of law, breach, negligence or willful misconduct.

If BLE or any of its directors, officers, employees, agents, attorneys, successors, assigns and affiliates (collectively, the "BLE Affiliates") become subject to any liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs and expenses (including, without limitation, fees and disbursements of attorneys and consultants) (collectively, "Claims"), arising from, related to or in connection with:

- a. the negligence, gross negligence or willful misconduct of CLIENT or its directors, officers, shareholders, employees, subcontractors, agents and affiliates (collectively, the "Representatives");
- b. a violation of a statute or regulation by CLIENT or its Representatives; and/or
- c. a breach of this Agreement by CLIENT or its Representatives;

CLIENT shall indemnify and hold harmless BLE and its Affiliates from and against any and all Claims. For purposes of the preceding sentence, "negligence" shall be deemed to include both negligent acts and omissions, but this indemnification shall only extend to the proportional extent of CLIENT's violation of law, breach, negligence or willful misconduct.

29. NON-EXCLUSIVITY. BLE recognizes and agrees that its services hereunder are to be provided on a non-exclusive basis.

30. WAIVER. Waiver by either Party of any term, provision or condition of this Agreement shall not constitute a precedent or bind either party to a waiver of any succeeding breach of the same or any other term, provision or condition of this Agreement.

31. TERMINATION. This Agreement terminates automatically when BLE completes the services set forth in the Proposal. Either Party may terminate this Agreement without cause upon 30 days written notice to the other Party. In the event CLIENT requests termination prior to completion, CLIENT agrees to pay BLE for all reasonable costs incurred to date and reasonable charges associated with such termination.

NOTES:

*Applies only if toxic or hazardous substances or constituents are anticipated or encountered.

For work in the State of Georgia, delete the words "or any third party" as such words appear in Paragraph 5

 END OF DOCUMENT

PAS revision 8.2 – 08/11/2020

New Atlantic Contracting Inc
 2635 Reynolda Rd
 Winston Salem, North Carolina 27106
 Phone: (336) 759-7440
 Fax: (336) 759-7445

Project: 2102 - Macon Middle School Renovations
 1345 Wells Grove Road
 Franklin, North Carolina 28734

Prime Contract Potential Change Order #013: Change event numbers 55, 63, 64, 66, 68, 70 and 71

TO:	Macon County 5 West Main Street Franklin, North Carolina 28734	FROM:	New Atlantic Contracting Inc 2635 Reynolda Rd Winston Salem, North Carolina 27106
PCO NUMBER/REVISION:	013 / 1	CONTRACT:	1 - Macon Middle School Renovations Prime Contract
REQUEST RECEIVED FROM:		CREATED BY:	Frank Harris (New Atlantic Contracting Inc)
STATUS:	Pending - In Review	CREATED DATE:	12/7/2021
REFERENCE:		PRIME CONTRACT CHANGE ORDER:	None
FIELD CHANGE:	No		
LOCATION:		ACCOUNTING METHOD:	Amount Based
SCHEDULE IMPACT:		PAID IN FULL:	No
EXECUTED:	No	SIGNED CHANGE ORDER RECEIVED DATE:	
		TOTAL AMOUNT:	\$17,396.00

POTENTIAL CHANGE ORDER TITLE: Change event numbers 55, 63, 64, 66, 68, 70 and 71

CHANGE REASON: Client Request

POTENTIAL CHANGE ORDER DESCRIPTION: *(The Contract Is Changed As Follows)*
 December 7, 2021

Mr. Chris Coleman
 1815 S. Tyron St. Suite A
 Charlotte, NC 28203

RE: Macon County Middle School
 Macon County Schools
 Franklin, NC 28734
 Potential Change Order Number
 PCO #013

NAC JOB# 2102

Dear Chris,

In accordance with PROJECT REQUIREMENTS, attached is our proposal for the following Change Events: 55, 63, 64, 66, 70, 71 and 77.

The total cost estimate of this work per the enclosed summary sheet and attached back-up is **\$17,396.00**.

This change will not increase the contract time; however, we reserve the right to request an equitable adjustment in the contract amount and time as a result of the cumulative impact of this and future change orders.

This proposal is based on the following qualifications:
 We will proceed with this revised work upon receipt of written acceptance of this proposal. In the interim, we are proceeding in accordance with our current contract documents.

It may be necessary to revise this proposal if it is not accepted within 5 days, or if the progress of the work changes the conditions upon which this proposal is based.

Thank you for your prompt consideration of this proposal.

Very truly yours,

New Atlantic Contracting

ATTACHMENTS:

[#55 E101 Missing Hardware Set# 27.pdf](#) , [_macon county middle faucets change \(R1.docx](#) , [_macon county middle faucets change.docx](#) , [_Macon VFD.msg](#) , [_MCMS bleacher circuit proposal.docx](#) , [_RE_MCMS Phase 3.msg](#) , [_Macon County Middle School -CO #55-.msg](#) , [_Request for Change Order - Macon Middle Transaction Windows.doc](#) , [_Macon County Screw CO.pdf](#)

#	Budget Code	Description	Amount
1	08-100.M Doors	East wing missing hardware E101 add hardware set #27	\$1,302.35
2	08-700.S Hardware.Commitment	Install hardware for E101	\$250.00
3	09-301.S Ceramic Tile.Commitment	NE Bathroom Floor Leveling	\$1,740.00
4	08-410.S Windows.Commitment	Transaction window rework	\$1,430.00
5	07-542.S Roofing.Commitment	Repair screw bulges on NE roof	\$1,126.31
6	26-001.S Electrical	Added bleacher circuit	\$1,030.00
7	23-001.S HVAC	AHU-12 VFD	\$4,260.00
8	22-001.S Plumbing	Install new faucets in classrooms as required	\$4,724.00
Subtotal:			\$15,862.66
Material (6.75% Applies to Materials.):			\$0.00
Equipment (6.75% Applies to Equipment.):			\$0.00
Labor (39.00% Applies to Labor.):			\$0.00
OH&P Sub (7.50% Applies to Material Purchase Order and Commitment.):			\$1,189.70
OH&P LME (15.00% Applies to Equipment, Materials, and Labor.):			\$0.00
Insurance (1.00% Applies to Temporary Labor, Material Purchase Order, Payroll Taxes & Insurance, Owner Cost, Commitment, Equipment, Materials, Labor, Other, and Professional Services.):			\$170.52
P&P Bond (1.00% Applies to Temporary Labor, Material Purchase Order, Payroll Taxes & Insurance, Owner Cost, Commitment, Equipment, Materials, Labor, Other, and Professional Services.):			\$172.23
Rounding (≈ 0.01% Applies to Temporary Labor, Material Purchase Order, Payroll Taxes & Insurance, Owner Cost, Commitment, Equipment, Materials, Labor, Other, and Professional Services.):			\$0.89
Grand Total:			\$17,396.00

Mark Sealy (SGA NarmourWright Design)
1815 S. Tryon Street, Suite A
Charlotte, North Carolina 28226

Macon County
5 West Main Street
Franklin, North Carolina 28734

New Atlantic Contracting Inc
2635 Reynolda Rd
Winston Salem, North Carolina 27106

SIGNATURE DATE

SIGNATURE DATE

SIGNATURE DATE

**RESOLUTION EXEMPTING ARCHITECTURAL SERVICES FOR MACON
MIDDLE SCHOOL LOCKER ROOM FACILITY IN MACON COUNTY,
NORTH CAROLINA, FROM THE PROVISIONS OF ARTICLE 3D OF CHAPTER
143 OF THE NORTH CAROLINA GENERAL STATUTES**

WHEREAS, Article 3D of Chapter 143 of the North Carolina General Statutes establishes a general public policy regarding procurement of architectural services; and

WHEREAS, North Carolina General Statutes Section 143-64.32 provides:

"Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000)"; and

WHEREAS, Macon County is now in need of architectural services for the proposed Macon Middle School Locker Room Facility in Macon County, North Carolina; and

WHEREAS, the estimated professional architectural fee for the required architectural work on the proposed Macon Middle School Locker Room Facility in Macon County, North Carolina is in an amount less than fifty thousand (\$50,000) dollars.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF MACON that the proposed architectural services for the proposed Macon Middle School Locker Room Facility in Macon County, North Carolina, is hereby exempted in writing from the provisions of Article 3D of Chapter 143 of North Carolina General Statutes pursuant to the provisions of N.C. Gen. Stat. §143-64.32.

Adopted this 14th day of December 2021.

James Tate, Chairman
Macon County Board of Commissioners

ATTEST:

Clerk to the Board

(COUNTY SEAL)

RESOLUTION EXEMPTING SURVEYING SERVICES FOR FRANKLIN HIGH SCHOOL IN MACON COUNTY, NORTH CAROLINA, FROM THE PROVISIONS OF ARTICLE 3D OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES

WHEREAS, Article 3D of Chapter 143 of the North Carolina General Statutes establishes a general public policy regarding procurement of surveying services; and

WHEREAS, North Carolina General Statutes Section 143-64.32 provides:

"Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000)"; and

WHEREAS, Macon County is now in need of surveying services for Franklin High School in Macon County, North Carolina; and

WHEREAS, the estimated professional surveying fee for Franklin High School in Macon County, North Carolina is in an amount less than fifty thousand (\$50,000) dollars.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF MACON that the proposed surveying services for Franklin High School in Macon County, North Carolina, is hereby exempted in writing from the provisions of Article 3D of Chapter 143 of North Carolina General Statutes pursuant to the provisions of N.C. Gen. Stat. §143-64.32.

Adopted this 14th day of December 2021.

James Tate, Chairman
Macon County Board of Commissioners

ATTEST:

Clerk to the Board

(COUNTY SEAL)

**RESOLUTION EXEMPTING ENGINEERING SERVICES FOR FRANKLIN
HIGH SCHOOL IN MACON COUNTY, NORTH CAROLINA, FROM THE
PROVISIONS OF ARTICLE 3D OF CHAPTER 143 OF THE NORTH CAROLINA
GENERAL STATUTES**

WHEREAS, Article 3D of Chapter 143 of the North Carolina General Statutes establishes a general public policy regarding procurement of engineering services; and

WHEREAS, North Carolina General Statutes Section 143-64.32 provides:

"Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000)"; and

WHEREAS, Macon County is now in need of engineering services for Franklin High School in Macon County, North Carolina; and

WHEREAS, the estimated professional engineering fee for Franklin High School in Macon County, North Carolina is in an amount less than fifty thousand (\$50,000) dollars.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF MACON that the proposed engineering services for Franklin High School in Macon County, North Carolina, is hereby exempted in writing from the provisions of Article 3D of Chapter 143 of North Carolina General Statutes pursuant to the provisions of N.C. Gen. Stat. §143-64.32.

Adopted this 14th day of December 2021.

James Tate, Chairman
Macon County Board of Commissioners

ATTEST:

Clerk to the Board

(COUNTY SEAL)



AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Thirteenth day of December in the year Two Thousand Twenty-One

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

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Macon County Board of Commissioners
5 West Main Street
Franklin, NC 28734

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

LS3P ASSOCIATES LTD.
227 West Trade Street, Suite 700
Charlotte, NC 28202

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

Franklin High School Project
Franklin, North Carolina
LS3P Project: M201-217240

The Owner and Architect agree as follows: See Exhibit A.

The Design Contract will be completed in three (3) phases:

- Phase I:** Design of the new stadium and field house.
- Phase II:** Comprehensive Facility Study of the existing campus vs. a new building.
- Phase III:** Implement the recommendations of the Phase II Study.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit A.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The project will be located on the existing Franklin High School Campus.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

See Exhibit A.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any: See Exhibit A.

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- .2 Construction commencement date:

- .3 Substantial Completion date or dates:

- .4 Other milestone dates:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Design-Bid-Build or CM at Risk. To be determined by the Owner.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Follow the Codes and Laws of the State of North Carolina.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Derek Roland
 Macon County Manager
 5 West Main Street
 Franklin, NC 28734
 Tel: 828.349.2025

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Owner will address

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer:
 To be determined as authorized by the Owner.

- .2 Civil Engineer:
 To be retained by LS3P.

- .3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Paul Davis Boney, FAIA, Senior Vice President
LS3P ASSOCIATES LTD.
227 West Trade Street, Suite 700
Charlotte, NC 28202 Tel: 910.520.0812
Email: paulboney@ls3p.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

- .1 Associate Architect:

PFA Architects
196 Coxe Avenue
Asheville, NC 28801

Mike Watson – retained by PFA Architects

- .32 Structural Engineer:

ARP Engineering
P.O. Box 587
Monroe, NC 28111

- .3 Mechanical, Electrical and Plumbing Engineer:

CMTA of Kentucky, Inc.
8801 J M Keynes Drive, Suite 240
Charlotte, NC 28262

- .4 Landscape Architecture:

CLH Design, P.A.
400 Regency Forest Drive, Suite 120
Cary, NC 27518

- .5 Civil Engineer:

WGLA Engineering, PLLC
724 5th Avenue West
Hendersonville, NC 28739

- .6 Cost Consultant:

McDonough Bolyard Peck, Inc. d/b/a MBP
301 McCullough Drive
Charlotte, NC 28262

- .7 Food Design:

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Foodesign Associates, Inc.
615 S. College Street, 9th Floor
Charlotte, NC 28202

§ 1.1.11.2 Consultants retained under Supplemental Services:

None unless authorized in writing by Owner.

§ 1.1.12 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than ONE MILLION and NO /100 DOLLARS (\$ 1,000,000.00) for each occurrence and TWO MILLION and NO/100 DOLLARS (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) combined single limit for per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) each accident, ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) each employee, and ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) per claim and ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

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§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;

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- 3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- 4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect – Phase II
§ 4.1.1.2 Multiple preliminary designs	Architect

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.3 Measured drawings	Owner
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Owner
§ 4.1.1.13 On-site project representation	One (1) visit per week
§ 4.1.1.14 Conformed documents for construction	Contractor
§ 4.1.1.15 As-designed record drawings	Contractor
§ 4.1.1.16 As-constructed record drawings	Contractor
§ 4.1.1.17 Post-occupancy evaluation	Architect
§ 4.1.1.18 Facility support services	Owner
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect / Owner
§ 4.1.1.21 Telecommunications/data design	Architect – conduit only
§ 4.1.1.22 Security evaluation and planning	Architect – conduit only
§ 4.1.1.23 Commissioning	Third Party
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	Architect – additional services
§ 4.1.1.26 Multiple bid packages	Architect
§ 4.1.1.27 Historic preservation	Owner
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	Owner
§ 4.1.1.30 Other Supplemental Services	Owner

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

None unless authorized in writing by Owner.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

None unless authorized in writing by Owner.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .8 Evaluation of the qualifications of entities providing bids or proposals;
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .10 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

Init.

- .1 two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 one (1) site visit per week to the site by the Architect during construction
- .3 one (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 one (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional

Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

Init.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the

Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered under the NC Rules for Mediated Settlement Conference and other Settlement Procedures in Superior Court. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation in section 8.2.2 above, the method of binding dispute resolution shall be Litigation in Macon County, North Carolina, Superior Court.
(Check the appropriate box.)

Litigation in a court of competent jurisdiction
(Paragraphs deleted)

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

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

Init.

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

\$0.00

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

By Owner

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

Init.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

- .2 Percentage Basis
(Insert percentage value)

- .3 Other
(Describe the method of compensation)

All fees can be converted to lump sum in this contract.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Phase I and Phase III

Schematic Design Phase	ten	percent (10	%)
Design Development Phase	fifteen	percent (15	%)
Construction Documents Phase	thirty-five	percent (35	%)
Procurement Phase	five	percent (5	%)
Construction Phase	thirty	percent (30	%)
Close-out	five		5	
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit C.

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Printing, reproductions, plots, and standard form documents;
(Paragraphs deleted)

.2 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
(Paragraphs deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

NTE \$10,000.00

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$ N/A) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

1.5 % per month

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 Exhibits

(Paragraphs deleted)

Exhibit A – Scope of Services

Exhibit B - Project Schedule

Exhibit C - Hourly Rates

Init.

(Paragraph deleted)

- .3 Other documents:
(List other documents, if any, forming part of the Agreement.)

"A Complex Puzzle, Onsite K-12 School Replacements" by LS3P.

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

OWNER (Signature)

James P. Tate
Chairman
Macon County Board of Commissioners

(Printed name and title)

Paul Davis Boney

ARCHITECT (Signature)

Paul Davis Boney, FAIA
Sr. Vice President | K12 Practice Leader | Principal

(Printed name, title, and license number, if required)

EXHIBIT A
SCOPE OF SERVICES
Franklin High School Project
Revised December 06, 2021

Phase I: New Stadium Facility

Phase 1 of the Franklin High School Project will be the design and construction of a New Stadium Facility. The new facility will consist of seating for 2,500 home seats and 1,000 visitors. A new modern field house will be constructed. There are significant flooding and stormwater issues with the site that will be addressed. There are several existing programs in this area also that will need to be relocated such as greenhouses, etc. Grading will be a key to blending the New Stadium Project with Phase III.

Projected Budget = \$14,000,000

This budget will be finalized during Phase I Schematic Design.

Phase II: Comprehensive Facility Plan of the Existing Campus Building vs. a New Building

The Design Team will study the buildings on the existing campus and develop a plan to bring them up to a 50-year standard, current codes, structural, mechanical, electrical and plumbing. Space Analysis for teaching current and future students. We will develop a plan for the location of students while renovations are completed.

The Design Team will study the design and construction of a new facility.

The Design Team will meet with teachers, students, parents and members of the public to obtain input on both options.

The Design Team will use as a reference, "A Complex Puzzle, Onsite K-12 School Replacements" by Taylor Morris or LS3P. This was given to the Joint Committee.

The Design Team will develop a final report.

Phase III: Implement the Recommendation of the Phase II Study

Fees associated with Phase I and II

Phase I: 6.0% of the estimated construction cost
(6.0% x \$14,000,000= \$840,000)

This fee will be adjusted at end of Schematic Design to reflect the actual budget.

Approved Phases by BOCC:

- Schematic Design Phase- 10% (per pg. 21 of AIA contract)
- Design Development Phase- 15% (per pg. 21 of AIA contract)

25% x \$840,000 = \$210,000

EXHIBIT A
SCOPE OF SERVICES
(continued)

Phase II: Advance Planning Study cost is ½ of 1% of the Estimated Construction Cost
(220,000 sq ft* x \$350 /sq ft** = \$77,000,000 x \$.05 = \$385,000)

The Estimated Construction Cost of a New Building is based upon the following:

*220,000 sq ft (as per the standards of size per sq ft for a high school of 1,200 students)

**\$350/sq ft (estimated cost of construction in Fall 2022)

Phase III: Will only be authorized in writing by the Owner upon approval by the Board of Commissioners

EXHIBIT B
PROJECT SCHEDULE
Franklin High School Project
Revised December 06, 2021

Phase I: New Stadium Facility

- Begin Design
15 December 2021

- Order Topographic Survey and Soil Borings
3 January 2022

- Schematic Design Submittal
25 February 2022

- Design Development
6 May 2022

- Remaining Phases to be determined and authorized in writing by Owner.

Phase II: Comprehensive Facility Plan of the Existing Campus Building vs. a New Building

- Begin Study
15 December 2021

- Complete Study
6 May 2022

Phase III: Implement the Recommendation of the Phase II Study

- Schedule for Phase III will be developed during Phase II.

EXHIBIT C
HOURLY RATES and OWNER RESPONSIBILITIES
Franklin High School Project
Revised December 06, 2021

Hourly Rates: Any LS3P/PFA hourly rates for additional services must be authorized in advance by Owner.

2021 PFA Architects Hourly Bill-Out Rates (Subject to Change on an Annual Basis):

Principal in Charge	\$180.00/hr.
Project Architect	\$140.00/hr.
Design Staff	\$115.00/hr.
Interior Designer	\$105.00/hr.
Administrative Staff	\$100.00/hr.

Owner Responsibilities. The following are necessary services that must be completed in order for the Architect to complete Phase I and II and shall be the responsibility of Owner:

- Topographical Survey
- Geotechnical Engineering and Special Inspections

Optional Additional Services and Special Consultants not included in Basic Services but may be provided for additional fee if completed by Architect upon approval by the Owner

- Additional services shall be billed as a factor of 1.0
- Outsourced Professional Renderings or highly rendered images, models, or mockups (Basic renderings for use in study and development of the project design are included in basic services fee, but finish quality renderings for use in special presentations, outreach, fundraising, etc., are not included.)
- Special Consultants outside of the services consultants listed in this proposal.
- Interior Design other than Architectural Finishes. (FF&E)
- Third Party Acoustical Consulting, Acoustical Modeling, Acoustical Testing
- Daylighting Modeling or Energy Modeling
- Audio Visual Equipment
- Environmental Assessments / Environmental Impact Statements
- Permitting and review fees
- Life Cycle Cost Analyses
- Multiple designs documented in construction documents (Minor bid alternates for budget control to be included)
- LEED or other green building certification
- Specialty envelope consultants
- Commissioning Services
- Coordination with additional owner third-party consultants.
- Intersection design if not completed by DOT.
- Future athletic complex

MACON COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

CATEGORY – CONSENT AGENDA

MEETING DATE: December 14, 2021

Item 16A. Draft minutes from the November 9, 2021 regular meeting will be forwarded in a separate email. (Mike Decker/Tammy Keezer)

Item 16B. Budget Amendments #107-110 are attached for your review and approval. (Lori Carpenter)

Item 16C. Approval of tax releases for the month of November 2021 in the amount of \$9,878.33. A memo and an itemized list of the releases will be included in the packet. (Delena Raby)

Item 16D. A copy of the ad valorem tax collection report, which shows a 65.91 percent collection rate as of November 30, 2021. No action is necessary. (Delena Raby)

Macon County Tax Office
5 West Main Street
Franklin, NC 28734



Phone: (828) 349-2149
draby@maconnc.org

TO: MACON COUNTY COMMISSIONERS

FROM: Macon County Tax Collector's Office
Delena Raby, Tax Collections Supervisor

DATE: December 03, 2021

RE: Releases for November, 2021

Attached please find the report of releases for real estate that require your approval in order to continue with the process of releasing these amounts from the tax accounts. Please feel free to contact me if you should have any questions. The report of releases in alphabetical order is attached.

AMOUNT OF RELEASES FOR NOVEMBER 2021: \$ 9,878.33

RELEASES REPORT
Macon County

NAME	BILL NUMBER	OPER	DATE/TIME	DISTRICT	VALUE	AMOUNT
51506 BATES DON CONCRETE FINISHING	2021-55275	ZAD	12/31/9999 1:46:58 PM			
				G01 ADVLTAX	13,000.00	52.00
				G01 PEN FEE	13,000.00	5.20
				F01 ADVLTAX	13,000.00	7.09
				F01 PEN FEE	13,000.00	0.71
				TOTAL RELEASES:		65.00
62444 HAMPTON, BENNY	2021-71122	ZAD	12/31/9999 1:46:22 PM			
				L01 FFEFEE	0.00	108.00
				TOTAL RELEASES:		108.00
149865 MB HIGHLANDS	2021-232453	LAS	12/31/9999 4:34:19 PM			
				G01 ADVLTAX	2,042,090.00	8,168.36
				F10 ADVLTAX	2,042,090.00	612.63
				TOTAL RELEASES:		8,780.99
93990 OWEN, SHELBY JEAN DRYMAN	2021-77178	LAS	12/31/9999 9:24:04 AM			
				L01 FFEFEE	0.00	108.00
				TOTAL RELEASES:		108.00
6427 OWENS, HOMER	2021-77191	LAS	12/31/9999 9:23:27 AM			
				L01 FFEFEE	0.00	108.00
				TOTAL RELEASES:		108.00
6427 OWENS, HOMER	2021-77180	LAS	12/31/9999 9:25:35 AM			
				L01 FFEFEE	0.00	108.00
				TOTAL RELEASES:		108.00
133106 TOWNSEND, STEVE	2021-52882	LAS	12/31/9999 10:00:29 AM			
				G01 ADVLTAX	131,740.00	526.96
				F04 ADVLTAX	131,740.00	73.38
				TOTAL RELEASES:		600.34
NET RELEASES PRINTED:	9,878.33					
TOTAL TAXES RELEASED						9,878.33

RELEASES REPORT
Macon County

F01 ADULT TAX - FRANKLIN FIRE DISTRICT TAX												
TAX YEAR	RATE YEAR	REAL VALUE RELEASED	PERS VALUE RELEASED	TOTAL VALUE RELEASED	REAL TAX RELEASED	PERS TAX RELEASED	MV VALUE RELEASED	MV TAXES RELEASED	TOTAL VALUE RELEASED	TOTAL TAXES RELEASED		
2021	2021	0	26,000	26,000	0.00	7.80	0	0.00	26,000	7.80		
DIST TOTAL		0	26,000	26,000	0.00	7.80	0	0.00	26,000	7.80		
F04 ADULT TAX - CULLASAJA FIRE DISTRICT TAX												
TAX YEAR	RATE YEAR	REAL VALUE RELEASED	PERS VALUE RELEASED	TOTAL VALUE RELEASED	REAL TAX RELEASED	PERS TAX RELEASED	MV VALUE RELEASED	MV TAXES RELEASED	TOTAL VALUE RELEASED	TOTAL TAXES RELEASED		
2021	2021	0	131,740	131,740	0.00	73.38	0	0.00	131,740	73.38		
DIST TOTAL		0	131,740	131,740	0.00	73.38	0	0.00	131,740	73.38		
F10 ADULT TAX - HIGHLANDS FIRE DISTRICT TAX												
TAX YEAR	RATE YEAR	REAL VALUE RELEASED	PERS VALUE RELEASED	TOTAL VALUE RELEASED	REAL TAX RELEASED	PERS TAX RELEASED	MV VALUE RELEASED	MV TAXES RELEASED	TOTAL VALUE RELEASED	TOTAL TAXES RELEASED		
2021	2021	0	2,042,090	2,042,090	0.00	612.63	0	0.00	2,042,090	612.63		
DIST TOTAL		0	2,042,090	2,042,090	0.00	612.63	0	0.00	2,042,090	612.63		
G01 ADULT TAX - GENERAL COUNTY TAX												
TAX YEAR	RATE YEAR	REAL VALUE RELEASED	PERS VALUE RELEASED	TOTAL VALUE RELEASED	REAL TAX RELEASED	PERS TAX RELEASED	MV VALUE RELEASED	MV TAXES RELEASED	TOTAL VALUE RELEASED	TOTAL TAXES RELEASED		
2021	2021	0	2,199,830	2,199,830	0.00	8,752.52	0	0.00	2,199,830	8,752.52		
DIST TOTAL		0	2,199,830	2,199,830	0.00	8,752.52	0	0.00	2,199,830	8,752.52		
GRAND TOTALS:		0	4,399,660	4,399,660	0.00	9,446.33	0	0.00	4,399,660	9,446.33		

Macon County
Advalorem Tax Collections Report
Year To Date November 2021 Tax Year 2021

TAX YEAR 2021 Month To Date November 2021 Tax Year 2021

Month to Date	Beginning Balance	Levy Added	Less Releases	Less Administrative Refunds	Less Write Offs	Equals Adjusted Levy	Less Payments	Outstanding Balance
General Tax	17,189,914.37	8,508.30	-4,493.21	0.00	-12.78	17,193,916.68	-6,355,658.32	10,838,258.36
Fire Districts	2,421,451.37	1,143.49	-648.90	0.00	-2.92	2,421,943.04	-956,551.48	1,465,391.56
Landfill User Fee	1,697,509.93	108.00	-324.00	0.00	-0.13	1,697,293.80	-744,917.26	952,376.54
TOTAL:	21,308,875.67	9,759.79	-5,466.11	0.00	-15.83	21,313,153.52	-8,057,127.06	13,256,026.46

TAX YEAR 2021 Year To Date November 2021 Tax Year 2021

Year to Date	Beginning Balance	Levy Added	Less Releases	Less Administrative Refunds	Less Write Offs	Equals Adjusted Levy	Less Payments	Outstanding Balance	This Year Collection Percentage Tax Year 2021 As of 11/30/2021	Last Year Collection Percentage Tax Year 2020 As of 11/30/2020
General Tax	0.00	31,708,538.49	-14,122.06	0.00	-1154.32	31,693,262.11	-20,855,003.75	10,838,258.36	65.80%	66.98
Fire Districts	0.00	4,248,807.67	-1,913.74	0.00	-169.18	4,246,724.75	-2,781,333.19	1,465,391.56	65.49%	66.49
Landfill User Fee	0.00	2,991,790.00	-47,412.00	0.00	-2.48	2,944,375.52	-1,991,998.98	952,376.54	67.65%	68.21
TOTAL:	0.00	38,949,136.16	-63,447.80	0.00	-1325.98	38,884,362.38	-25,628,335.92	13,256,026.46	65.91%	67.02

MACON COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

CATEGORY – APPOINTMENTS

MEETING DATE: December 14, 2021

17A. **Board of Health:** Public Health Director Kathy McGaha has forwarded four applications for appointment to the Macon County Board of Health, as follows:

- (1) Jerry Hermanson of Highlands, who would fill an open slot as a “general public” member.
- (2) Dr. Michael Dupuis of Highlands, who would fill the open “physician” slot that has been vacant since June of 2020.
- (3) Dr. Roy Lenzo of Franklin, who would fill the unexpired term of Dr. Jeff Todd as the “veterinarian” slot on the board. This term would expire June 30, 2022.
- (4) Ellen Shope of Franklin, which would be a reappointment as Ms. Shope is completing her first, three-year term and fills the “nursing” slot on the board.

Applications from all four individuals will be included in the packet.

Application for Appointment to Macon County Authorities, Boards, Commissions and Committees

The Macon County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. The Board wants to appoint qualified, knowledgeable and dedicated people to serve on authorities, boards and committees. If you have an interest in being considered for an appointment to any advertised vacancy, please thoroughly complete the form below before the advertised deadline and choose from the following options.

Mail to: County Manager's Office
5 West Main Street
Franklin, North Carolina 28734
or FAX to: 828-349-2400

Any Questions, please call the County Manager's Office at (828) 349-2025

Name of Authority, Board or Committee applying for: Board of Health

Name: Jerry Hermanson

Address: 96 Lake Villa Court City: Highlands NC Zip: 28741

Telephone: Home: 828 526-9647 Work: 828 526-1991

Occupation: Health Care Administrator

Business Address: 52 Aunt Dora Drive, Highlands, NC 28741

Email Address: jhceo@aol.com

Briefly explain any anticipated conflict of interest you may have if appointed:

I do not anticipate any conflicts of interest as the Board of Health has no authority over the business I work at.

Educational Background

BSBA in Management and an MBA in Health and Hospital Administration (Both from the University of Florida)

Business and Civic Experiences/Skills:

I've been a health care administrator in Hospitals, medical offices as well as a consultant working primarily with large physician groups and hospitals. I'm currently the executive director of the Community Care Clinic of Highlands Care, Inc.

Areas of Expertise and Interest/Skills:

health care delivery, health policy, health care finance and general business

List any Authorities, Boards, Commissions or Committees presently serving on:

I am not currently serving on any authorities, boards, commissions or committees.

SIGNATURE: 

DATE: 10/30/2021

Application for Appointment to Macon County Authorities, Boards, Commissions and Committees

The Macon County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. The Board wants to appoint qualified, knowledgeable and dedicated people to serve on authorities, boards and committees. If you have an interest in being considered for an appointment to any advertised vacancy, please thoroughly complete the form below before the advertised deadline and choose from the following options.

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5 West Main Street
Franklin, North Carolina 28734

or FAX to: 828-349-2400

Any Questions, please call the County Manager's Office at (828) 349-2025

Name of Authority, Board or Committee applying for: Board of Health

Name: Michael Lee Dupuis

Address: 2300 Turtle Pond Rd. City: Highlands NC Zip: 28741

Telephone: Home: 828-526-2632 Work: 850-932-0372

Occupation: Physician

Business Address: 52 Aunt Dora Dr. Highlands

Email Address: mdupuis46@yahoo.com

Briefly explain any anticipated conflict of interest you may have if appointed:

none

Educational Background

BA Chemistry LSU 1969 MD LSU Med School 1973

Business and Civic Experiences/Skills:

Emergency Medicine practice 1976-2008 Occupational Medicine 1978-2014 Rehabilitation/Skilled Nursing 1978-2014 Medical Director of Emergency, Rehab/Skilled Nursing 1980-2014, Instructor ACLS, ATLS

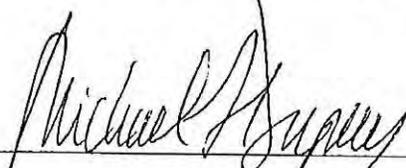
Areas of Expertise and Interest/Skills:

Public Health, Mental/Behavioral Health. Administration of Health Care Providers

List any Authorities, Boards, Commissions or Committees presently serving on:

Presently serving on Highlands/Cashiers Community Care Clinic Board, Attending Physician (volunteer) HCC Clinic

SIGNATURE:



DATE: 11/29/2021

Application for Appointment to Macon County Authorities, Boards, Commissions and Committees

The Macon County Board of Commissioners believes all citizens should have the opportunity to Participate in governmental decisions. The Board wants to appoint qualified, knowledgeable and dedicated people to serve on authorities, boards and committees. If you have an interest in being considered for an appointment to any advertised vacancy, please thoroughly complete the form below before the advertised deadline and choose from the following options.

Mail to: County Manager's Office
5 West Main Street
Franklin, North Carolina 28734

or FAX to: 828-349-2400

Any Questions, please call the County Manager's Office at (828) 349-2025

CS

Name of Authority, Board or Committee applying for: Board of Health

Name Roy Lenzo

Address 1869 Georgia Rd City Franklin NC Zip 28734

Telephone: Home 828-369-2860 Work 828-369-2635

Occupation Veterinarian

Business Address 1869 Georgia Rd, Franklin, NC, 28734

Email Address r_lenzo@msn.com

Briefly explain any anticipated conflict of interest you may have if appointed:

Educational Background

BS Biology, chemistry minor, Doctor of Veterinary Medicine

Business and Civic Experiences/Skills:

Areas of Expertise and Interest/Skills:

32 years of experience in using vaccines to prevent and control disease outbreaks. Also have properly used ivermectin thousands of times to deworm animal patients.

List any Authorities, Boards, Commissions or Committees presently serving on:

SIGNATURE:



DATE:

11/17/2021

Application for Appointment to Macon County Authorities, Boards, Commissions and Committees

The Macon County Board of Commissioners believes all citizens should have the opportunity to participate in governmental decisions. The Board wants to appoint qualified, knowledgeable and dedicated people to serve on authorities, boards and committees. If you have an interest in being considered for an appointment to any advertised vacancy, please thoroughly complete the form below before the advertised deadline and choose from the following options.

Mail to: County Manager's Office
5 West Main Street or FAX to: 828-349-2400
Franklin, North Carolina 28734

Any Questions, please call the County Manager's Office at (828) 349-2025

Name of Authority, Board or Committee applying for: Board of Health

Name Ellen Shope

Address 1793 N Blaine Branch Rd City Franklin NC Zip 28734

Telephone: Home Cell- 828-371-0431 Work

Occupation Retired Registered Nurse

Business Address NA

Email Address Ellen.shope@gmail.com

Briefly explain any anticipated conflict of interest you may have if appointed:

NA

Educational Background

BS Nursing- WCU 1974

Business and Civic Experiences/Skills:

5yr hospital nurse-ACH/ VAH-Oteen; 27yr PHN- MCHD; 8yr state PHN consultant

Areas of Expertise and Interest/Skills:

All areas of PH nursing particularly child health; home visiting; accreditation, community health assessment
Currently Community Care Clinic -volunteer

List any Authorities, Boards, Commissions or Committees presently serving on:

Community Care Clinic of Franklin Board- Vice Chair

SIGNATURE: Ellen Shope DATE: 12/3/18