



Town of Blowing Rock

Board of Commissioners Meeting

Date: *Tuesday, September 10, 2024, 6:00 p.m.*

Location: *1036 Main Street, Blowing Rock, NC 28605*

Agenda

Item		Presenter and Participants
I.	CALL TO ORDER – ROLL CALL FOR ATTENDANCE	Mayor Charles Sellers
II.	PLEDGE OF ALLEGIANCE	Mayor Charles Sellers
III.	APPROVAL OF MINUTES – By Roll Call 1. August 13, 2024 – Regular and Closed Session Meeting Minutes 2. August 26, 2024 – Special Meeting Minutes REGULAR AGENDA ADOPTION	Mayor & Council Mayor & Council
IV.	CONSENT AGENDA: 1. USDA – RD ESA 2. Budget Amendment	Mayor & Council
V.	PUBLIC COMMENTS <i>Comments shall be limited to three (3) minutes</i>	
VI.	SPECIAL PRESENTATIONS: 1. Introduction of the new Police Chief 2. Sports Day – Baker Stanley	Manager Fox Parks and Rec Director Jennifer Brown
VII.	PUBLIC HEARING: 1. SUP – Shops at Watership Down	Planning Director Kevin Rothrock

VIII.	REGULAR AGENDA 1. McGill Studies – Streets, Sidewalks, Reservoir and Reservoir Intake - Budget Amendment 2. Downtown Standards – Set Public Hearing Date	Town Engineer Doug Chapman and Manager Fox Planning Director Kevin Rothrock
IX.	OFFICIALS REPORTS & COMMENTS: 1. Mayor 2. Council Members 3. Town Attorney 4. Town Manager	
X.	CLOSED SESSION – – NCGS 143-318.11. (a)(3) – <i>Attorney/Client privilege</i>	
XI.	ADJOURNMENT/RECESS...Mayor Charles Sellers entertains <i>a motion and second to adjourn or recess the meeting.</i>	

Draft
MINUTES
Town of Blowing Rock
Town Council Meeting
August 13, 2024

The Town of Blowing Rock Town Council met for their regular monthly meeting on Tuesday, August 13, 2024, at 6:00 p.m. The meeting took place at Town Hall located at 1036 Main Street Blowing Rock, NC. Present were Mayor Charlie Sellers, Mayor Pro-Tem Doug Matheson, Council Members Cat Perry, David Harwood, Melissa Pickett and Pete Gherini. Others in attendance were Town Manager Shane Fox, Town Attorney Tucker Deal, Parks and Recreation Director Jennifer Brown, Finance Director Tasha Brown, Emergency Services Director Kent Graham, Interim Police Chief Nathan Kirk, Landscape Director Cory Cathcart, Town Engineer Doug Chapman and Town Clerk Hilari Hubner, who recorded the minutes.

CALL TO ORDER

Mayor Sellers called the meeting to order at 6:00 p.m. and welcomed everyone. Mayor Sellers verified attendance via roll call.

THE PLEDGE OF ALLEGIANCE

MINUTE APPROVAL

Mayor Pro-Tem Matheson made the motion to approve the minutes from the July 9, 2024, regular and closed session meetings, seconded by Council Member Gherini. Unanimously approved.

Council Member Gherini made a motion to approve the minutes from the July 12, 2024, open and closed session special meeting, seconded by Council Member Pickett. Unanimously approved.

Council Member Harwood made a motion to approve the minutes from the July 23, 2024, special meeting, seconded by Council Member Perry. Unanimously approved.

REGULAR AGENDA ADOPTION

Mayor Sellers explained a few changes to the meeting agenda: the new Blowing Rock School Principal, Madison Hollar, will speak after Public comments. Under Presentations End Overdose in Watauga County will be moved to the last item on the Regular Agenda.

Council Member Pickett made a motion to move the Annie Cannon Grant Resolution off Consent Agenda and to the second item on Regular Agenda, seconded by Mayor Pro-Tem Matheson. Unanimously approved.

Council Member Pickett made a motion to approve the regular meeting agenda with the changes, seconded by Council Member Harwood. Unanimously approved.

CONSENT AGENDA

- 1. USDA Reimbursement Resolution**
- 2. Caldwell County Animal Control**
- 3. Daughters of the American Revolution Proclamation – For Constitution Week**

Council Member Harwood made a motion to approve the consent agenda as presented, seconded by Council Member Pickett. Unanimously approved.

SPEAKERS FROM THE FLOOR

Steven Cohen – 201 Chestnut Drive wanted to express his thanks to Town Council for all the hard work and let them know they are doing a great job.

Madison Hollar, the new Blowing Rock School Principal introduced herself to Council and residents in attendance. Ms. Hollar gave a little background on herself and mentioned she looks forward to a working partnership with the school and the Town.

PRESENTATIONS

- 1. Foothills Conservancy – Johns River Headwaters**

Andrew Kota with the Foothills Conservancy gave a presentation on the Headwaters GTSP Trail Grant proposal.

REGULAR AGENDA

- 1. Capital Debt Financing**

Town Manager Shane Fox explained as part of the 2024-2025 approved budget, the Town Council approved staff soliciting bids for a Capital Loan to purchase vehicles and equipment requested in the annual budget. The total for those items was \$570,000. The Town publicly advertised and solicited bids on July 16th with all bids due August 6th. A total of seven (7) bids were received, the lowest bidder was Hunting Bank with a four (4) year term at 3.74% interest rate.

Mayor Pro-Tem Matheson made a motion to approve as presented, seconded by Council Member Gherini. Unanimously approved.

- 2. Annie Cannon – Grant Resolution**

Town Manager Fox stated recently the Village Foundation of Blowing Rock has been working to develop a project to transform the Annie Cannon Gardens and the Glen Burney Trail for generations to come. The concept would reconfigure the entrance to the Annie Cannon Gardens and construct a new trailhead for the Glen Burney Trail. As of now, this project is only in the concept stages with more design work and ultimate approval that must be done through the Town Council and the Public Lands and Recreation Advisory Board. Funding for the conceptual project could come from a series of sources, including the Village Foundation, private donors, and grant monies. A potential grant would be The Great Trails State Grant. The GTS grant is an annual grant that allows local governments to apply for up to \$500,000 in grant monies for trail construction and trail maintenance.

This grant could be used for the development of the conceptual project including construction costs. The grant requires a match of 50% for every dollar awarded. The grant match could come from the series of funding options, including the Village Foundation, donors, etc. The current grant application deadline is September 3, 2024. The High Country Council of Governments has agreed to write and apply on behalf of the Town and the Village Foundation for the grant. The grant writing and submittal, along with the administration of the grant would be performed by the HCCOG for a fee of \$10,000, but only if the grant is awarded, of which the fee would be paid by the grant itself, not the Town. If not awarded, the HCCOG would not administer a fee. For the HCCOG to proceed with writing and submitting the grant application, the Town Council must give official approval of the HCCOG to proceed. No obligation would be incurred by the Town for allowing for the grant to be submitted.

Council Member Pickett asked since it's a concept if the Town applies on that concept would the Town be locked into that concept if the grant were to be approved since it's not yet been brought before any entities of the Town.

Manager Fox stated it would not and there would be no obligations.

Council Member Pickett asked what the term on the grant would be if awarded.

Manager Fox stated it would be thirty-six (36) months.

Manager Fox explained this is a matching grant up to \$500,000 and the foundation is looking at fundraising opportunities to help with the matching funds if the grant were to be awarded.

Mr. John Aldridge spoke on behalf of the Village Foundation and stated the fundraising is just getting started and this is in the conceptual stage. Mr. Aldridge further stated the total estimated cost of the project is a million dollars so the grant and fundraising is going to be very important.

Manager Fox mentioned the request is for Council to approve to allow the HCCOG to move forward with writing of the grant and submittal process.

Council Member Perry made a motion to approve, seconded by Council Member Pickett. Unanimously approved.

3. End Overdose in Watauga Day

Mary McKinney gave a brief presentation on End Overdose in Watauga County and asked Council to consider approval of a Proclamation to End Overdose in Watauga County.

Council Member Gherini made a motion to approve the proclamation as presented, seconded by Council Member Pickett. Unanimously approved.

OFFICIAL REPORTS & COMMENTS

- Mayor Sellers – The State of the Town will be Thursday, August 15th at 5:30 p.m. at BRAHM.
- Council Member Perry – None
- Council Member Harwood – None
- Council Member Pickett – None
- Mayor Pro-Tem Matheson – Reminded everyone Groovy Nights, a fundraiser for the Blowing Rock Community Foundation, will be August 18th, 20th and 23rd at the Blowing Rock Country Club.
- Council Member Gherini – Expressed his condolences to the Penninger family with the passing of Chester. As the chairman of the Economic Development Commission, he hosted a meeting of local and state level representatives. In attendance were Representative Destin Hall, Representative Ray Pickett and County Commissioner Todd Castle – all gave detailed information of what is going on in their respective areas. Manager Fox acted as the facilitator of the meeting. Discussion included the upcoming election, budget for next year, upcoming bills, a lot of discussion about tourism, how it effects this area, the possible change in the TDA's 2/3's 1/3's funding.
- Town Attorney Tucker Deal – None
- Town Manager Shane Fox – Gave updates on the Main Street project – Maple Street, 221 and Green Street, Laurel Lane – Mayview HOA, Broyhill Lake spillway, Chestnut sewer progress, Grandfather lift station – will be soon, USDA – work continues on design, and the Police Chief hiring progress.

Upcoming meeting dates – Watauga EDC meeting August 15th at 1:00 pm
 ABC Board meeting August 15th at 2:00 p.m.
 Planning Board meeting August 15th at 5:30 p.m.
 State of the Town meeting August 15th at 5:30 p.m.

EXECUTIVE SESSION

At 7:15 PM Council Member Perry made a motion to go into closed session, **NCGS 143-318.11.(a)(3) Attorney/Client privilege and NCGS 143-318.11(a)(5) – Discussion of potential property acquisition**, seconded by Council Member Harwood. Unanimously approved.

ADJOURNMENT

At 8:15 p.m. the Council returned to open session and with no further business, Council Member Pickett made a motion to adjourn, seconded by Council Member Harwood. Unanimously approved.

MAYOR _____
 Charlie Sellers, Mayor

ATTEST _____
 Hilari Hubner, Town Clerk

Attachments

USDA Reimbursement Resolution – Attachment A

Caldwell County Animal Control – Attachment B
Daughters of the American Revolution Proclamation – Attachment C
Foothills Conservancy – John River Headwaters – Power Point – Attachment D
Capital Debt Financing Resolution – Attachment E
End Overdose Proclamation – Attachment F

Draft
MINUTES
Town of Blowing Rock
Town Council Special Meeting
August 26, 2024

The Town of Blowing Rock Town Council met for a special meeting on Monday, August 26, 2024, at 6:00 p.m. The meeting took place at Town Hall located at 1036 Main Street Blowing Rock, NC. Present were Mayor Charlie Sellers, Mayor Pro-Tem Doug Matheson, Council Members Cat Perry, David Harwood, Melissa Pickett and Pete Gherini. Others in attendance were Town Manager Shane Fox, Town Attorney Tucker Deal, Finance Director Tasha Brown, Emergency Services Director Kent Graham, Interim Police Chief Nathan Kirk, Planning Director Kevin Rothrock and Town Clerk Hilari Hubner, who recorded the minutes.

CALL TO ORDER

Mayor Sellers called the meeting to order at 6:00 p.m. and welcomed everyone. Mayor Sellers verified attendance via roll call.

THE PLEDGE OF ALLEGIANCE

AGENDA ADOPTION

Council Member Gherini made a motion to approve the agenda as presented, seconded by Council Member Pickett. Unanimously approved.

PLANNING BOARD MEMBERSHIP DISCUSSION

Mayor Sellers stated he had called the special meeting and explained no matter how we feel as a Council Member, Board Member or citizen we are all charged with dealing with situations. However these situations should be handled in a positive manner.

Mayor Sellers received an editorial sent to the High Country Press on August 21st by Planning Board member, Mr. Gregg Bergstrom. While he agrees everyone has their right to speak, he quoted Mr. Bergstrom's letter "the simple fact of the matter is the Town of Blowing Rock has not been open, honest or transparent about the sudden need to replace this tower now" and expressed his disappointment in the comments. He advised Mr. Bergstrom could have come to him, Manager Fox or any Council Members to get as much information as possible before making any comments on the matter.

Mayor Sellers quoted the letter "the Town attempted to skirt its own written codes to push this matter forward without any studies concerning the adverse effects of increasing the tower height, which in fact in and of itself is only a band-aid solution considering the trees will continue to grow and technology will only improve". He stated that tower, pole or whatever someone wants to call it has been "on the books" since 2014, the state wanted to put a viper tower up there to increase the radio frequency and that didn't happen. He restated the comments in the letter to the editor really disappointed him, Council and citizens.

Mayor Sellers stated as a member of a board a person should be transparent, but also be careful what is said and have all the information first. He re-emphasized everyone is entitled to their opinions, but he didn't appreciate being called a liar.

Manager Fox reviewed the Planning Board bylaws for potential removal of members. He stated any member of a board can be removed by the Board of Commissioners for inefficiency, neglective duty, malfeasance or conflict of interest. Manager Fox then shared Town Land Use Code Section 16-3.1.1 which states, *"members may be removed by the Town Board of Commissioners at anytime for failure to attend three (3) consecutive regular scheduled meetings or failure to attend four (4) or more meetings within a twelve month period or for any other good cause related to performance of duties."*

Town Attorney Tucker Deal explained the Council has the power to appoint members to the Town Boards and equally has the power to remove members of the boards. He further added that Section 16-3.1.1 of the Town Land Use Code is what governs this process and is the guiding principal for the Council to use in making their decision.

Council Member Pickett explained while every citizen, board member etc. is entitled to their opinions, her concern is that opinion was shared in a public format on an open project. Her other concern is that public opinion puts the Town in a disparaging light and anyone who serves on a Town Board has a responsibility to uphold our Town whether you agree with an opinion or not. She restated the Town was put in a bad light and she didn't think it was appropriate for any Town Board member to put the Town in that position.

Council Member Gherini stated when he ran for Council it was to take care of the residents in Town and when it comes to public safety there is nothing that will overcome that. He agreed with Mayor Sellers that this is not good to see out in the newspapers. It's Council's job to handle the safety of the residents and this isn't making Council's job any easier as it now has people calling and question what is going on due to this misrepresentation. He concluded that everyday we don't have proper communications is a day something bad could happen.

Mayor Pro-Tem Matheson agreed with Council Member Pickett's points. He felt like it was a personal attack on Council with the accusations of the Town not being open and honest and cannot see where there was any truth to that accusation from the Town's standpoint.

Council Member Perry commented that when you are appointed to a board you have a higher level of responsibility. By publicly making disparaging comments without even speaking with the Manager, Mayor or Council to get all the information opens unnecessary doubt and judgement to the other citizens based on what they read. She further commented this puts the Town in a bad light and a Board Member should be held to a higher standard.

Council Member Harwood started by thanking all the wonderful people in our community

that give up their time to serve on these volunteer boards and committees. He expressed those people do that selflessly, don't seek recognition or compensation and he really appreciates those individuals including Mr. Bergstrom. Council Member Harwood further stated he has spent significant time the last few days thinking about this and he fully supports Mr. Bergstrom's first amendment right of free speech. However, his letter alleges dishonesty, lack of transparency from the Town Council and Town staff disregarding municipal ordinances. He recognized Mr. Bergstrom was primarily responding in his letter to Mr. Wayne Miller, but these statements broadly indicate the Council and Town operations. As Mayor Sellers indicated the Planning Board is an advisory board to the Town Council and it's important for these two bodies to function well together and have a collaborative working relationship together. He stated the comments of Mr. Bergstrom risk undermining the public trust that the public places in Council and the Planning Board. He further stated Mr. Bergstrom's comments lacked professionalism and were very careless. While the Planning Board bylaws provide for the removal on four things, which Manager Fox stated, and while he thinks Mr. Bergstrom's comments were unprofessional he didn't feel they qualified for his removal from Planning Board. So rather than removal Council Member Harwood proposed a motion for a resolution of censure for Mr. Bergstrom. With no second to Council Member Harwood's motion the motion failed.

Mayor Pro-Tem Matheson made a motion to remove Gregg Bergstrom from the Planning Board because he no longer has confidence in his ability to serve. He believes Mr. Bergstrom demonstrated a biased opinion during the Planning Board meeting on July 11th and then confirmed that biased opinion with his letter to the editor published in the High Country Press on August 21, 2024. His behavior during the July 11th meeting along with his editorial in the High Country Press on the Town "not being open, honest, or transparent" demonstrates a conflict of interest to serve the Town. Mr. Matheson added that Mr. Bergstrom claimed the Town had attempted to "skirt its own codes" as well, which shows his inability to serve the Planning Board and loss of confidence from my position as member of the Town Council. The motion was seconded by Council Member Gherini.

Mr. Gregg Bergstrom asked from the audience if "the accused was allowed to speak."

Mayor Sellers allowed Mr. Bergstrom to speak and asked him to keep his comments brief.

Mr. Bergstrom of 126 Hilltop Way stated he is currently a member of the Planning Board and when he wrote his letter to the editor, he didn't in any way say he was a Planning Board member. It was simply a personal opinion that was directed at Mr. Wayne Miller for his inaccurate letter he had written to the editor prior. He cleared up he did not call Mayor Sellers a liar and if he did he would like to know when he did. In regards to his statement in his editorial "the simple fact of the matter is the Town of Blowing Rock has not been open, honest or transparent about the sudden need to replace this tower now" with the emphasis on the word "now" it's true in his opinion. He continued that Attorney Nathan Miller who is representing the Protect Blowing Rock Neighborhoods LLC stated the Town was not being open, honest and transparent. Mr. Bergstrom stated you can take it from him or take it from Mr. Miller and he was sorry if the Council felt it wasn't true, but in his opinion it is true. Mr. Bergstrom added the Town did attempt to skirt their own

ordinances and he had those he could go over if Council wanted him to.

Mr. Bergstrom and Mayor Sellers both got off topic and began to debate issues surrounding the emergency communications tower.

Town Attorney Deal asked Mayor Sellers to bring the discussion back to the agenda topic.

Mr. Bergstrom advised it appears to him that as a private citizen who did not identify himself as a Planning Board member, stating a personal opinion as his first amendment right, trying to get all the information out and if the Council doesn't agree with that opinion or it's different from the Town's then their idea is to remove that member. He further advised if that is the Council's choice, it's their choice and he cannot do anything about it, but felt it was a small-minded way to advance the interest of Blowing Rock in the future. He concluded this will probably deter people in the future from wanting to volunteer for boards with the fear of saying something wrong and in turn be removed from the board.

Mayor Sellers thanked Mr. Bergstrom and asked Council how they would like to proceed.

Council Member Perry asked to go on record as stating she felt Mr. Bergstrom's comments were a misinterpretation of what Council is saying.

With no further comments, Mayor Pro-Tem Matheson's motion stood, seconded by Council Member Gherini. For the motion: Mayor Pro-Tem Matheson, Council Members, Perry, Pickett and Gherini. Against the motion: Council Member Harwood. Motion was approved.

ADJOURNMENT

At 5:25 p.m. Council Member Perry made a motion to adjourn, seconded by Council Member Pickett. Unanimously approved.

MAYOR _____
Charlie Sellers, Mayor

ATTEST _____
Hilari Hubner, Town Clerk

Attachments

None

Consent Agenda - Staff Report

To: Mayor Charlie Sellers and the Blowing Rock Town Council

From: Shane Fox, Town Manager

Subject: USDA – ESA

Date: September 10, 2024

Information:

As a part of the USDA loan and work to be performed, the USDA requires the Town to approve an Engineering Services Agreement with the Town's engineering firm. The town has selected McGill to perform the necessary design, engineering, inspection, and construction overview work for the USDA project.

Recommendation:

Staff recommends the Town Council approves the ESA contract with McGill to perform the

Attachments:

1. USDA Letter
2. EJCDC
3. Final – ESA
4. Certification – Debarment, Suspension, Ineligibility, and Voluntary Exclusion
5. Engineering Agreement Certification
6. Owner Pre-Audit Statement

#1



United States Department of Agriculture /

Rural Development

North Carolina

10 Referendum Dr.
Building F
Bolivia, NC 28422

Voice 910.409.5803

DATE: 7/24/2024

TO: Area Specialist
USDA-Rural Development | Area Specialist

FROM: Brian Noll, PE
USDA-Rural Development | State Engineer

SUBJECT: Town of Blowing Rock – Water and Sewer Improvements
State Engineer Draft ESA Concurrence

Digitally signed by
BRIAN NOLL
Date: 2024.07.24
14:08:42 -04'00'

My office has reviewed and concurs in the Draft Engineering Services Agreement (ESA) between The Town of Blowing Rock (Owner) and McGill Associates, PA (Engineer) for the above referenced project. This review has been completed in accordance with 7 CFR 1780 Subpart C and RUS Bulletin 1780-26.

After the Owner accepts USDA Rural Development's Letter of Conditions (LOC) for funding this agreement will need to be fully executed. All efforts should be made to execute this agreement quickly after funding is in place. The execution of this agreement directs the Engineer to start their design phase services. The Owner/Engineer shall follow the enclosed *NC-RD Final ESA Guidance* when submitting the executed Final ESA for USDA-RD review/concurrence.

The Owner and Engineer should be aware that USDA-RD funding will not be available to reimburse engineering design phase services and other pre-construction costs until interim financing has been secured by the Owner. Interim financing is not available until after the overall construction project has been bid and construction contracts are awarded. The Owner is responsible for all costs incurred prior to this milestone. Any changes to the Final ESA will need to be concurred in by USDA-RD to be eligible for reimbursement once interim financing is in place.

Enclosures:

- NC-RD Final ESA Guidance

USDA is an equal opportunity provider and employer.

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

Prepared by



Issued and Published Jointly by



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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER	1
1.01 Scope.....	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	1
2.01 General.....	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement.....	2
3.02 Time for Completion	2
ARTICLE 4 – INVOICES AND PAYMENTS	2
4.01 Invoices.....	2
4.02 Payments.....	2
ARTICLE 5 – OPINIONS OF COST.....	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit	3
5.03 Opinions of Total Project Costs.....	3
ARTICLE 6 – GENERAL CONSIDERATIONS.....	4
6.01 Standards of Performance	4
6.02 Design Without Construction Phase Services.....	5
6.03 Use of Documents.....	6
6.04 Electronic Transmittals.....	6
6.05 Insurance	7
6.06 Suspension and Termination.....	8
6.07 Controlling Law.....	9
6.08 Successors, Assigns, and Beneficiaries.....	9
6.09 Dispute Resolution.....	10
6.10 Environmental Condition of Site.....	10
6.11 Indemnification and Mutual Waiver	11
6.12 Records Retention	12
6.13 Miscellaneous Provisions.....	12
ARTICLE 7 – DEFINITIONS.....	13
7.01 Defined Terms.....	13
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS.....	17
8.01 Exhibits Included:.....	17
8.02 Total Agreement:.....	18
8.03 Designated Representatives:.....	18
8.04 Engineer’s Certifications:	18

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of [] 9/10/24 ("Effective Date") between
Town of Blowing Rock ("Owner") and
McGill Associates, PA ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Water and Sewer Improvements Project ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

1. Completion of the Preliminary Design and Final Design Phases of the project, and the pursuit of all regulatory permits from appropriate agencies
2. Provide Bidding and Negotiation, Construction Phase, and Post-Construction Phase services for the proposed project based on the approved Final Design plans.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. any development that affects the scope or time of performance of Engineer's services;
2. the presence at the Site of any Constituent of Concern; or
3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. **Invoices will include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. **Opinions of Probable Cost and any revisions thereof should reflect compliance with Domestic Preference requirements.**

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

Opinions of Total Project Costs and any revisions thereof should reflect compliance with Domestic Preference requirements.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.

- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

~~6.02 — Design Without Construction Phase Services~~

- ~~A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly~~

~~required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.~~

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital

format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. ~~Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary

insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be

reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. **This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of the State of North Carolina. All actions relating to this Contract in any way will be brought in the General Courts of Justice in the County of Watauga and the State of North Carolina. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.**

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for

consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.

- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or

standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer ~~as an Additional Service~~ and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
38. **Agency**— **The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.**

39. **Build America, Buy America Act (BABAA) – Requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.**
 40. **Contractor’s Certification - Documentation submitted by the Contractor upon Substantial Completion of the Contract that all iron and steel, manufactured products, and construction materials are installed were produced in the United States.**
 41. **Construction Materials - Those articles, materials, or supplies — other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives — that are or consists primarily of: non-ferrous metals, plastic and polymer- based products, glass, lumber or drywall.**
 42. **Domestic Preference – The Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953.**
 43. **Manufactured Product – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the product.**
 44. **Manufacturer’s Certification - Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items**
- B. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.

- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

[NOTE TO USER: If an exhibit is not to be included in the specific agreement, indicate "not used " after that exhibit in the list above.]

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirement*

- A. **Agency Concurrence.** Signature of a duly authorized representative of the Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement

shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. **Restrictions on Lobbying.** Engineer and each Consultant shall comply with "Restrictions on Lobbying" if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions," to the Owner who will forward it the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Town of Blowing Rock

Engineer: McGill Associates

By: _____
Print name: Shane Fox
Title: Town Manager
Date Signed: _____

By: _____
Print name: Douglas Chapman
Title: Vice President
Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

C-0459

State of: North Carolina

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

1036 Main Street
Blowing Rock, NC 28605
Designated Representative (Paragraph 8.03.A):
Shane Fox
Title: Town Manager
Phone Number: 828-295-5200
E-Mail Address: sfox@townofblowingrocknc.gov

1240 19th Street Lane NW
Hickory, NC 28601
Designated Representative (Paragraph 8.03.A):
Douglas Chapman
Title: Vice President
Phone Number: 828-328-2024
E-Mail Address: doug.chapman@mcgillassociates.com

This is EXHIBIT A, consisting of [] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [].

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 ~~Study and Report Phase~~

A. ~~Engineer shall:~~

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.~~
 - ~~a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions: [] *{List the specific potential solutions here.}*~~
 - ~~b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.~~
 - ~~c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [] *{insert specific number}* alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
- ~~2. Identify potential solution(s) to meet Owner's Project requirements, as needed.~~
- ~~3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~
- ~~4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~
- ~~5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~

Exhibit A – Engineer's Services

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Page 1

- ~~6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.~~
- ~~8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.~~
- ~~9. to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.~~
- ~~10. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
- ~~11. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
- ~~12. onstruction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
- ~~13. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
- ~~14. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
- ~~15. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
- ~~16. Perform or provide the following other Study and Report Phase tasks or deliverables:
[] ***{List any such tasks or deliverables here.}***~~

Exhibit A – Engineer's Services

~~17. Furnish [] review copies of the Report and any other Study and Report Phase deliverables to Owner within [] days of the Effective Date and review it with Owner. Within [] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~

~~18. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish [] copies of the revised Report and any other Study and Report Phase deliverables to the Owner within [] days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.~~

A1.02 Preliminary Design Phase

A. After acceptance by Owner and concurrence by Agency of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner and Agency during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.

6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**

[Note to User: Some owners prefer to handle the preparation of bidding (procurement) and construction contract documents with little or no involvement by the Engineer (other than with respect to Engineer's preparation or furnishing of the Drawings, Specifications, and other design and technical documents), relying either on Owner's in-house staff and legal counsel for such services, or on third-parties such as a construction manager. When such is the case, the task item above, and related items in the Final Design Phase (Paragraph A1.03 below) and in Exhibit B, Owner's Responsibilities, should be modified to fit the requirements of the specific project.]

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
[N/A] *[List any such tasks or deliverables here.]*
 10. Furnish [2] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within [150] days of authorization to proceed with this phase, and review them with Owner. Within [30] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.
 11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner [2] copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within [45] days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents,

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revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Perform or provide the following other Final Design Phase tasks or deliverables:
[REDACTED] [N/A]

The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.

10. Furnish for review by Owner, its legal counsel and Agency, and other advisors, [2] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within [180] days of authorization to proceed with the Final Design Phase, and review them with Owner. Within [30] days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit [2] final copies of such documents to Owner within [30] days after receipt of Owner's comments and instructions.
 12. Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency."
 13. Services required to determine and certify that to the best of the Engineer's knowledge and belief all Iron and Steel Products, Manufactured Products, and Construction Material referenced in engineering analysis, the Plans, Specifications, and Bidding Documents requiring design revisions comply with all federal requirements including Domestic Preference requirements.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables and all final design phase deliverables have been accepted by Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is [1]. If more prime

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Page 6

contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence where possible.**
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
 - a. **The Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Engineer shall issue a bid addendum for any and all approved "or equals" and substitutes. Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Construction Contract and applicable Agency regulations. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.**
 - b. **Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron and steel products, Manufactured Products, and Construction Materials referenced in Bid Addenda requiring design revisions are**

compliant with Domestic Preference requirements or are the subject of an approved waiver.

7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables: [N/A]

Upon award of the Construction Contract, the Engineer shall furnish to Owner five executed copies of the Contract Documents and one electronic copy of the signed documents, including Drawings and Specifications.

10. Provide copies of Manufacturers' Certifications or copies of waivers, if applicable, to the Bidders on any products specified as sole-source in the Plans, Specifications and Bidding Documents. Manufacturers' Certifications and waivers are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction.
 11. Provide copies of Manufacturers' Certifications, and any waivers, to the Contractor on any products specified as sole-source in the Plans, Specifications, Bidding Documents including any Bid Addenda and Change Orders. Manufacturers' Certifications and waivers are to be included in the Bidding Documents and must be kept in the Engineer's project file and on-site during construction.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through

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Page 8

Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. ***[If Engineer will not be providing the services of an RPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D as part of the Agreement.]***
3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
4. *Pre-Construction Conference:* Participate in and chair a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* ~~If requested by Owner to do so,~~ **Maintain** and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve

detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
 - c. **The visits described in Article A1.05.A.9.a shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner and Agency.**
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs),

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Page 10

or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* **Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, including Applications for Payment, to ensure compliance with Domestic Preference requirements. Any iron and steel products, Manufactured Products, and Construction Materials included in any submittal by the General Contractor, must include a Manufacturers' Certification letter, or waiver, to verify Domestic Preference requirements. Copies of said documentation must be kept in the Engineer's project file and on-site during construction. In the event the Engineer requires an item to be sole-source, the Engineer must furnish the Manufacturer's Certification, or waiver, to the Contractor for said item. Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.**
18. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A. **Review of substitutes and "or equals" shall be in accordance with the General Conditions of the Contract and applicable Agency regulations. Prior to approval of any substitute "or equal" review Manufacturers' Certifications, or waiver, provided by the Contractor to verify the**

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Page 11

product(s) meet Domestic Preference requirements. Manufacturers' Certifications and waivers must be kept in the Engineer's project file and on-site during construction.

19. *Inspections and Tests:*

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
- b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
- c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- d. **As part of the approval process for payment applications, Engineer confirms that Manufacturers' Certifications, or waivers, meeting Domestic Preference requirements have been received for all items requested for payment. By recommending for payment, Engineer certifies that they have reviewed the documentation for items included in the payment application and determined it is adequate for compliance with domestic preference requirements. Engineer must keep Manufacturers' Certifications and waivers in the project file and on-site during construction.**

20. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims. **Review Change Proposals to ensure compliance with Domestic Preference requirements.**

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is

generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.**
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist

Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables: [N/A]

Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.

25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement. **Obtain the Contractors' Certification letter and copies of Manufacturers' Certifications and waivers from the Contractor for all products used in the project. Upon Substantial Completion, provide copies of Contractors' and Manufacturers' Certifications to the Owner and Agency.**
26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables: [N/A] *[List any such tasks or deliverables here.]*
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements **not including preparation of the Environmental Report defined under Basic Services**; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2-, **"but only if the Owner's request is made after completion of the Study and Report Phase."**
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.

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Page 16

14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
- ~~17. Preparing Record Drawings, and furnishing such Record Drawings to Owner. Deleted~~
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

Exhibit A – Engineer's Services

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Page 17

29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. ~~Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~ **Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the construction Contract.**
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
 6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
 7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
 8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

Exhibit A – Engineer's Services

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Page 18

This is **EXHIBIT B**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [] .

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.

Exhibit B – Owner's Responsibilities

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Page 1

3. Utility and topographic mapping and surveys.
 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- T. Perform or provide the following: [N/A] *[List any other Owner responsibilities here.]*

Exhibit B – Owner's Responsibilities

B.2.02 Owners are ultimately responsible for compliance with Domestic Preference requirements and will be responsible for the following:

A. Sign loan resolutions, grant agreements and letters of intent to meet conditions which include Domestic Preference language, accepting Domestic Preference requirements in those documents and in the letter of conditions.

B. Sign agreements for engineering services, construction contracts, and all other appropriate and necessary documents which include domestic preference language.

C. Acknowledge responsibility for compliance with Domestic Preference requirements by signing change orders (EJCDC C-941), work change directives (EJCDC C-940), field orders (C-942) and partial payment applications (EJCDC C-620).

D. Obtain the certification letters and waivers from the Contractor and Engineer upon Substantial Completion of the project and maintain this documentation for the life of the loan.

E. If the project is seeking a waiver of Domestic Preference requirements, provide any requested information to assist the Agency in processing the waiver request.

F. Where the Owner directly procures products,

- 1. Include Domestic Preference clauses in the procurement contracts;**
- 2. Obtain Manufacturers' Certifications and any waivers; and**
- 3. Provide copies to Engineer, Contractor.**

Exhibit C – Compensation Decision Guide.

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Page 1

This is **EXHIBIT C**, consisting of [] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [].

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$501,000 based on the following estimated distribution of compensation:

a. Study and Report Phase	\$0
b. Preliminary Design Phase	\$76,000
c. Final Design Phase	\$217,700
d. Bidding and Negotiating Phase	\$15,000
e. Construction Phase	\$187,300
f. Post-Construction Phase	\$5,000
 2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner and Agency.
 3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.
 4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): [N/A] **[List any such expenses here, or indicate “None.” If “None” then the reference to Appendix 1 may be deleted.]**
 5. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the

billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding [15] months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted **with concurrence of the Owner and Agency.**

**COMPENSATION PACKET RPR-1:
Resident Project Representative – Lump Sum**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.04 Compensation for Resident Project Representative Basic Services – Lump Sum Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:

1. *Resident Project Representative Services:* For services of Engineer's Resident Project Representative, if any, under Paragraph A1.05 of Exhibit A, the Lump Sum amount of \$311,200. The Lump Sum includes compensation for the Resident Project Representative's services. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses) related to the Resident Project Representative's Services.
2. *Reimbursable Expenses:* In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR Reimbursable Expenses (see Appendix 1 for rates or charges): [N/A] [List any such expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.] .

If rate(s) for RPR services is not indicated in Appendix Two to Exhibit C, "Standard Hourly Rates Schedule", the Standard Hourly Rate for RPR services is \$_____ per hour.

3. *Resident Project Representative Schedule:* The Lump Sum amount set forth in Paragraph C2.04.A.1 above is based on full-time RPR services on an eight-hour workday Monday through Friday over a [450] day construction schedule. Modifications to the schedule shall entitle Engineer to an equitable adjustment of compensation for RPR services. **Changes will not be effective unless and until concurred in by the Owner and Agency.**

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
 2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of [1.0].
 4. The Reimbursable Expenses Schedule will be adjusted annually (as of [January 1]) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**
- C. *Other Provisions Concerning Payment for Additional Services:*
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of [1.15].

Exhibit C – Compensation Packet AS-1: Additional Services –
Standard Hourly Rates Method of Payment.

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Page 1

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner ~~at cost~~ **at no cost**.

This is **Appendix 1 to EXHIBIT C**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Reimbursable Expenses Schedule

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	\$ 0.2/page
Copies of Drawings	\$ 0.20/sq. ft.
Mileage (auto)	\$ 0.70/mile
Air Transportation	at cost
Laboratory Testing	at cost
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project.]

This is **Appendix 2 to EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [] .

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

	I	II	III	IV
Senior Principal	\$295			
Principal – Regional Manager – Director	\$250	\$255	\$270	\$285
Practice Area Lead	\$215	\$240	\$250	\$265
Senior Project Manager	\$220	\$240	\$245	\$250
Senior Engineer	\$220	\$240	\$245	\$250
Project Manager	\$190	\$210	\$215	\$220
Senior Project Engineer	\$190	\$210	\$215	\$220
Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$130	\$135	\$140	\$145
Planner- Consultant – Designer	\$130	\$150	\$175	\$185
Engineering Technician	\$120	\$130	\$145	\$155
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$160	\$170	\$180	\$205
Construction Administrator	\$125	\$140	\$150	\$160
Financial Services Manager	\$145	\$155	\$165	\$175
Grant Administrator	\$125	\$145	\$155	\$165
Construction Field Representative	\$100	\$115	\$125	\$140
Environmental Specialist	\$100	\$110	\$115	\$120
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

Exhibit D - Resident Project Representative.

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Page 1

This is EXHIBIT D, consisting of [5] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [] .

[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2.]

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. **Full time Resident Project Representation is required unless requested in writing by the Owner and waived in writing by the Agency.**
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

Exhibit D - Resident Project Representative.

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Page 2

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation — RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*

- a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

Exhibit D - Resident Project Representative.

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Page 4

- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
- g. **Maintain all Manufacturers' Certifications and waivers in the project file and on-site during construction to ensure compliance with Domestic Preference requirements, as applicable.**

12. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- ~~b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor. Deleted~~
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

Exhibit D - Resident Project Representative.

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Page 5

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
 - b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
- D. Resident Project Representative shall not:
1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of [3] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [] .

Exhibit E – Notice of Acceptability of Work.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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Page 1



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To:

Owner

And To:

Contractor

From:

Engineer

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, and the following terms and conditions of this Notice:

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.

Exhibit E – Notice of Acceptability of Work.

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Page 1

2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Exhibit F – Construction Cost Limit.

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This is **EXHIBIT G**, consisting of [2] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
 - 1) Bodily injury, each accident: \$[]
 - 2) Bodily injury by disease, each employee: \$[]
 - 3) Bodily injury/disease, aggregate: \$[]
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability --
 - 1) Per Occurrence: \$6,000,000
 - 2) General Aggregate: \$6,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
\$1,000,000
- f. Professional Liability --
 - 1) Each Claim Made \$3,000,000
 - 2) Annual Aggregate \$5,000,000
- g. Other (specify): \$[N/A]

2. By Owner:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --

Exhibit G – Insurance.

- 1) Bodily injury, Each Accident \$[]
- 2) Bodily injury by Disease, Each Employee \$[]
- 3) Bodily injury/Disease, Aggregate \$[]

c. General Liability --

- 1) General Aggregate: \$2,000,000
- 2) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000

d. Excess Umbrella Liability

- 1) Per Occurrence: \$6,000,000
- 2) General Aggregate: \$6,000,000

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

f. Other (specify): \$[N/A]

B. Additional Insureds:

1. The following individuals or entities are to be listed on Owner’s general liability policies of insurance as additional insureds:

- a. McGill Associates
 Engineer

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner’s general liability policies of insurance.

3. The Owner shall be listed on Engineer’s general liability policy as provided in Paragraph 6.05.A.

Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of [1] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

[NOTE TO USER: Select one of the two alternatives provided.]

H6.08 Dispute Resolution

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

Exhibit H - Dispute Resolution.

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Page 1

This is EXHIBIT I, consisting of [1] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [] .

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

[NOTE TO USER: Select one of the three alternatives listed below for 16.11. A.1]

1. *Engineer's Liability Limited to Stated Amount, or Amount of Engineer's Compensation:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all injuries, claims, losses, expenses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project, Engineer's or its Consultants' services. or this Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total amount of \$1,000,000 or the total compensation received by Engineer under this Agreement, whichever is greater. Higher limits are available for an additional fee.

2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to:

- E. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants,

or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Special Provisions

Paragraph(s) [] of the Agreement is/are amended to include the following agreement(s) of the parties:

Exhibit J - Special Provisions.

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Page 1

This is EXHIBIT K, consisting of [] pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated [].

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- _____ Additional Services to be performed by Engineer
- _____ Modifications to services of Engineer
- _____ Modifications to responsibilities of Owner
- _____ Modifications of payment to Engineer
- _____ Modifications to time(s) for rendering services
- _____ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

USDA-Rural Development
North Carolina Guidance Document
Consultant Engineer's Development/Submittal Instructions
FINAL - Engineering Services Agreement (ESA)

The Consultant Engineer (Engineer) shall follow the below instructions when submitting the Final Engineering Services Agreement (ESA) for projects funded by USDA Rural Development in North Carolina (NC-RD). This agreement shall not be submitted until after NC-RD has obligated funding to the proposed project and the Owner has signed and accepted the letter of conditions for this funding. All submittals shall be provided to the responsible NC-RD Area Specialist using an electronic PDF format. All NC-RD items referenced below are available at the following NC-RD public folder link:

<https://new.cloudvault.usda.gov/index.php/s/tyYNXKxDa72ctMa>.

Final – Engineering Services Agreement (ESA) Submittal Items:

1. **Engineer's Submittal Cover Letter** - This cover letter shall verify that the Final ESA matches the Draft ESA previously submitted for Agency review.
2. **Final (Executed) Agreement** - A complete Final ESA executed by the Owner and Engineer needs to be prepared in accordance with the NC-RD ESA Checklist. This was the checklist used to prepare the Draft ESA. The following should be noted:
 - o The Final ESA needs to include all forms listed in the above referenced checklist.
 - o Debarment Certification (Form – AD-1048) – This form needs to be executed by the Engineer.
 - o Lobbying Certification (Form – RD Instruction 1940-Q Exhibit A-1) – This form needs to be executed by the Engineer.
 - o Engineering Agreement Certification (Form – RUS Bulletin 1780-26 Exhibit C, Attachment 2, Page 1) – This form needs to be executed by the Owner and Engineer.
 - o Owner's Pre-Audit Statement – This statement needs to be provided with the executed agreement and signed by the Owner's Finance Officer. This statement can be provided either directly on the signature page of the agreement or on the example form provided by NC-RD.



**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
 Lower Tier Covered Transactions**

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 CFR §§ 180.300, 180.335, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

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 0505-0027. The time required to complete this information collection is estimated to average 15 minutes 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 provisions of appropriate criminal or civil fraud, privacy, and other statutes may be applicable to the information provided.

(Read instructions on page two before completing certification.)

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME	PR/AWARD NUMBER OR PROJECT NAME
NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)	
SIGNATURE	DATE

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Instructions for Certification

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant must provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 CFR Parts 180 and 417. You may contact the Department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it may not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the General Services Administration's System for Award Management Exclusions database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(name)

(date)

(title)

oOo

ENGINEER AGREEMENT CERTIFICATION

PROJECT NAME: _____

The Engineer and Owner hereby concur in the Funding Agency acceptable revisions to E-500 identified in RUS Bulletin 1780-26. In addition, Engineer certifies to the following:

All modifications to E-500 have been made in accordance the terms of the license agreement, which states in part that the Engineer "must plainly show all changes to the Standard EJCDC Text, using 'Track Changes' (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions." Such other means may include attachments indicating changes (e.g. Supplementary Conditions modifying the General Conditions).

SUMMARY OF ENGINEERING FEES

Note that the fees indicated on this table are only a summary and if there is a conflict with any provision of Exhibit C, the provisions there overrule the values on this table. Fees shown in will not be exceeded without the concurrence of the Agency.

Basic Services	\$ _____
Resident Project Observation	\$ _____
Additional Services	\$ _____
TOTAL:	\$ _____

Any adjustments to engineering fees or changes to maximum estimated values must be approved by the Agency and must include a table of what specific category or categories of fees are being changed, what fees were before and after the change, and the resulting total fee.

 Engineer Date

 Name and Title

 Owner Date

 Name and Title

Agency Concurrence:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

 Agency Representative Date

 Name and Title

OWNER'S PRE-AUDIT STATEMENT

Owner:

Contract:

Contract Amount:

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

(Signature of Owner's Finance Officer)

Owner's Pre-audit Statement

Project Cost

Project Cost Item	User Desc	Item Cost
Development	Construction Cost	3,153,000
Contingencies	10% of Construction Cost	314,800
Eng - PreDevelopment	PER and ER	60,000
Eng - Design	Basic Services	441,000
Eng - Inspection	RPR	311,200
Eng - Additional Services	Funding Assistance	18,600
Legal Services	Local Attorney	1,500
Legal Services	Bond Counsel	26,500
Other	Administrative	15,000
Other	Permit Fees	1,400
Interest	Capitalized Interest	222,000

Total Construction Contract Cost	3,153,000	
Total Soft Cost / Other	266,400	
Total Engineering/Arch Cost	830,800	
Contingency Cost	314,800	9.98%
Deobligations	0	
Total Project Cost	4,565,000	



Town of Blowing Rock

1036 Main Street ★ Post Office Box 47 ★ Blowing Rock, North Carolina 28605

To: Mr. Shane Fox, Mayor Sellers, and Members of Town Council
From: Tasha Brown, Finance Officer
Subject: Budget Amendment Ordinance to Account for Various Items
(Ordinance #2024-50)
Date: September 10, 2024

Enclosed please find a Budget Amendment Ordinance for the fiscal year 2024-2025 for your consideration.

Section 1 (Water/Sewer Fund) allocates funding as follows:

- Allocates Water/Sewer fund balance (\$31,551) towards emergency sewer repair at Chestnut Circle. This allocation has been directed towards Sewer Line I&I Replacement/Repairs.

Please let me know if you need further details on the proposed amendment.

Be it ordained by the Town Council of the Town of Blowing Rock, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section 1. To amend the Water/Sewer Fund, the appropriations are to be changed as follows:

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
30-91-7130-504	Sewer Line I&I Replacement/Repairs	\$ 10,000		\$ 31,551	\$ 41,551
			<u>\$ -</u>	<u>\$ 31,551</u>	

This will result in a net increase of \$31,550 in the appropriations of the Water/Sewer Fund. As a result, the following revenue will be increased.

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
30-91-3400-399	Fund Balance Appropriated	\$ -	\$ -	\$ 31,551	\$ 31,551
			<u>\$ -</u>	<u>\$ 31,551</u>	

Copies of this budget amendment shall be furnished to the Clerk to the Town Council and to the Finance Officer for their implementation.

Adopted this 10th day of September 2024.

Attested by: _____
Charles Sellers, Mayor

Hilari Hubner, Town Clerk

TO: Mayor Charlie Sellers and the Blowing Rock Town Council

FROM: Kevin Rothrock, Planning Director

SUBJECT: SUP 2024-03 David Reule – 133 Morris St (Watership Down)

APPLICANT: David Reule

DATE: September 5, 2024

REQUEST

David Reule is requesting a Special Use Permit to demolish four (4) office/retail units at Watership Down at 133 Morris Street and construct four (4) two-story office and residential units. The property is 0.119 acres and is zoned CB, Central Business. The property is further identified by Watauga County PIN 2807-97-2526-000, 2807-97-3504-000, 2807-97-3501-000 and 2807-97-2566-000. The property is located in the WS-IV-PA Water Supply Watershed.

SITE PLAN

The subject property involves 4 lots at Shoppes at Watership Down originally regulated by a Conditional Use Permit approved in 1995. The Applicant plans to partially demolish 4 buildings and rebuild within the existing footprint and add a second story. A 5-foot side setback is required on the east and west property lines. Section 16-12.6 of the Land Use Code allows construction within the existing setback but does not allow a second story to be added without meeting the required setback. The building is currently about 3 feet from the property line on the east and west sides. A waiver of Section 16-12.6 is being requested to allow the second floor of the buildings to be built within the 5-foot setback.

PARKING

The property currently has 4 total parking spaces reserved for the 4 commercial units. The proposed project with office space and residential living units requires 7 parking spaces. The applicant proposes to add 6 additional parking spaces in the rear of the building accessed through a passage way through the building on lot # 4 for a total of 10 spaces. These parking spaces would be exclusively for the property owners. Any public spaces will be retained in the parking area in front of the buildings.

STORMWATER MANAGEMENT

The area proposed for parking behind the building previously used for parking but is now grass. Drainage from adjacent properties is currently directed to this area with no coordination. The applicant intends to collect adjacent property drainage pipes and runoff from the rear parking and the rear of the project buildings and direct the storm water to a detention storage structure

just to the east of the property. This should improve the runoff situation in this area at least from a collection basis. Runoff will not be increased with the measures planned for this project.

APPEARANCE

Since buildings in the area are both flat roof and pitched, the Applicant proposes a mix of roof types to be complimentary to the surrounding architecture.

Building materials consist of natural stone, board and batten, wood shakes, and a “pebbledash” stucco finish.

LANDSCAPING

Given the tight spaces and drainage areas on the property, landscaping will be added in front of the units in potted and raised retaining beds. There may also be room for a small tree to be added in the rear parking area.

REQUESTED WAIVERS

1. The applicant is requesting a waiver to Section 16-12.6 of the Land Use Code to allow the second floor of the buildings to be built within the 5-foot setback.
2. The applicant is requesting a waiver of the standard parking space width from 9 feet to 8.5 feet.

PLANNING BOARD RECOMMENDATION

At their regular meeting on August 15, 2024, the Planning Board made a recommendation to approve the Special Use Permit application and requested waivers of the side setback and the parking space width and the following additional condition:

1. That job site construction deliveries and activities on Morris Street be restricted during Blowing Rock School drop-off and pick-up times.

ATTACHMENTS

1. Draft SUP
2. Property survey
3. Aerial vicinity map
4. Site plan and building elevations
5. Building renderings
6. Proposed building colors summary
7. Photo of existing buildings

NORTH CAROLINA

WATAUGA COUNTY

**TOWN OF BLOWING ROCK SPECIAL USE PERMIT
David Reule – Watership Down property
SUP No. 2023-04**

On the date listed below, the Board of Commissioners of the Town of Blowing Rock met and held a public hearing to consider the following application:

Applicant: David Reule

Project Name: David Reule Townhome/Office Project

Property Location: 133 Morris Street

Tax Parcel No.: 2807-97-2526-000, 2807-97-3504-000, 2807-97-3501-000 and 2807-97-2566-000

Property Owners of Record: Lenoir First LLC, Orian and Catherine Carter, David and Edward Reule

Proposed Use of Property: Office and Residential Townhomes, Short-term rental

Current Zoning Classification of Property: CB, Central Business

Meeting Date: September 10, 2024

Having heard all of the evidence and arguments presented at the above-referenced hearing, the Board finds that the application complies with all applicable requirements of the Code of Ordinances of the Town of Blowing Rock, and that, therefore, the application to make use of the above-described property for the purpose indicated is hereby approved, subject to all applicable conditions of the Land Use Code and the following additional conditions:

1. The Applicant shall complete the development of the subject property in accordance with the site and architectural plans (dated 6-27-24 and 7-2-24) submitted and approved by this Board, except as amended by the following conditions. Where said plans are in conflict with the provisions of the Land Use Code, the provisions of the Land Use Code shall prevail, except as specifically provided herein. Copies of said plans are made a part hereof as if fully rewritten herein, and shall be maintained in the Special Use Permit file in the Town Clerk’s office. Any deviations from or changes in the plans must be pointed out to the Administrator in writing and specific written approval must be obtained as provided in the Blowing Rock Land Use Code.
2. Specific building materials and colors shall be submitted to the Planning Director for approval before construction.
3. The property is hereby approved for office use, residential use, and short-term rental use. The proposed uses require 7 parking spaces and the site will have 10 spaces when completed. The parking spaces behind the building are restricted for use by the tenants and owners.
4. Consistent with Section 16-4.10.3 of the Land Use Ordinance, the Board of Commissioners finds:
 - a. The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.

- b. The use or development complies with all required regulations and standards of the Land Use Ordinance or with variances thereto, if any, and with all other applicable regulations.
 - c. The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.
 - d. The use or development will not substantially injure the value of adjoining or abutting property.
 - e. The use or development conforms with the general plans for the physical development of the Town as embodied in this Ordinance, the Town of Blowing Rock Comprehensive Plan, and any other duly adopted plans of the Town.
5. All electric, phone, and cable utilities shall be placed underground. No building shall be constructed over any part of any utility easement.
 6. Job site construction deliveries, collections, demo removal and construction activities on Morris Street shall be restricted during normal Blowing Rock School drop-off and pick-up times.
 7. Garbage collection will be with roll-out containers stored behind the building and shall be screened and kept corralled. The Public Works director shall approve the storage location and collection methods.
 8. A fire hydrant shall be added on Morris Street in a location approved by the Public Works Director and Fire Marshal. The expenses associated with fire hydrant installation shall be borne by the Applicant.
 9. A landscape plan for the area in front of each building shall be submitted for review and approval.
 10. Storm water will be collected behind the building and rear parking area and directed to the detention device installed by the Town adjacent to the existing dumpster pad. This would include gutter downspouts, a drain pipe from the Hanna building, and surface water from the rear parking area.
 11. The Applicant shall be responsible for the perpetual maintenance of all trees, plants, and landscaping required herein. Any dead, unhealthy, or missing vegetation, or any vegetation disfigured by severe pruning, shall be replaced with new vegetation.
 12. Before any building permit is issued, the Applicant shall submit a revised site plan, in such form as shall be required by the Zoning Officer, that incorporates the terms and conditions of this Special Use Permit. All utility easements shall be signed and recorded prior to final approval of the site and grading plan.
 13. Failure to comply with any provision herein shall subject the Applicant to forfeiture of the Permit and a stop work order on any further construction.
 14. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this Permit shall be void and of no effect.

IN WITNESS WHEREOF, the Town of Blowing Rock has caused this Permit to be issued in its name and the undersigned being property owner(s) and/or agent(s) of the property owner(s) does hereby accept this Special Use Permit, together with all of its conditions as binding upon them and their successors in interest.

TOWN OF BLOWING ROCK

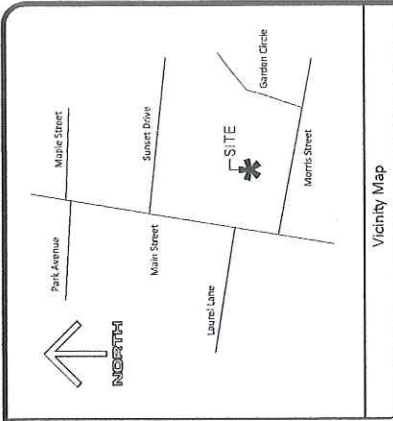
Draft

David Reule

Special Use Permit No. 2024-03

By: _____
Charlie Sellers, Mayor

ATTEST: _____
Hilari H. Hubner, Town Clerk
(CORPORATE SEAL)



Surveyor's Certification
 I certify that this plat was drawn under my supervision from an actual survey made under my supervision (see description and/or deed references below); that the boundaries not surveyed are indicated as drawn from the information noted on this plat of survey; that this survey is made as an Urban Land Survey (ULS) having a stated accuracy of 1:100,000; that the error of closure for any control point or property corner exceeds 0.10 feet; that this plat meets the requirements of The Standards of Practice for Land Surveying in North Carolina 21 NCAC 59.1603; and that this plat was prepared in accordance with G.S. 47-30 as amended. I further certify that this survey is of an existing parcel of land and does not create a new street or change an existing street.



Witness my signature, seal and date.
 David Reule 3/11/2024
 C. Neil Shepherd, R.S. 47-47-95

Surveyor's Notes:

- The property which is the subject of this survey is described in Deed Book 2114, Page 628, and Deed Book 2115, Page 578, and Deed Book 2116, Page 578, and also the property described in Deed Book 1355, Page 238, being Lot 6 shown in Plat Book 12, Page 368, and revised in Plat Book 14, Page 3, Watauga County Registry, LLC property owners shown in the deed at the time of survey were: Park Place Florist, LLC, Albert L. Ernest & Wu Fang Ernest.
- This plat reflects information discovered by the surveyor in the normal course of work and does not necessarily show every possible condition affecting the property. A complete title abstract was not prepared by Survey Profs. Underground utilities may exist which are not shown. This property may be subject to other rights, building easements, zoning, and other legal encumbrances which may also exist. Adjoining property owner information was obtained from the local GIS.
- Property subject to Declaration of Restrictions recorded in Deed Book 328, Page 265, and first amended in Deed Book 448, Page 578, second amended in Deed Book 455, Page 883, and third amended in Deed Book 2190, Page 62. Property is also subject to any matters shown in Plat Book 03, Page 178.
- The grid tie shown on this map was taken from an actual GPS survey made under my supervision. The GPS portion of this survey meets the standards of the North Carolina Land Survey (Class A) such that neither the 95 percent confidence level error ellipse for the project control point(s) exceeds 0.10 feet. The static GPS survey was performed on March 4, 2024 with Trimble R88 receivers. National Geospatial Survey (NGS) CORS station "NAB9312011" and orthometric height (elevation) NAVD 88 as shown herein. Vectors were adjusted to the project control point(s) using the least squares method. The horizontal accuracy was 0.07 feet prior to adjustment. The vertical positional accuracy relative to the remote control station was 0.30 feet prior to adjustment. The combined grid factor at the project control point is 0.99882556547. All bearings shown are relative to N.C. Grid, NAD 83 (2011). All elevations shown are relative to NAVD 88. All distances shown are horizontal distances in U.S. Survey feet unless otherwise noted. All areas shown were computed by coordinate computation.

Scale: 1 inch = 10'



Survey Profs, PLLC
 Firm Number: P-2218
 924 Main Street, Suite 300
 North Wilkesboro, NC 28659
 Crew Chief: CF
 File Number: 24-023
 www.NCSurveyProfs.com
 DATE: 3-11-2024

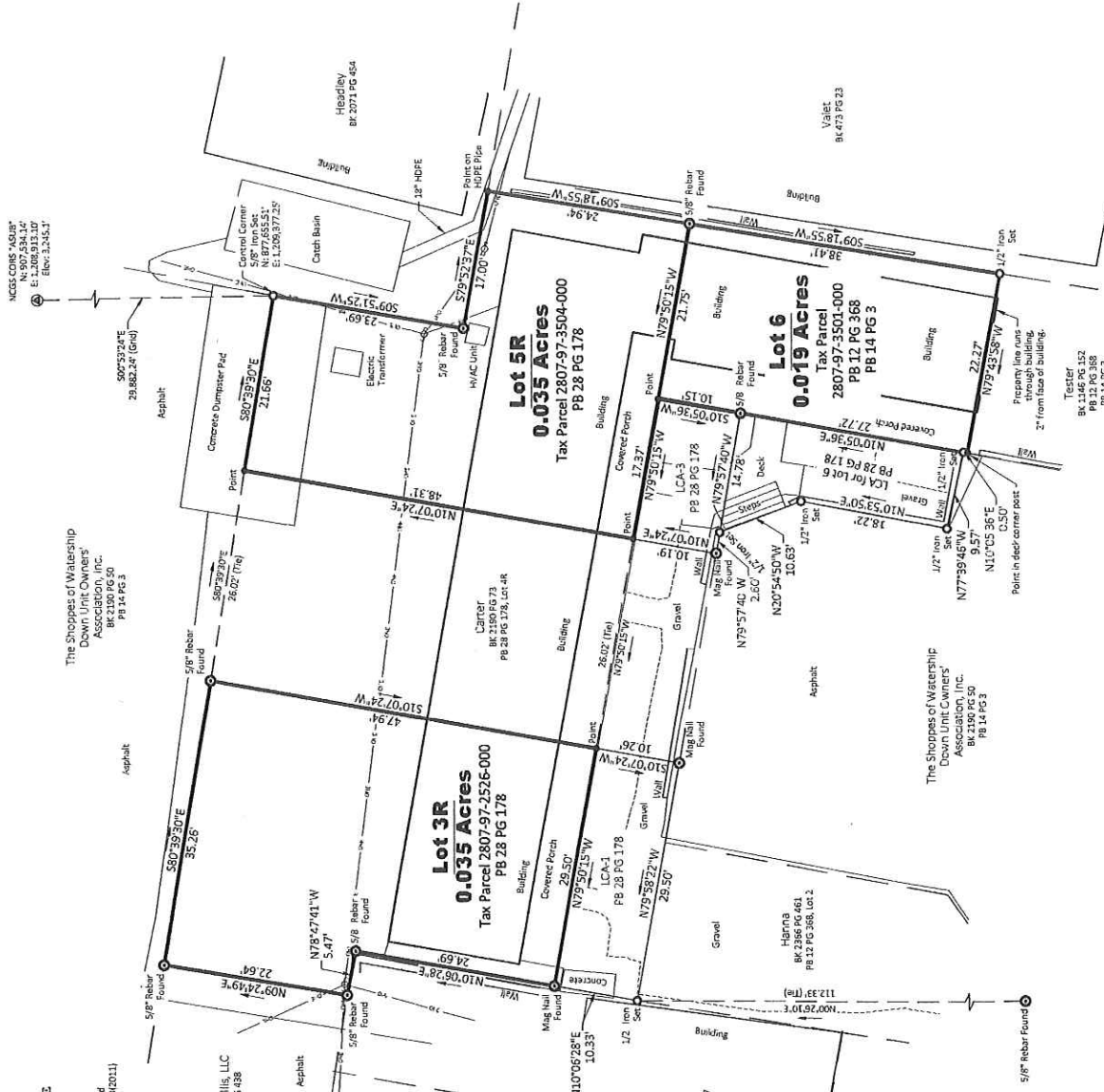
Additional Name for the Index: The Shoppes on Watership Down

Property Owners (for the Index): Park Place Florist, LLC, Albert L. Ernest & Wu Fang Ernest

Boundary Survey for:

David Reule

Property Location:
 133 Morris Street, Blowing Rock, NC 28605
 Blowing Rock Township, Watauga County, North Carolina



*Planning Department Review Not Required
 This plat depicts a boundary survey of land to be set from Planning Department and/or Review Officer certifications prior to recording. See NCS-47-30(f)(1)(i)(1).

- LEGEND**
- Property Line (Surveyed)
 - As Line (Surveyed)
 - As Line (Not Surveyed)
 - Easement
 - Overhead Electric
 - Right-of-Way
 - Computed Point
 - Utility Pole
 - Water Meter
 - United Common Area



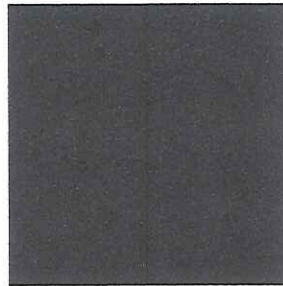


FRONT VIEW



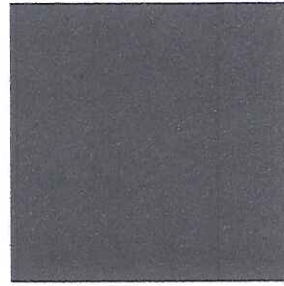
BACK VIEW

TRIM PAINT – FOR
DARKER BUILDINGS



BENJAMIN MOORE-
BLACK BEAUTY 2821-10

TRIM PAINT – FOR
LIGHTER BUILDING



SHERWIN WILLIAMS-
IRON ORE 7069

INTERIOR PAINT

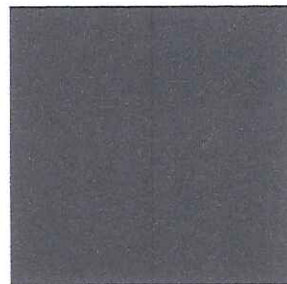


BENJAMIN MOORE-
SWISS COFFEE 0-45

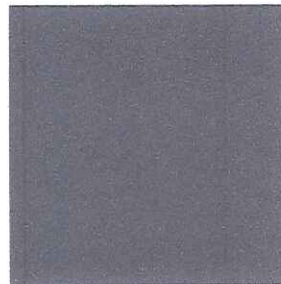


8050 STONEY MOUNTAIN ASHLAR CORNERS

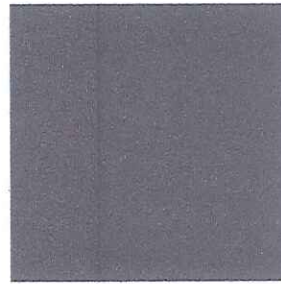
OVERALL PAINT OPTIONS –FOR DARKER BUILDINGS – TO TEST ON SITE



SHERWIN WILLIAMS-
IRON ORE 7069



SHERWIN WILLIAMS-
PEPPERCOURN 7674



BENJAMIN MOORE-
IRON MOUNTAIN 2134-30

OVERALL PAINT FOR BUILDING 4R TO BE TESTED AT
50% LIGHTER THAN DARKER PAINT SELECTION



Reule – 133 Main Street
Current Watership Downe Shops

133 MORRIS ST. RENOVATIONS - LOTS 3R, 4R, 5R & 6R

133 MORRIS STREET
 RENOVATIONS
 133 MORRIS STREET
 BLOWING ROCK, NC
 28605



AREA OF CONSTRUCTION

FARROW DESIGN TO HAVE NO RESPONSIBILITY OR LIABILITY FOR INFORMATION CONTAINED WITHIN DRAWINGS. CONTRACTOR ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR PROJECT AND WILL WORK WITH THE OWNER TO MAKE FINAL DECISIONS AS REQUESTED. CONTRACTOR RESPONSIBLE FOR VERIFYING AND CHECKING ALL DIMENSIONS AND DETAILS ON PLAN FOR ACCURACY PRIOR TO CONSTRUCTION AND NOTIFYING FARROW DESIGN WITH ANY QUESTIONS OR CONCERNS.

SQUARE FOOTAGE & SCOPE OF WORK

LOT 3R	LOT 4R	LOT 5R	LOT 6R
-LEVEL ONE: 391	-LEVEL ONE: 351	-LEVEL ONE: 608	-LEVEL ONE: 748
-LEVEL TWO: 414	-LEVEL TWO: 752	-LEVEL TWO: 608	-LEVEL TWO: 713
TOTAL: 844	TOTAL: 1,064	TOTAL: 1,216	TOTAL: 1,461

WALL LEGEND & SYMBOLS

	EXISTING EXTERIOR WALL
	NEW CEILING HIGH PARTITION
	NEW EXTERIOR WALL - REFER TO ELEVATIONS
	WALL TO BE REMOVED
	DOOR TO BE REMOVED
	EXISTING/NEW DOOR
	ITEMS TO BE REMOVED

GENERAL NOTES

- FOR SITE WORK/ADDITIONS/NEW CONSTRUCTION: CONTRACTOR TO FIELD VERIFY EXISTING SITE CONDITIONS TO CONFIRM EXACT LOCATION AND FLOOR ELEVATIONS ETC. PRIOR TO STARTING CONSTRUCTION. CONTACT FARROW DESIGN IMMEDIATELY WITH ANY CONFLICTS OR DISCREPANCIES TO RESOLVE.
- ALL FRAMING TO BE IN ACCORDANCE WITH CURRENT NC BUILDING CODE AND ACCEPTED CONVENTIONAL FRAMING PRACTICES, OR IN ACCORDANCE WITH THE STRUCTURAL ENGINEERING DRAWINGS (WHEN APPLICABLE).
- ALL DIMENSIONS, DETAILS AND UNDERSTANDINGS OF THE PLANS ARE TO BE DETERMINED AND UNDERSTOOD PRIOR TO CONSTRUCTION BY CONTRACTOR. FARROW DESIGN AND ENGINEERS OF RECORD TO BE NOTIFIED IF QUESTIONS ARISE, PRIOR TO CONSTRUCTION.
- PLANS ARE FOR DESIGN INTENT AND BUILDING PERMIT ONLY.
- CONTRACTOR RESPONSIBLE FOR FIELD DIMENSIONING ALL MILLWORK, GLASS, DOOR AND WINDOW OPENINGS, ETC.
- CONTRACTOR RESPONSIBLE FOR PROVIDING ALL WORK AND MATERIALS IN ACCORDANCE WITH LATEST LOCAL AND BUILDING CODES AND ORDINANCES.
- ASSUME NORTH AT TOP OF DRAWING, U.N.O.
- DO NOT SCALE DRAWINGS. IF DIMENSIONS ARE IN QUESTION, CONTACT FARROW DESIGN.
- PROVIDE SOLID WOOD BLOCKING FOR ALL LIGHTING, TOILET ACCESSORIES, T.V.'S, CABINETY AND TRIM AS NEEDED.
- ALL FIXTURES AND REGISTERS SHALL ALIGN SQUARE AND LEVEL WITH FINISHED CEILINGS.
- CONFIRM ALL POWER REQUIREMENTS FOR ANY APPLIANCES. ALL ELECTRICAL WORK TO BE DESIGN BUILT BY LICENSED ELECTRICAL CONTRACTOR IN ACCORDANCE WITH ALL APPLICABLE CODE.
- ELECTRICAL PLANS ARE FOR LAYOUT AND SWITCHING CONFIGURATION ONLY AND DO NOT REFLECT CIRCUITRY, GF'S ETC.
- ANY GROUPED SWITCHES SHALL BE MOUNTED WITHIN ONE FACEPLATE. COORDINATE INTERIOR SWITCH LOCATION (TO CONTROL OUTDOOR LIGHTING) WITH OWNER WHEN APPLICABLE.
- ALL INTERIOR AND EXTERIOR DETAILS TO BE COORDINATED WITH OWNER AND G.C. CONTACT FARROW DESIGN WHEN NECESSARY.

PROVIDE TERMITE TREATMENT PER R318

REFER TO STRUCTURAL ENGINEERING FOR FURTHER DETAILS

ROOF CONSTRUCTION, MATERIALS, FLASHING AND SLOPING SHALL COMPLY WITH ALL REQUIREMENTS IN NCRC SECTION R905

STAIR REQUIREMENTS:

REFER TO 2018 NCRC FOR ALL STAIR REQUIREMENTS
 MAX RISER HEIGHT IS 8"
 MIN TREAD DEPTH IS 9" (PLUS NOSING)
 MIN NOSING IS 2"
 MAX NOSING IS 1/2"
 MIN HEADROOM HEIGHT IS 6'-8"
 MIN HANDRAIL HEIGHT FOR STAIR IS 34"
 MAX STAIR RAIL HEIGHT IS 38"
 MIN HEIGHT FOR GUARDS IS 36" (AT OPEN-SIDED WALKING SURFACES)
 GUARDS SHALL NOT ALLOW PASSAGE OF 4" SPHERE
 GUARDS AT OPEN SIDES OF STAIR SHALL NOT ALLOW PASSAGE OF 4" SPHERE

SITE PLAN/VICINITY MAP

NOT TO SCALE

DEMOLITION NOTES

- CONTRACTOR SHALL REMOVE ALL EXISTING CONSTRUCTION AS INDICATED ON THE DEMOLITION PLAN AND REMOVE MATERIAL FROM PROJECT SITE.
- CONTRACTOR SHALL ERECT AND MAINTAIN ALL BARRICADES AND DUST DEBRIS CONTROL AS REQUIRED BY LOCAL AUTHORITY AND LANDLORD.
- REMOVE ALL ABANDONED PIPING AND CAP AT MAIN AT AREAS OF PLUMBING DEMOLITION.
- REMOVE ALL FINISHES THROUGHOUT SPACE.
- PROVIDE SAFETY AND PROTECTION OF PUBLIC AND OTHER PROPERTIES PER NCBC CHAPTER 33 "SAFEGUARDS DURING CONSTRUCTION."
- REMOVE EXISTING ELECTRICAL, CEILINGS, LIGHTS AND DRYWALL SOFFITS THROUGHOUT.
- G.C. TO REMOVE EXTERIOR PORTIONS OF BUILDING WHERE INDICATED.
- PREPARE EXISTING EXPOSED CONCRETE FLOORS FOR FLOOR LEVELING PROCESS AS REQUIRED.
- PREPARE ANY EXISTING FLOOR OPENINGS DUE TO DEMOLITION TO BE INFILLED.
- REMOVE EXISTING DECKING PATHWAY ALONG (PLAN WEST) SIDE OF BUILDING 3R. COORDINATE WITH OWNER FOR NEW PATHWAY MATERIALS.

ARCHITECTURAL NOTES

- MAINTAIN EXISTING RATINGS AS REQUIRED BY CODE.
- CONTRACTOR TO BE RESPONSIBLE FOR FIELD DIMENSIONING OF ALL MILLWORK, GLASS, DOOR OPENINGS, ETC.
- CONTRACTOR SHALL PROVIDE NECESSARY BACKING, FIRE RETARDANT TREATED BLOCKING, AND FRAMING FOR LIGHT FIXTURES, ELECTRICAL FIXTURES, CASEWORK AND OTHER ITEMS REQUIRING SAME. COMBUSTIBLE MATERIALS SHALL BE IN ACCORDANCE WITH NCBC 603.
- PROVIDE WALL MOUNTED FIRE EXTINGUISHERS AS REQUIRED BY LOCAL FIRE CODE.
- CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING ALL WORK AND MATERIALS IN ACCORDANCE WITH THE LATEST LOCAL BUILDING CODES AND ORDINANCES.
- CONTRACTOR SHALL VERIFY ALL FIELD DIMENSIONS AND CONDITIONS AND SHALL REPORT ANY CONFLICTS OR QUESTIONS FOR RESOLUTION BEFORE PROCEEDING WITH THE WORK. DO NOT SCALE FROM THE DRAWINGS.
- THE USE OF THE WORD "PROVIDE" SHALL ALWAYS MEAN FURNISH AND INSTALL, CONNECT OR SECURE AS REQUIRED.
- ALL MATERIALS AND EQUIPMENT SHALL BE INSTALLED IN STRICT ACCORDANCE WITH MANUFACTURER'S WRITTEN INSTRUCTIONS AND TRADE ASSOCIATIONS' ACCEPTED STANDARDS.
- ALL MATERIALS TO BE NEW, UNLESS NOTED OTHERWISE.
- ASSUME NORTH AT TOP OF DRAWING.
- CONTRACTOR SHALL PROVIDE "UNISEX" SIGNAGE ON ALL RESTROOM DOORS. SIGNAGE MUST COMPLY WITH CURRENT STANDARD BUILDING CODE, ADA CODE, OSHA CODE § A117.1-2009.
- CONTRACTOR SHALL CLEAN THE PREMISES IMMEDIATELY PRIOR TO OCCUPANCY OF THE SPACE BY THE TENANT. THIS INCLUDES VACUUMING, MOPPING, CLEANING OF THE WINDOWS AND BLINDS, CLEANING OF THE LIGHT FIXTURE LENSES, CLEANING OF THE HVAC RETURNS AND DIFFUSERS, POLISHING OF ALL METAL, WAXING AND BUFFING OF TILE FLOORING (AS APPLICABLE), REMOVAL OF ALL CONSTRUCTION DEBRIS, ETC.

FINISH NOTES

- ALL FINISHES ARE TO MEET NCBC 803 & 804 AND IFC 803.3 ALL EXPOSED EDGES OF CARPET SHALL COMPLY WITH ICC A117 SECTION 302.2. RESTROOM FINISHES TO COMPLY WITH NCBC 1210.1.8 & 1210.2.
- PROVIDE LOW-VOC PAINT (LESS THAN 50 G/L - MEET OR EXCEED GS-11 STANDARDS - SHERWIN WILLIAMS PROGREEN 200 OR EQUAL).
- PAINT TO BE APPLIED WITH PRIMER COAT AND A MINIMUM OF TWO (2) FINISH COATS. PROVIDE ADDITIONAL FINISH COATS AS REQUIRED TO ACHIEVE APPROPRIATE CONSISTENCY OF COVERAGE AND EVEN COLOR OVER SURFACE. ALL SURFACES TO BE SANDED AND PREPPED BEFORE PAINTING TO PROVIDE "AS NEW" APPEARANCE.

DOOR SCHEDULE NOTES

- PROVIDE HANDICAP APPROVED LEVER HARDWARE ON ALL DOORS.
- HARDWARE AND LOCKS TO COMPLY WITH SECTIONS 1010.1.9.2 AND 1010.1.9.3 THE NORTH CAROLINA STATE BUILDING CODE AND ICC A117.1 ACCESSIBILITY CODE (404.2.6 AND 404.2.7).
- DOOR STOPS SHALL BE PROVIDED WHERE UNCONTROLLABLE DOOR SWINGS INTERSECT ADJACENT WALLS OR OTHER PERMANENT OBJECTS.
- DOOR CLOSERS (WHEN PROVIDED) SHALL BE EITHER NORTON 8300 SERIES #8301BF (BARRIER FREE TO MEET ADA REQUIREMENTS) OR YALE 3500 SERIES #3501BF (BARRIER FREE TO MEET ADA REQUIREMENTS).

SHEET INDEX

SHEET NUMBER	DRAWING DESCRIPTION	DATE
CS	COVER SHEET	6/27/2024
A0-1	SITE PLAN (OPTION ONE)	6/27/2024
A0-2	SITE PLAN (OPTION TWO)	6/27/2024
D1	DEMOLITION PLAN	6/27/2024
A1a-L1	LEVEL ONE FURNITURE PLAN	6/27/2024
A1b-L1	LEVEL ONE CONSTRUCTION PLAN	6/27/2024
A2a-L2	LEVEL TWO FURNITURE PLAN	6/27/2024
A2b-L2	LEVEL TWO CONSTRUCTION PLAN	6/27/2024
A3	ELEVATIONS	6/27/2024
A4	ELEVATIONS	6/27/2024
A5	ROOF PLANS	6/27/2024

SANDY FARROW
 INTERIOR DESIGN + ARCHITECTURE
 REGISTERED INTERIOR DESIGNER
 SEAL #338
 09/09/2024
 CERT. NO. 1061
 07/09/2024
 FARROW DESIGN, LLC
 REGISTERED INTERIOR DESIGN COMPANY
 NORTH CAROLINA

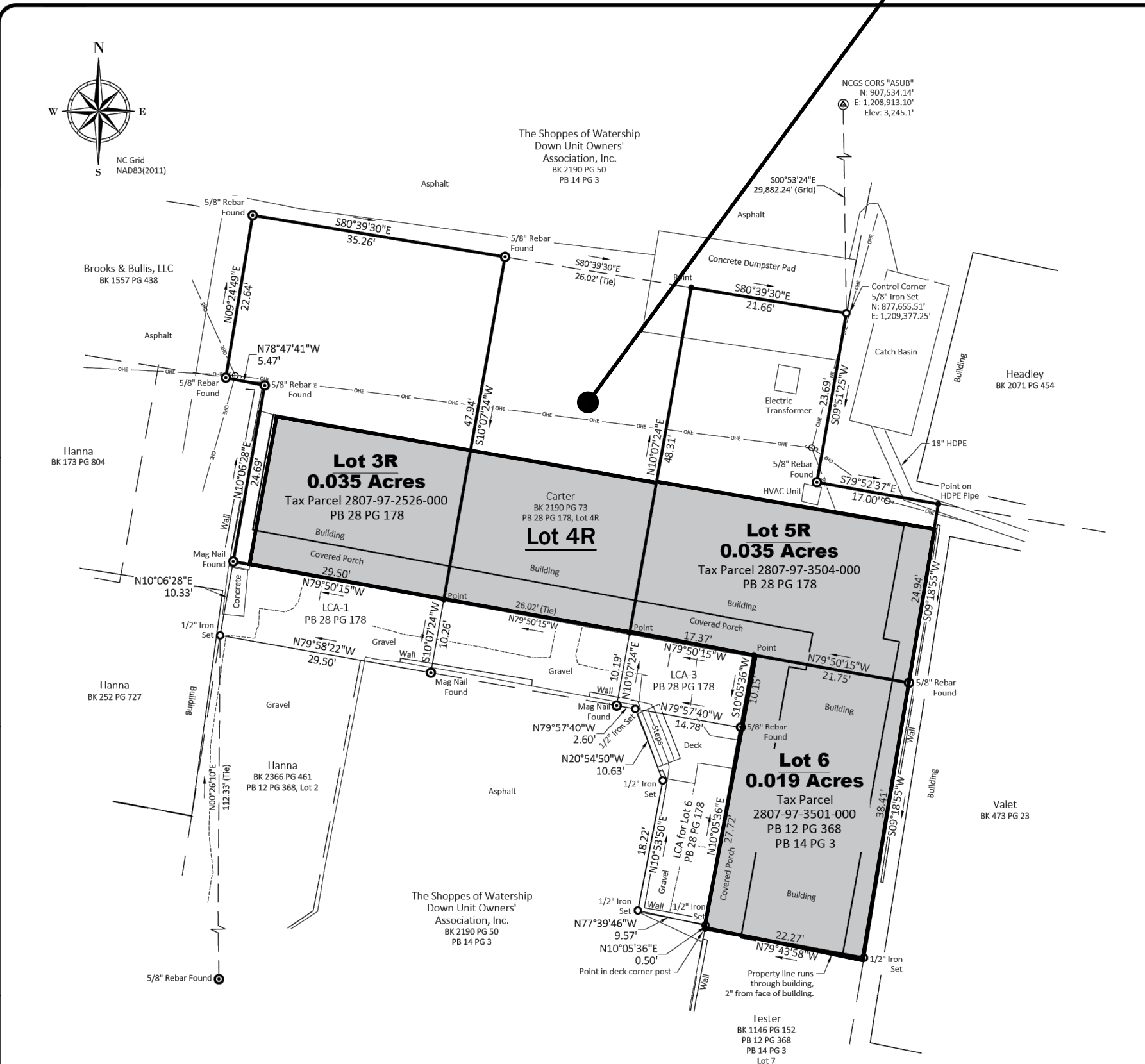
THESE DRAWINGS DO NOT BEAR THE SEAL OF A LICENSED ARCHITECT OR STRUCTURAL ENGINEER. IT IS THE CONTRACTOR'S RESPONSIBILITY TO INSURE THAT THE CONSTRUCTION COMPLIES WITH ALL LOCAL AND STATE BUILDING CODES FOR LIFE SAFETY, STRUCTURAL, ADA ACCESSIBILITY AND ALL STANDARD PRACTICES FOR FLASHING AND CONSTRUCTION. CONTRACTOR TO ASSUME ALL RESPONSIBILITY AND LIABILITY FOR INFORMATION CONTAINED WITHIN.

SUITE: 1235 EAST BLVD, SUITE E
 #812 CHARLOTTE, NC 28203
 USF: 704-726-8727
 SCALE: NTS
 www.sandyfarrowdesign.com

DRAWN BY: SANDY FARROW, IDA
 ASSOCIATE AIA
 NC-RID

DATE: 06.27.24
 06.20.24 REV. #1 - ADDING 4R TO SCOPE OF WORK
 06.27.24 REV. #2 - OWNER COMMENTS
 07.02.24 REV. #3 - OWNER COMMENTS

SHEET:
 COVER SHEET
 CS



Surveyor's Certification
I certify that this plan was drawn under my supervision from an actual survey made under my supervision (see description and/or deed references below); that the foundation not surveyed and indicated as shown from the information noted on this plan of survey; that the survey is classified as an Urban Land Survey (Class A) having a calculated ratio of precision better than 1:10,000 before adjustments, and/or within one of the 50 percent confidence level error allowed for any control point or property corner exceeds 0.10 feet; that this plan meets the requirements of the Standards of Practice for Land Surveyors in North Carolina (21 NCAC 16.100); and that this plan was prepared in accordance with G.S. 47-30 as amended. I further certify that this survey is of an existing parcel or parcels of land and does not create a new street or change an existing street.

Witness my signature, seal and date.
C. Neil Shephard 3/11/2024
C. Neil Shephard, P.L.S. #14746

Surveyor's Notes
1. The property which is the subject of this survey is described in Deed Book 2334, Page 406, and Deed Book 2190, Page 76, being lot 3R and lot 5R shown in Plat Book 26, Page 176, and also the property described in Deed Book 2253, Page 238, being lot 4 shown in the Book 12, Page 360, and revised in Plat Book 14, Page 3, Watauga County Registry. The property owners shown in the deed at the time of survey were: Park Place Homes, LLC, Albert L. Ernest & Lu Fang Ernest.
2. This plan reflects information discovered by the surveyor in the normal course of work and does not necessarily show every possible condition affecting the property. A complete title abstract was not performed by Survey Pro, Inc. Underground utilities may exist which are not shown. This property may be subject to easements and/or rights-of-way of record not shown. Other easements, rights-of-way, building encroachments, zoning, and other legal encumbrances may also exist. Adjoining property owner information was obtained from the local GIS.
3. Property subject to Declaration of Restrictions recorded in Deed Book 328, Page 295, and Plat amended in Deed Book 448, Page 378, second amended in Deed Book 423, Page 893, and third amended in Deed Book 2190, Page 62. Property is also subject to any matters shown in Plat Book 26, Page 176.
4. The grid for shown on this map was taken from an actual GPS survey made under my supervision. The GPS portion of the survey meets the qualification requirements of The Standards of Practice for Land Surveyors in North Carolina (21 NCAC 16.1007) for an Urban Land Survey (Class A) such that neither side of the 50 percent confidence level error allowed for the project control exceeds 0.10 feet. The state GPS survey was performed on March 4, 2024 with Trimble 560 receivers. National Geographic Survey (NAD 83) CORS station "AOLB" was used as the fixed control station having published NC Grid coordinates NAD83(11) and orthometric height (mean sea level) as shown herein. Verticals were adjusted utilizing Trimble Geomatics Office Business Solutions software. The geoid model used was GRS08. The horizontal positional accuracy relative to the remote control station was 0.92 feet prior to adjustment. The combined grid factor at the suspect control point is 0.999292657. All bearings shown are relative to NC Grid, NAD 83(2011). All elevations shown are relative to MDD 88. All distances shown are horizontal distances in U.S. Survey Feet unless otherwise noted. All areas shown were computed by coordinate computation.

LEGEND
Property Line (surveyed) by User (surveyed)
Adjacent Line (not surveyed)
Easement
Overhead Electric
Right of Way
Computed Point
Utility Pole
Water Meter
United Common Area

*Planning Department Review Not Required
This plan depicts an existing parcel or parcels of land and is exempt from Planning Department and/or Review Officer certifications prior to recording. See NCCG 47-30(b)(1)(3)(b)(1).

Additional Name for the Index: The Shoppes at Watership Down
Property Owners (for the Index): Park Place Homes, LLC, Albert L. Ernest & Lu Fang Ernest

Boundary Survey for:
David Reule

Property Location:
133 Morris Street, Blowing Rock, NC 28605
Blowing Rock Township, Watauga County, North Carolina

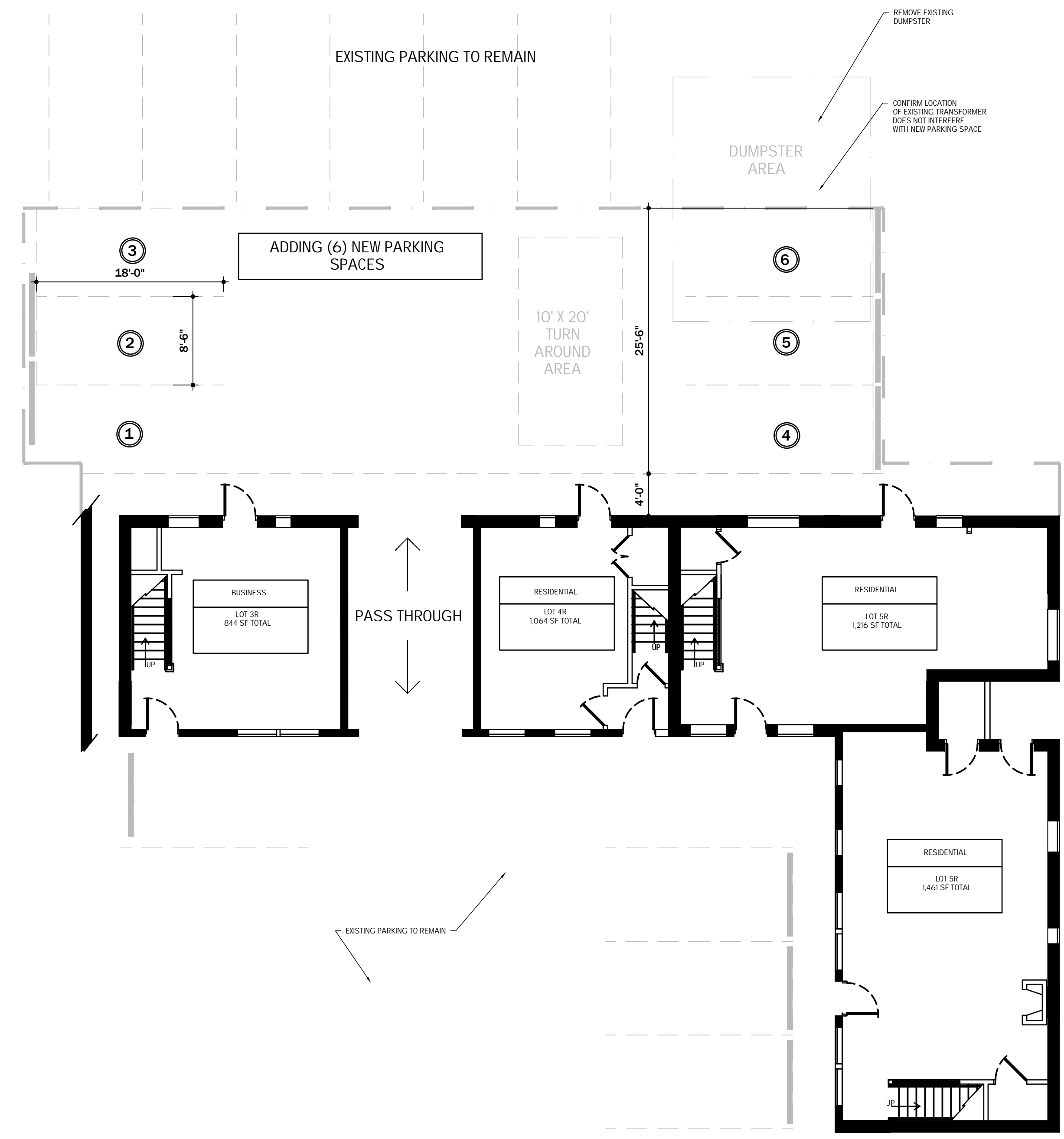
SurveyPro
(336) 667-5533

Survey Pro, PLLC
924 Main Street, Suite 300
North Wilkesboro, NC 28659
www.NCSurveyPro.com

Firm Number: P-2218
Crew Chief: CF
File Number: 24-023
Date: 3-11-2024

EXISTING CONDITIONS SITE PLAN
NOT TO SCALE
1-AO-1

PARKING INFORMATION



NEW CONSTRUCTION PLAN WITH PARKING ADDITIONS
SCALE: 1/8" = 1'-0"
2-AO-1

FARROW DESIGN TO HAVE NO RESPONSIBILITY OR LIABILITY FOR INFORMATION CONTAINED WITHIN DRAWINGS. CONTRACTOR ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR PROJECT AND WILL WORK WITH THE OWNER TO MAKE FINAL DECISIONS AS REQUESTED. CONTRACTOR RESPONSIBLE FOR VERIFYING AND CHECKING ALL DIMENSIONS AND DETAILS ON PLAN FOR ACCURACY PRIOR TO CONSTRUCTION AND NOTIFYING FARROW DESIGN WITH ANY QUESTIONS OR CONCERNS.

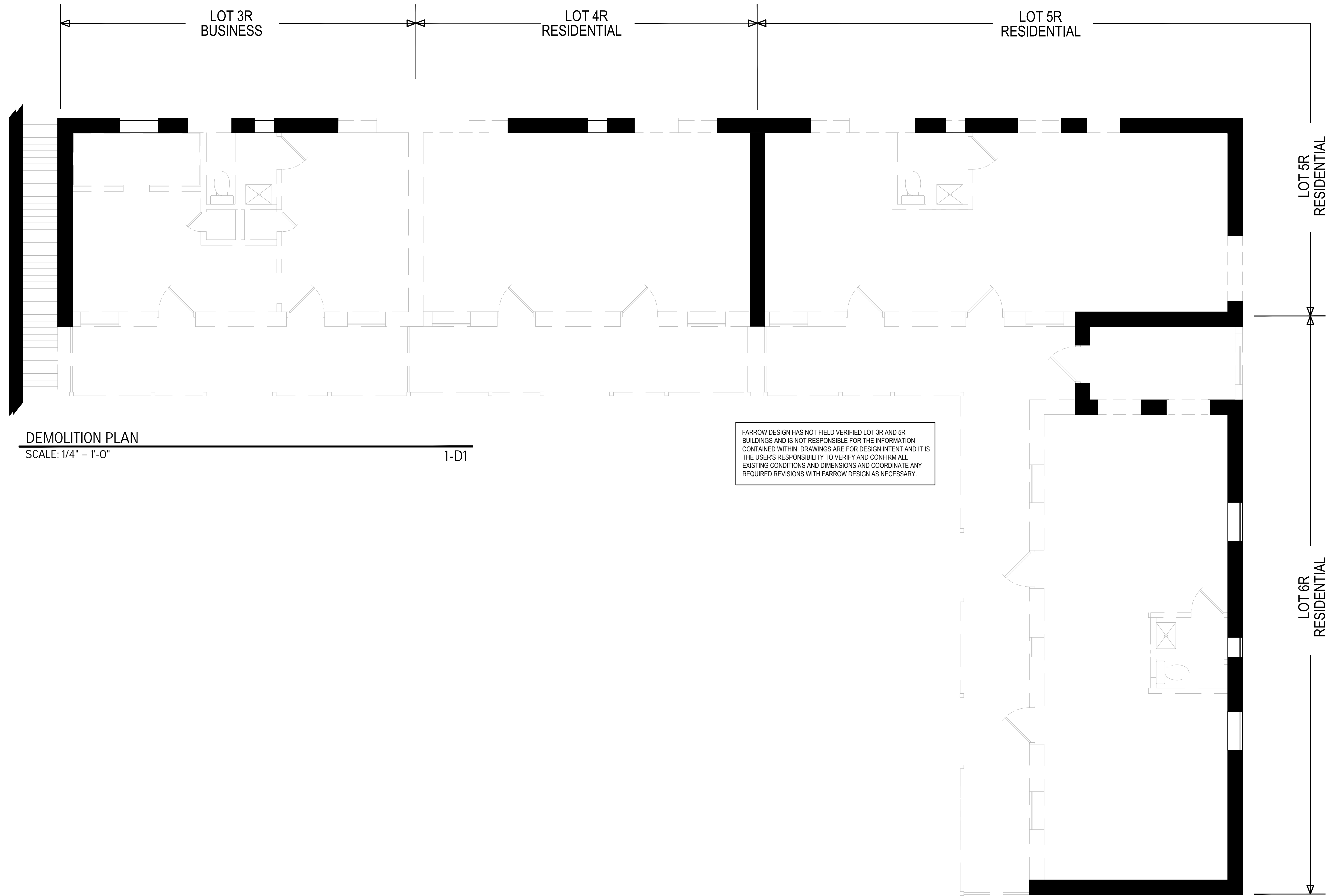
133 MORRIS STREET
RENOVATIONS
133 MORRIS STREET
BLOWING ROCK, NC
28605



SANDY FARROW INTERIOR DESIGN + ARCHITECTURE

THESE DRAWINGS DO NOT BEAR THE SEAL OF A LICENSED ARCHITECT OR STRUCTURAL ENGINEER. IT IS THE CONTRACTOR'S RESPONSIBILITY TO INSURE THAT THE CONSTRUCTION COMPLIES WITH ALL LOCAL AND STATE BUILDING CODES FOR LIFE SAFETY, STRUCTURAL, ADA ACCESSIBILITY AND ALL STANDARD PRACTICES FOR FLASHING AND CONSTRUCTION. CONTRACTOR TO ASSUME ALL RESPONSIBILITY AND LIABILITY FOR INFORMATION CONTAINED WITHIN.

SUITE:	1235 EAST BLVD. SUITE E
USF:	#612 CHARLOTTE, NC 28203
SCALE:	704-726-8727
	www.sandyfarrowdesign.com
DRAWN BY: SANDY FARROW, IDA ASSOCIATE AIA NC-RID <i>Sandy Farrow</i>	
DATE: 06.27.24	
06.20.24	REV. #1 - ADDING 4R TO SCOPE OF WORK
06.27.24	REV. #2 - OWNER COMMENTS
07.02.24	REV. #3 - OWNER COMMENTS
SHEET:	
SITE PLAN A0-1	


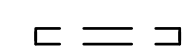
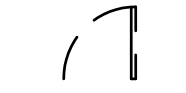
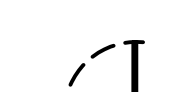


DEMOLITION PLAN
SCALE: 1/4" = 1'-0"

1-D1

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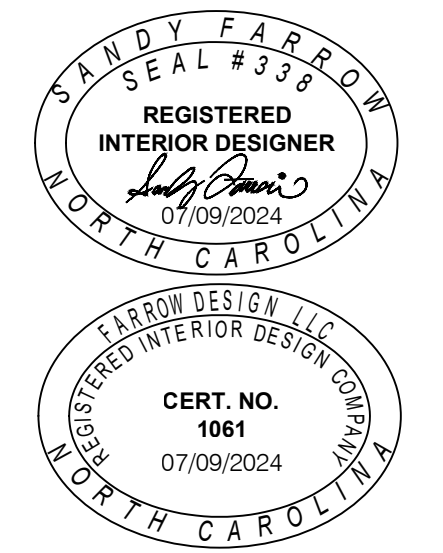
WALL LEGEND & SYMBOLS

-  EXISTING EXTERIOR WALL
-  WALL TO BE REMOVED
-  DOOR TO BE REMOVED
-  EXISTING/NEW DOOR

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133 MORRIS STREET
RENOVATIONS


133 MORRIS STREET
BLOWING ROCK, NC
28605



SANDY FARROW INTERIOR DESIGN + ARCHITECTURE

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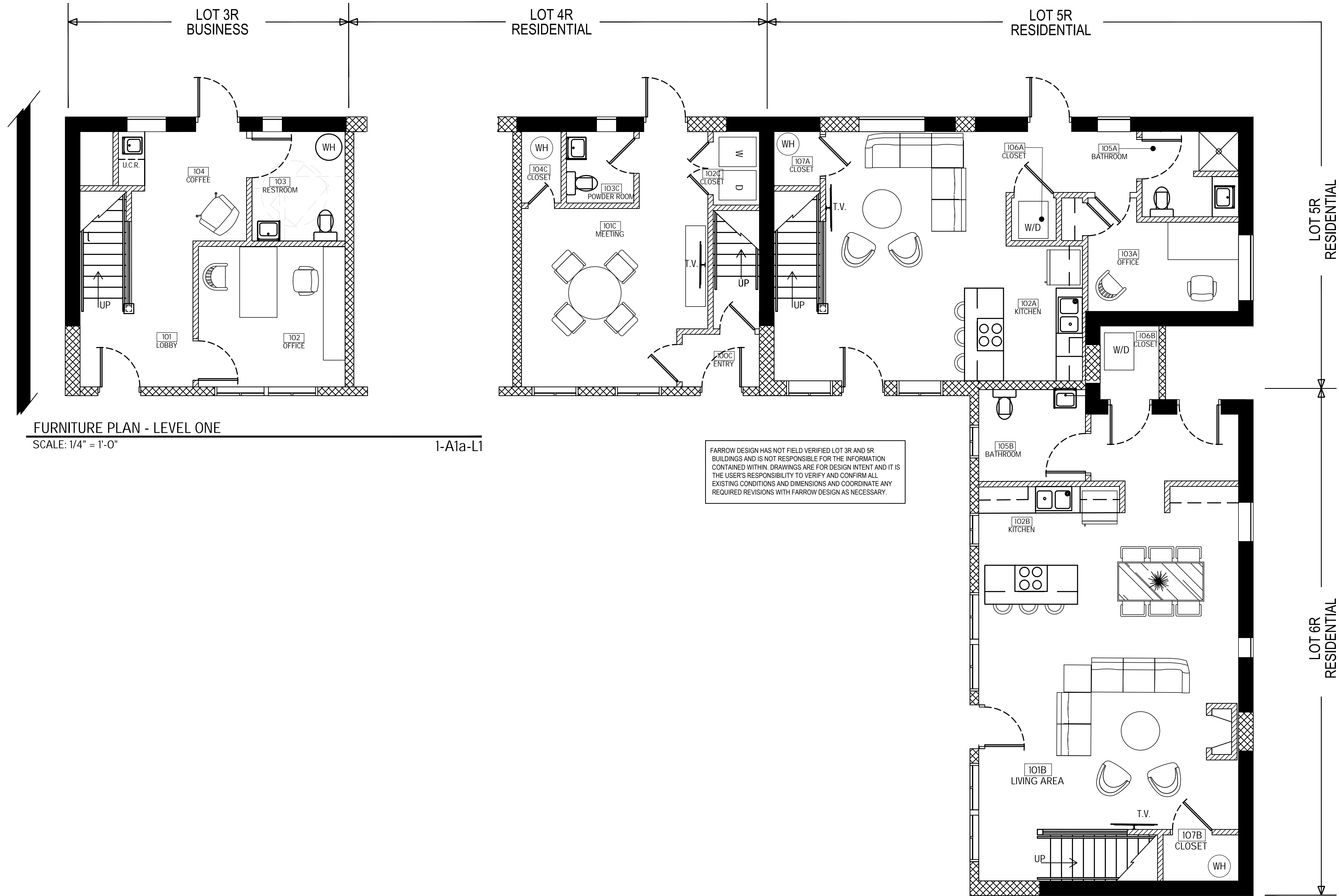
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SCALE: 704-726-8727
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DRAWN BY: SANDY FARROW, IIDA
ASSOCIATE AIA
NC-RID 

DATE: 06.27.24	
06.20.24	REV. #1 - ADDING 4R TO SCOPE OF WORK
06.27.24	REV. #2 - OWNER COMMENTS

SHEET: DEMOLITION PLAN

D1



FURNITURE PLAN - LEVEL ONE

SCALE: 1/4" = 1'-0"

1-A1a-L1

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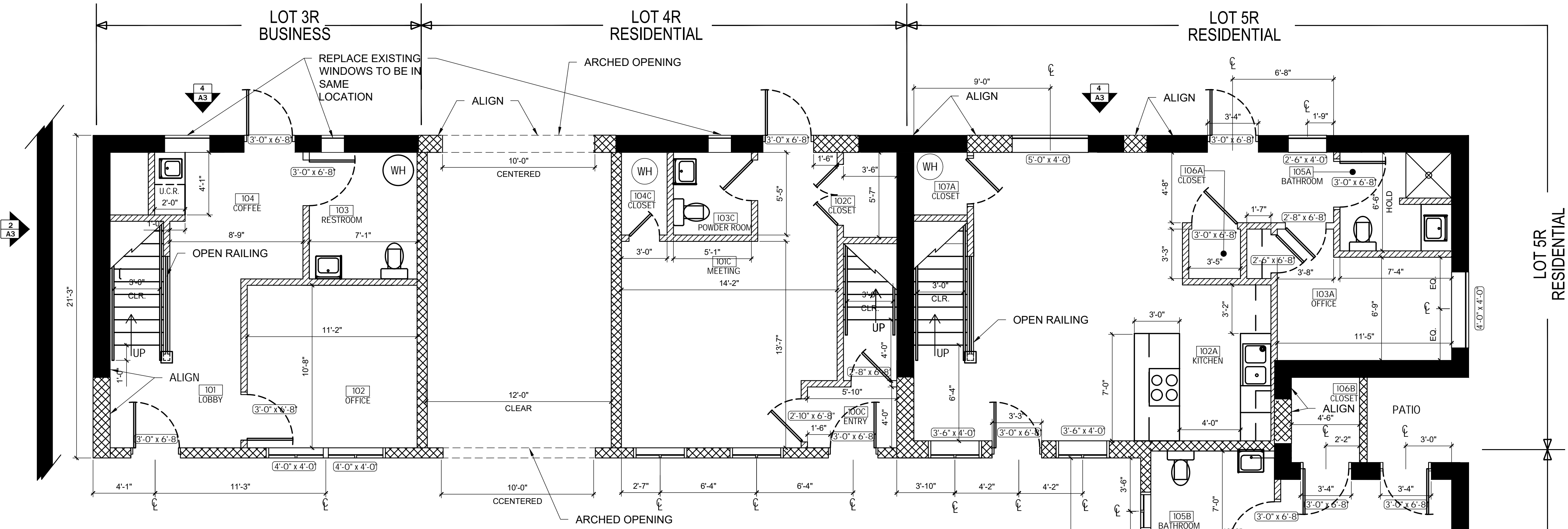
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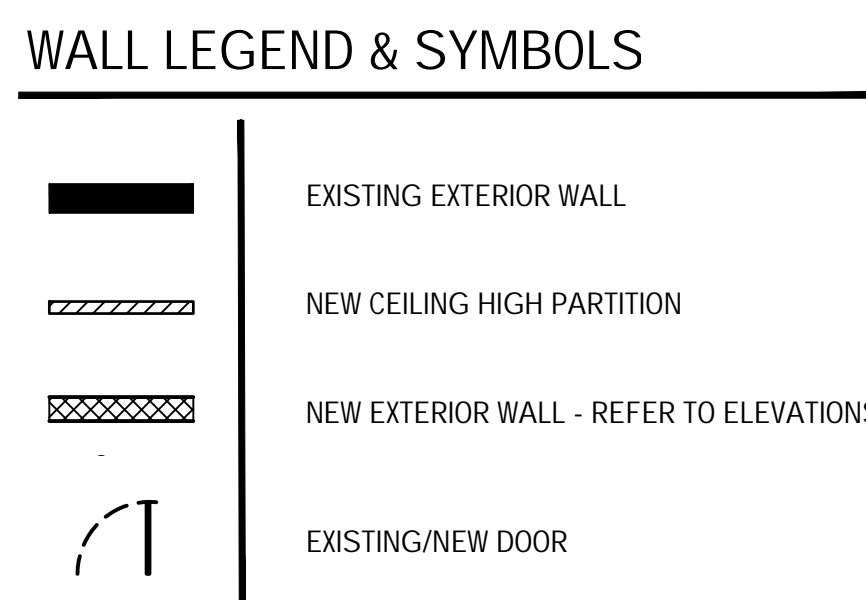
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SHEET: FURNITURE PLAN
LEVEL ONE

A1a-L1



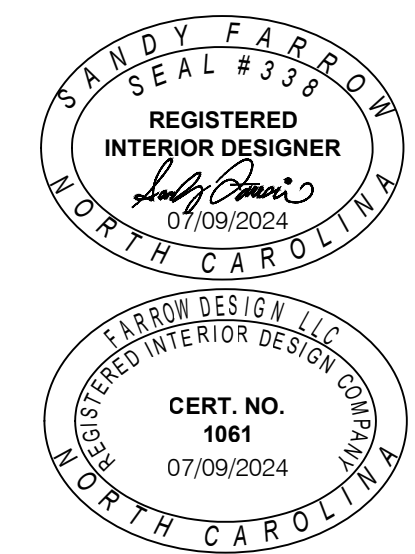
NEW CONSTRUCTION PLAN - LEVEL ONE
 SCALE: 1/4" = 1'-0" 1-A1b-L1



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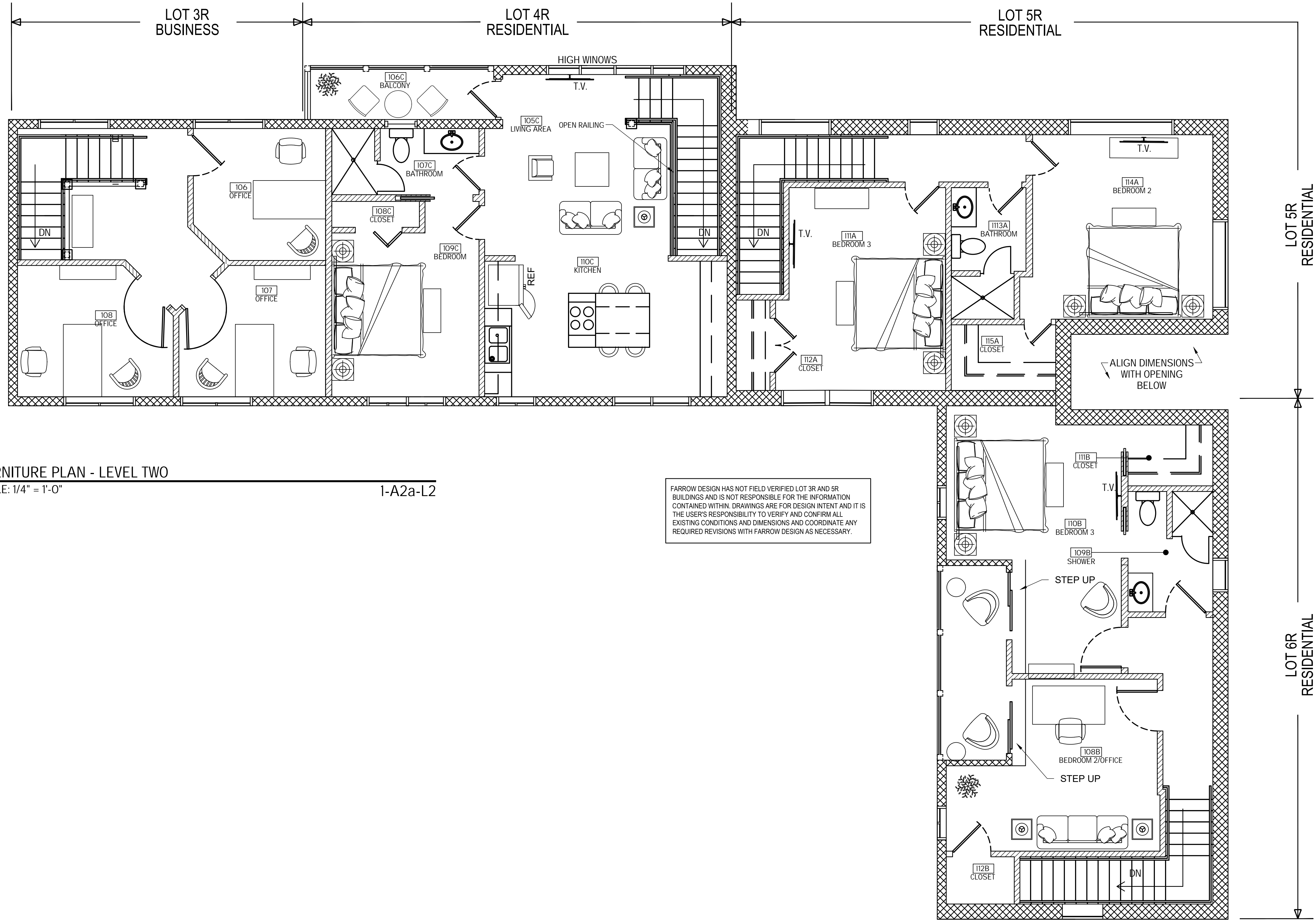


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SHEET: NEW CONSTRUCTION PLAN
 LEVEL ONE
A1b-L1



FURNITURE PLAN - LEVEL TWO

SCALE: 1/4" = 1'-0"

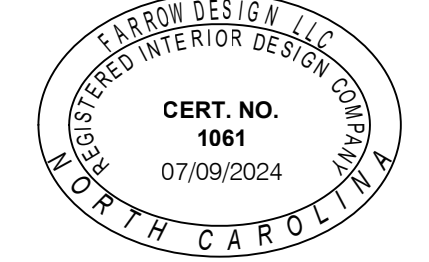
1-A2a-L2

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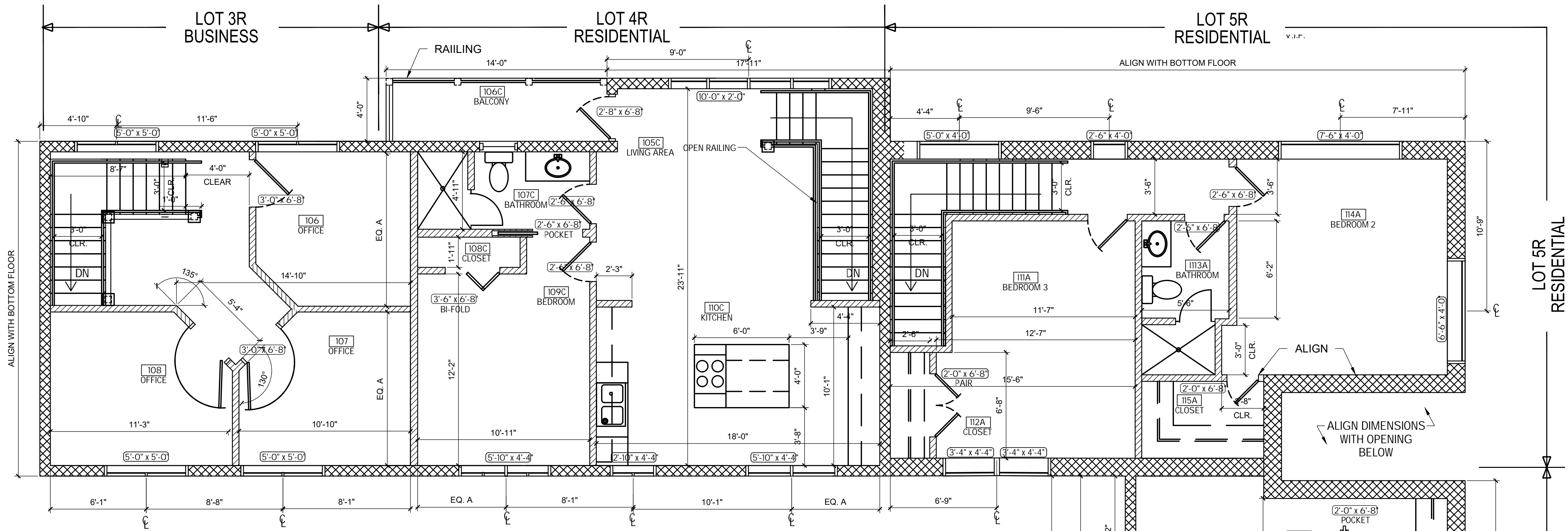


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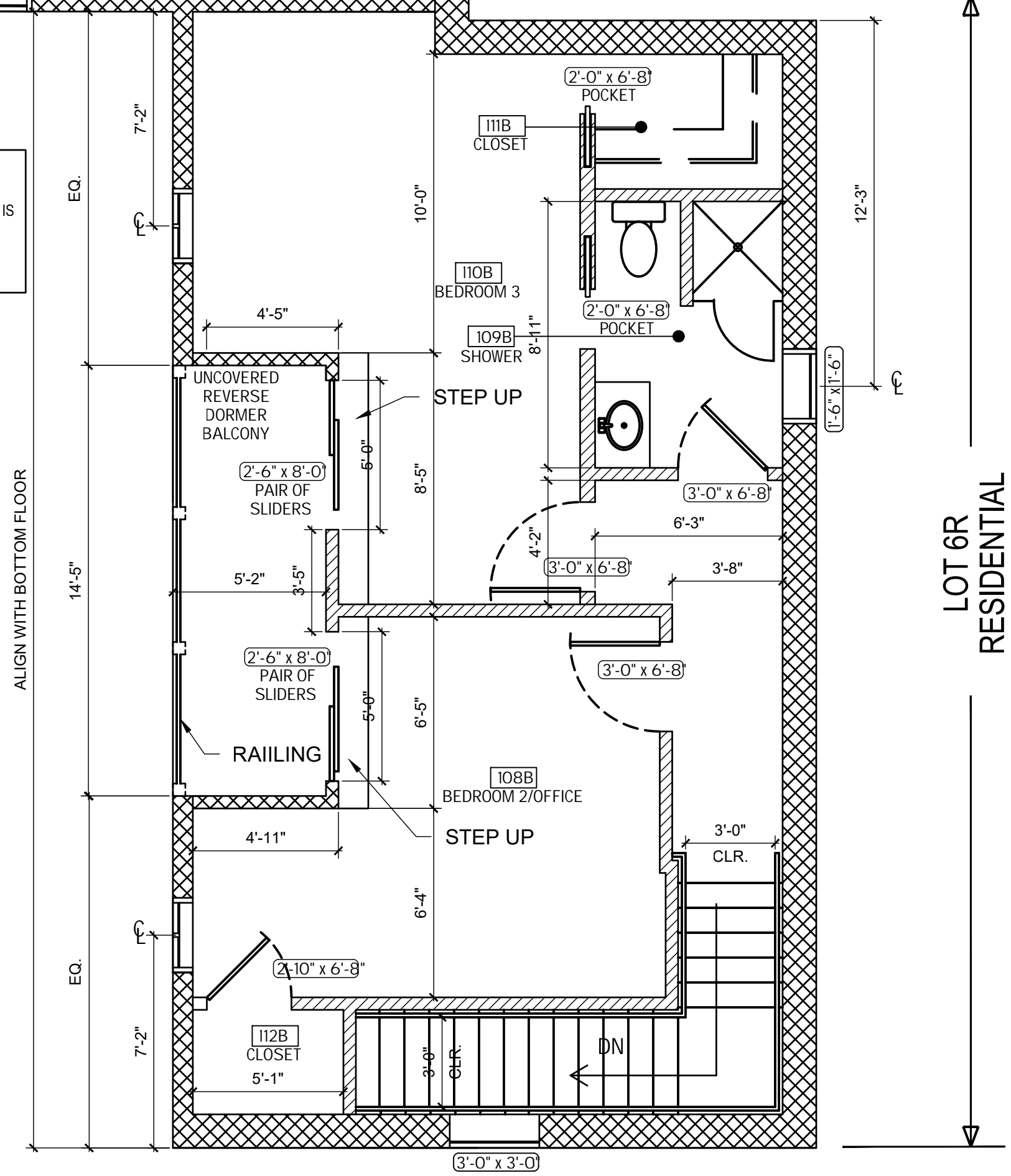
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SHEET: FURNITURE PLAN
LEVEL TWO
A2a-L2



NEW CONSTRUCTION PLAN - LEVEL TWO
 SCALE: 1/4" = 1'-0" 1-A2b-L2

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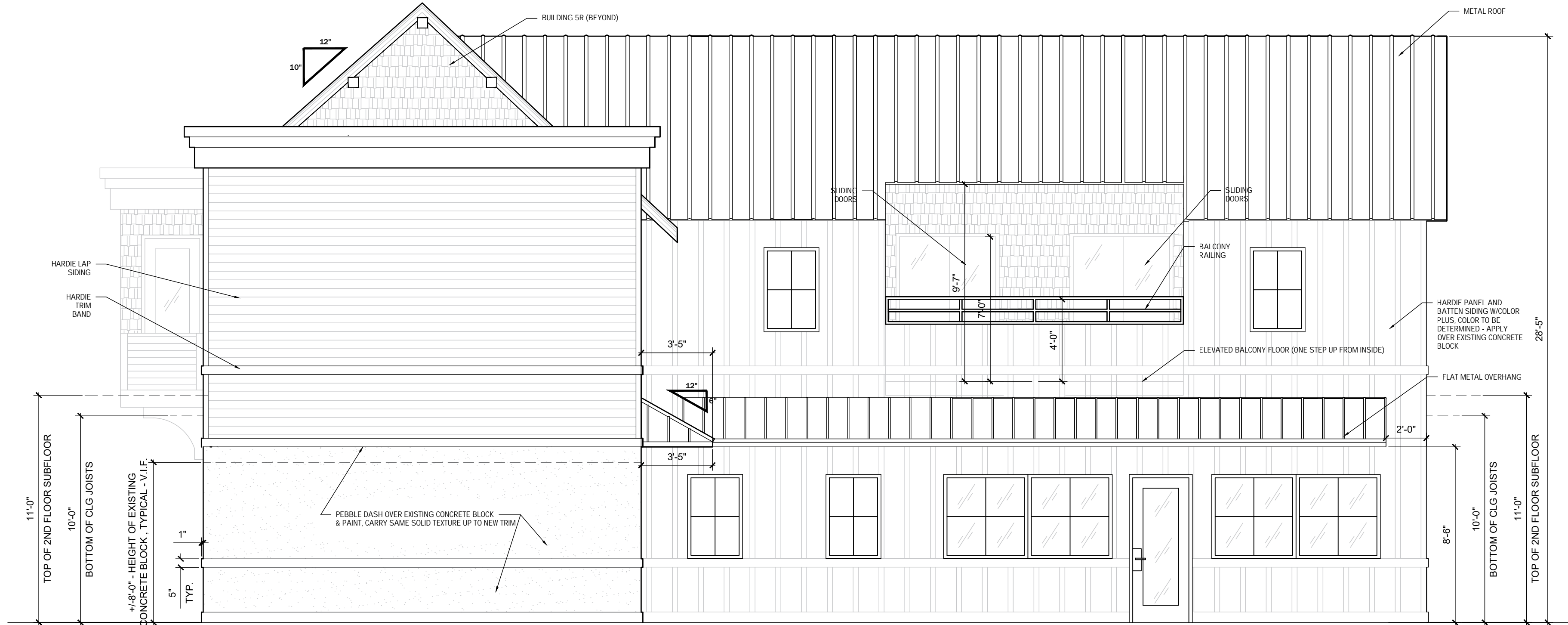
SHEET: NEW CONSTRUCTION PLAN
 LEVEL TWO

A2b-L2



FRONT ELEVATION - BUILDING 3R - (BUSINESS)
SCALE: 1/4"=1'-0" 1-A3

FRONT ELEVATION - 5R -(RESIDENTIAL) / SIDE ELEVATION - 6R - (RESIDENTIAL)
SCALE: 1/4"=1'-0" 2-A3

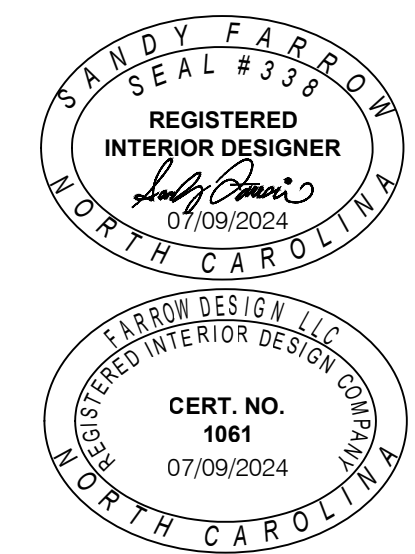


SIDE ELEVATION - BUILDING 3R - (BUSINESS) / FRONT ELEVATION - BUILDING 6R - (RESIDENTIAL)
SCALE: 1/4"=1'-0" 3-A3

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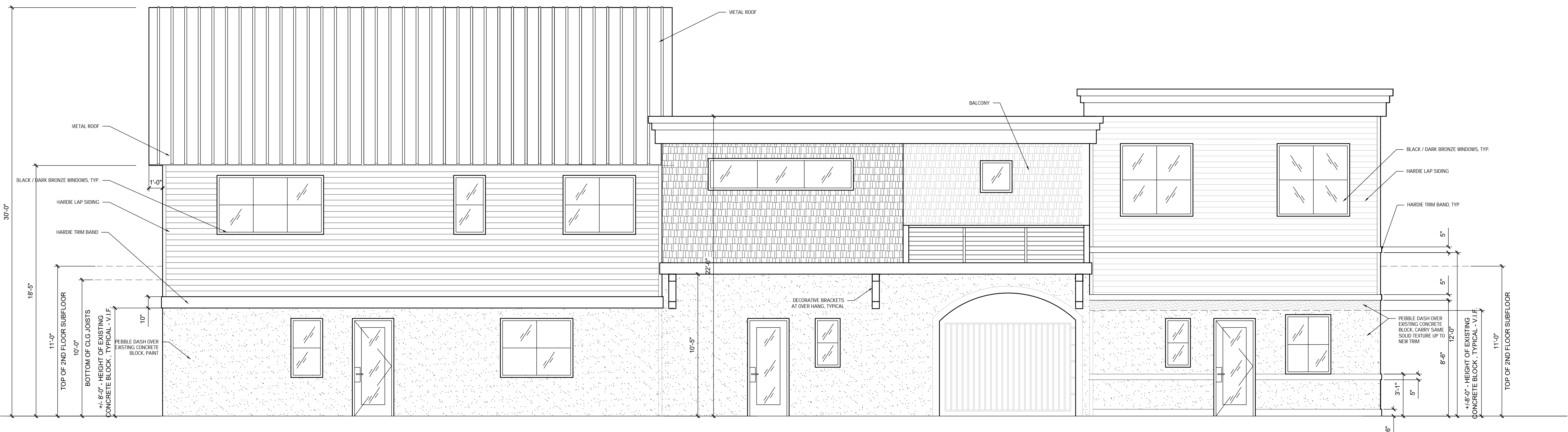


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07.09.24	REV. #4 - ROOF CHANGE

SHEET:
ELEVATIONS
A3



BACK ELEVATION - BUILDING 5R - (RESIDENTIAL)

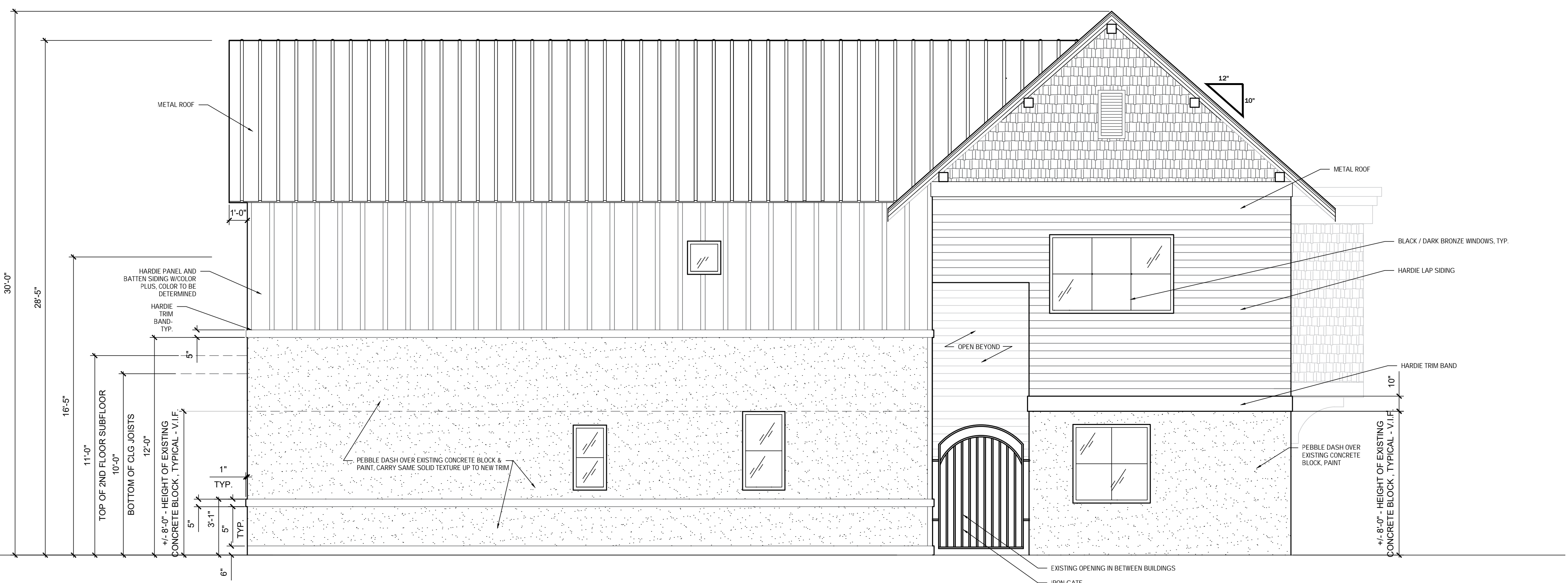
SCALE: 1/4"=1'-0"

1-A4

BACK ELEVATION - BUILDING 3R - (BUSINESS)

SCALE: 1/4"=1'-0"

2-A6



BACK ELEVATION - BUILDING 6R - RESIDENTIAL / SIDE ELEVATION BUILDING 5R - (RESIDENTIAL)

SCALE: 1/4"=1'-0"

3-A4

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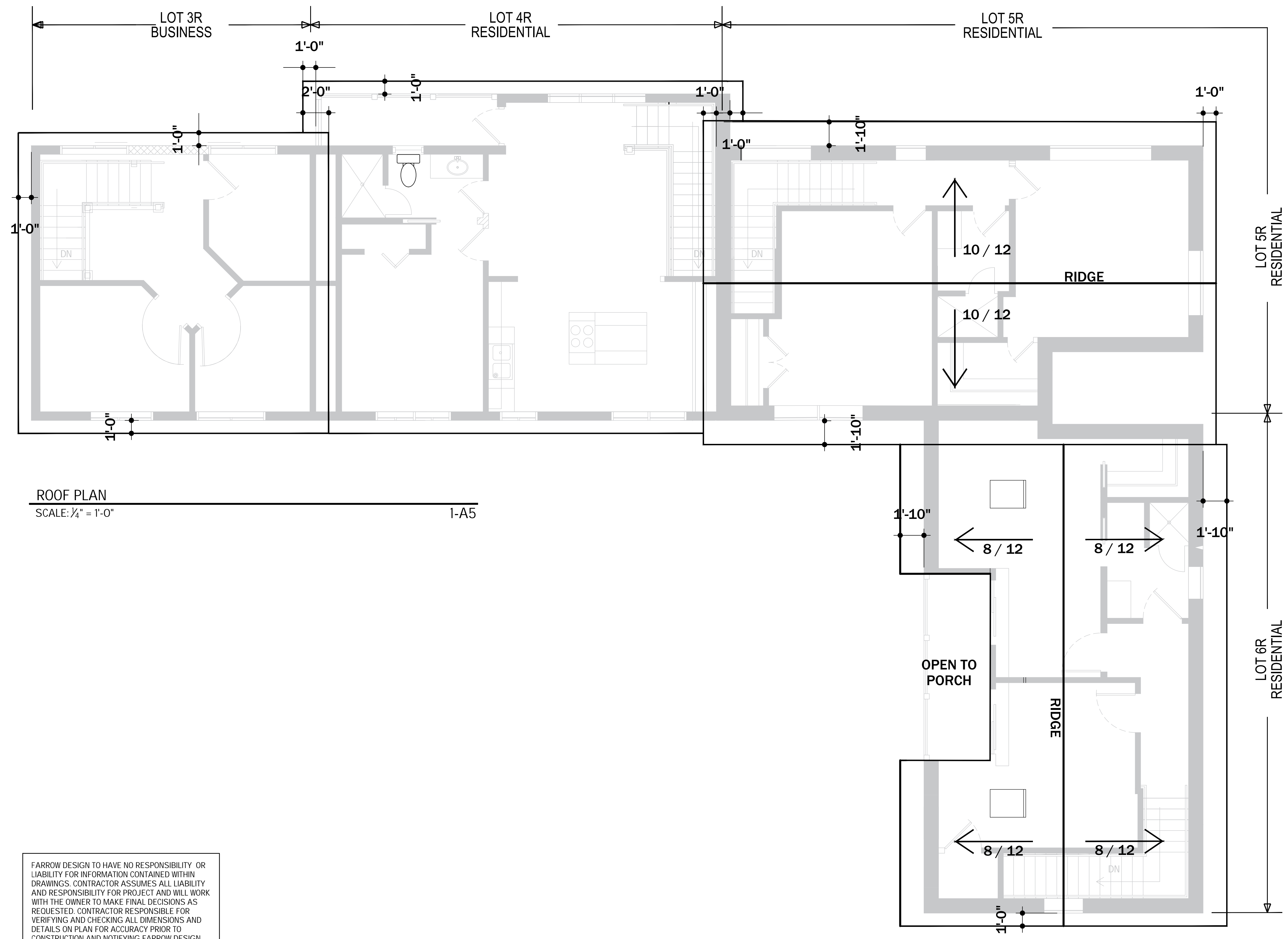
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SHEET: ELEVATIONS

A4



ROOF PLAN
SCALE: 1/4" = 1'-0" 1-A5

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ROOF CONSTRUCTION, MATERIALS, FLASHING AND SLOPING SHALL COMPLY WITH ALL REQUIREMENTS IN NCRC SECTION R905

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07.02.24	REV. #3 - OWNER COMMENTS

SHEET: ROOF PLAN

A5

Regular Agenda - Staff Report

To: Mayor Charlie Sellers and the Blowing Rock Town Council

From: Shane Fox, Town Manager

Subject: McGill Studies – Retreat prep

Date: September 10, 2024

Information:

In preparation for the upcoming 2025 Winter Retreat, McGill has prepared a series of proposals for studies to perform as part of the due diligence for retreat topics and possible 2025 bond discussion. These studies are an integral part of the preparation work needed to have accurate information to discuss as we plan for the future needs of the Town.

The proposed studies include a master plan for our sidewalk system along with possible expansion areas as well a street and pavement assessment of our current inventory along with prioritization of needs and timing. As a part of the ongoing maintenance with the Town Reservoir, a bathymetric survey to determine the sediment and elevations including total water capacity, and possible next steps with regards to maintaining the water source. Separate from the study we would like to discuss some of the results of the recent divers inspection of the water intake and recommendations for some additional maintenance of the intake and platform.

Recommendation:

Staff recommends the Town Council approves the following proposals along with the appropriate budget amendments to cover the costs:

Attachments:

- 1. Sidewalk Master Plan - \$35,000**
- 2. Streets – Pavement Assessment - \$44,600**
- 3. Reservoir Survey - \$29,600**
 - a. Reservoir intake work - \$26,475**

August 29, 2024

Shane Fox,
Town Manager
Town of Blowing Rock
Post Office Box 47
Blowing Rock, NC 28605

RE: Proposal for Professional Planning Services
Sidewalk Master Plan
Blowing Rock, North Carolina

Dear Mr. Fox:

McGill Associates is pleased to provide you with this proposal to provide professional planning services for the above-referenced project. It is our understanding that the project generally consists of developing a master plan for pedestrian needs within the Town of Blowing Rock. McGill Associates proposes to provide the following specific scope of work listed below:

- Evaluation of Current Conditions
- Review of current plans, programs, and policies
- Design of facility standards and guidelines
- Maps and illustrations

SCOPE OF SERVICES

Task 1: Project Management

McGill anticipates providing the following coordination and/or support activities associated with this project:

- Facilitate project kick off meeting which will include introductions, forming a project schedule and review overall scope of work.
- Coordinate with the Town to designate a project steering committee.
- Outline Sidewalk Master Plan objectives
- Finalize project schedule including potential meeting dates.

Task 2: Review Existing Pedestrian Facilities

- Evaluate the scope of existing town programs (if any) as related to pedestrian activities.
- Determine types and extent of existing constraints, barriers, and other deficiencies in pedestrian facilities, maintenance programs, and policies.
- Assess connectivity within the existing pedestrian infrastructure.
- Appraise the general condition of existing pedestrian facilities through a physical inspection and assessment by Town Staff with assistance by McGill Associates staff.
- Define areas of the community exhibiting the greatest needs for pedestrian facilities.

- Review all existing studies and plans relating to thoroughfares, town master plans, ordinances, development regulations, and other documents that may be associated with the pedestrian plan.

Task 3: Develop Program Parameters / Standards

- Develop general program parameters for pedestrian facilities regarding requirements for location and type relative to future route selection and construction.
- Establish pedestrian facilities design standards for construction, location, classification, access, street crossings, and other design and service issues.
- Establish concurrent pedestrian facility standards, where these facilities have the potential to co-exist.

Task 4: Prepare Pedestrian Plan

- Establish a concise statement of plan objectives and policy.
- Develop a Pedestrian Plan encompassing maps and text that addresses the magnitude of future improvements, including the correction of existing deficiencies and the development of new infrastructure. Make mapping products available by hard copy, as well as digitally including GIS compatible.
- Establish a Capital Improvement Plan addressing scheduling, cost estimates, and prioritization for proposed pedestrian facilities improvements. Preparation of the CIP will include clarification and identification of the Town's priorities for improvements, and implementation of the overall plan and its priorities.

Task 5: Program Implementation and Plan Development

- Schedule new improvements and maintenance
- Identify costs for proposed recommendations.
- Formulate ten-year Capital Improvement Plan and phasing strategies.
- Supporting maps, graphs, and charts
- Describe final priorities for development, including a plan to help implement the pedestrian plan goals.

Task 6: Final Plan Development

- Submit draft to Town staff for review. Provide digital copies of drafts and final drafts of the plan to Town staff.
- Incorporate review comments from one (1) composite set of comments from Town staff review and make necessary changes.
- Incorporate feedback from presentation findings.

DELIVERABLES

McGill will provide **the following deliverables:**

- An electronic copy of the final comprehensive master plan.

Basis for Compensation

Based on our understanding of the project, we propose providing the Scope of Services detailed in this proposal for lump sum fee of \$35,000, inclusive of all reimbursable expenditures. Invoices will be submitted monthly as work progresses.

Any additional services will be completed as directed by the Town in accordance with our Basic Fee Schedule.

ADDITIONAL SERVICES

When requested by the Owner and confirmed by the Firm in writing, the Firm shall perform services in addition to those described above in this Agreement and the Owner shall compensate the Firm by hourly charges in accordance with the attached Basic Fee Schedule.

1. Please note that the above fee does not include land surveying or designs associated with projects.
2. Providing services of professional consultants for items of work other than those described above.
3. Meetings in addition to what is included in the scope of work listed above.

OWNER'S RESPONSIBILITIES

1. The Owner shall provide full information regarding requirements for the Project.
2. The Owner shall designate a representative (authorized to act in his behalf) with respect to the Project. The Owner or his representative shall examine documents submitted by McGill and shall render decisions pertaining thereto promptly, avoiding unreasonable delay in the progress of McGill's work.
3. The Owner will be responsible for the arrangement of notices and any other costs associated with meeting schedules including facility cost, advertisement cost, etc.

We appreciate the opportunity to provide this proposal to the Town of Blowing Rock, and we are prepared to begin work immediately to meet your schedule. If the above, along with the attached Consulting Services Agreement (CSA), is acceptable to you, please provide the appropriate signatures below and on the CSA as indicated and return one (1) copy of each. As always, if you have any questions regarding this proposal, please do not hesitate to contact me. We look forward to working with you on this project.

Sincerely:

McGILL ASSOCIATES, PA

DOUGLAS G. CHAPMAN, PE

Vice President

Attachments: Basic Fee Schedule
Consulting Services Agreement

ACCEPTANCE: Sign: _____ Date: _____
Print: _____ Title: _____

Pre-Audit –This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director: _____ Date: _____

CONSULTING SERVICES AGREEMENT

This contract entered into this _____ day of, 2024 by and between **Town of Blowing Rock**, hereinafter called the Client, and McGill Associates, PA;

Witnesseth that:

Whereas, the Client desires to engage McGill Associates to provide consulting services; and,
Whereas, the Client finds that the attached Scope of Services and terms of this agreement are acceptable; and,
Whereas, McGill Associates desires to provide said services and agrees to do so for the compensation and upon the terms and conditions as hereinafter set forth. Now, therefore, the parties hereto do mutually agree as follows:

1. Scope of Services: McGill Associates shall provide the services attached hereto in the Contract Proposal "Scope of Services" of this Agreement, hereinafter called services. Fees for additional services will be negotiated with the Client prior to proceeding with the work.

2. Standard of Care: McGill Associates will perform its services using that degree of skill and diligence normally employed by professional engineers or consultants performing the same services at the time these services are rendered.

3. Authorization to Proceed: Execution of this Consulting Services Agreement will be considered authorization for McGill Associates to proceed unless otherwise provided for in this Agreement.

4. Changes in Scope: The Client may request changes in the Scope of Services provided in this Agreement. If such changes affect McGill Associates cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this Agreement.

5. Compensation: The Client shall pay the compensation to McGill Associates set forth in the Contract Proposal "Basis of Compensation" attached hereto. Unless otherwise provided in the Basis for Compensation, McGill Associates shall submit invoices to the Client monthly for work accomplished under this agreement and the Client agrees to make payment to McGill Associates within thirty (30) days of receipt of the invoices. It is also mutually agreed that should the Client fail to make prompt payments as described herein, McGill Associates reserves the right to immediately stop all work under this agreement until disputed amounts are resolved.

6. Personnel: McGill Associates represents that it has, or will secure at their own expense, all personnel required to perform the services under this agreement and that such personnel will be fully qualified and adequately supervised to perform such services. It is mutually understood that should the scope of services require outside subcontracted expertise McGill Associates may employ such services at their discretion.

7. Opinions or Estimates of Cost: Any costs estimates provided by McGill Associates shall be considered opinions of probable costs. These along with project economic evaluations provided by McGill Associates will be on a basis of experience and judgment, but, since McGill Associates has no control over market conditions or bidding procedures, McGill Associates cannot warrant that bids, ultimate construction cost, or project economics will not vary from these opinions.

8. Termination: This Agreement may be terminated for convenience by either the Client or McGill Associates with fifteen (15) days written notice or if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within five (5) days of written notice and diligently complete the correction thereafter. On termination, McGill Associates will be paid for all authorized work performed up to the termination date plus reasonable project closeout costs.

9. Limitation of Liability: McGill Associates liability for Client's damages will, in aggregate, not exceed the total fees paid by the Client for the Scope of Services referenced herein or \$50,000 whichever is greater. This provision takes precedence over any conflicting provision of this Agreement

Client: Town of Blowing Rock

Authorized Signature:

Print Name: Shane Fox

Title: Town Manager

Address: 1036 Main Street
Blowing Rock, North Carolina

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15. Choice of Law: This Agreement shall be governed by the internal laws of the State of North Carolina.

16. Entire Agreement: This Agreement contains all of the agreements, representations and understandings of the parties hereto and supersedes any previous understandings, commitments, proposals, or agreements, whether oral or written, and may only be modified or amended as herein provided; and as mutually agreed.

17. Attachments to this document:

1. Contract Proposal including Scope of Services and Basis of Compensation.

McGill Associates, P.A.

Authorized Signature:

Print Name: Douglas Chapman, PE

Title: Vice-President, Regional Manager

Address: 1240 19th Street Lane NW
Hickory, North Carolina 28601

BASIC FEE SCHEDULE

July 2024

PROFESSIONAL FEES	I	II	III	IV
Senior Principal	\$300			
Principal – Regional Manager – Director	\$245	\$255	\$280	\$290
Practice Area Lead	\$220	\$240	\$270	\$280
Senior Project Manager	\$220	\$235	\$260	\$270
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Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$135	\$140	\$145	\$150
Planner- Consultant – Designer	\$140	\$150	\$175	\$190
Engineering Technician	\$120	\$135	\$140	\$150
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$155	\$165	\$180	\$200
Construction Administrator	\$130	\$145	\$155	\$165
Financial Services Manager	\$140	\$150	\$160	\$170
Grant Administrator	\$125	\$140	\$150	\$160
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Environmental Specialist	\$105	\$115	\$120	\$125
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

EXPENSES

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. Robotics/GPS Equipment: \$30/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

ASSOCIATED SERVICES

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

Revised July 2024

August 29, 2024

Mr. Shane Fox, Town Manager
Town of Blowing Rock
1036 Main Street
P.O. Box 47
Blowing Rock, North Carolina, 28605

RE: Proposal for Pavement Management Study

Dear Mr. Fox:

Thank you for requesting that McGill Associates (McGill) provide this proposal to develop a Pavement Management Study for Blowing Rock. As requested, the following Scope of Services will provide the Town with a pavement maintenance evaluation, which is designed to optimize the funds allocated for pavement maintenance and rehabilitation (M&R). We will calculate an overall Pavement Condition Index (PCI) that provides a rational and objective basis for projecting M&R needs, developing a prioritized Capital Improvements Plan (CIP) and determining budget-level costs.

The anticipated **Scope of Services** for the project is as follows:

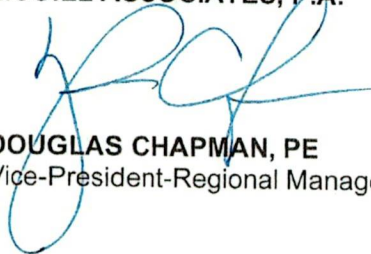
- Roadway System Inventory and Pavement Condition Survey.
 - Assemble roadway system inventory utilizing imported data from the Town including GIS and other available records.
 - Conduct survey of pavement conditions using standard practices applicable to surfaced roads, including measurements and condition rating evaluations.
 - Review datasets for accuracy and completeness. Correct inaccurate data and fill in data gaps.
- Determine Pavement Condition Index (PCI).
 - PCI is a numerical value between 0 (worst possible condition) and 100 (newly paved) that is calculated from the visual pavement distresses recorded in the pavement condition survey.
 - Calculate PCI for each section of roadway which is used to establish a baseline of objectively computed condition data that can accurately represent current pavement status and be used to prioritize work plans.
- Prioritized Project List and Funding Needs
 - Develop Project List based on appropriate M&R methods that should be performed on each roadway section, grouping sections together into projects by location, proximity and PCI.
 - Generate Project Cost Estimates using current M&R cost datasets and application of optimal pavement management strategies.
 - Prioritize Project List based on industry standard cost benefit ratio value, life cycle cost analysis, etc., to deliver the best performance using available funding.

Shane Fox, Town Manager
August 29, 2024
Page 2 of 2

McGill Associates will provide the proposed scope of services for a Lump Sum Fee of \$44,600. Invoices will be submitted monthly as work progresses based on our Basic Fee Schedule.

We appreciate the opportunity to provide this proposal and look forward to assisting the Town of Blowing Rock with this important effort. We are prepared to begin work upon your authorization. If this proposal is acceptable to you, please sign below and return one (1) copy to our office. If you have any questions concerning this proposal, please do not hesitate to contact us.

Sincerely,
MCGILL ASSOCIATES, P.A.



DOUGLAS CHAPMAN, PE
Vice-President-Regional Manager

Attachments: Basic Fee Schedule
Consulting Services Agreement

ACCEPTANCE:

Name: Shane Fox

Title: Town Manager

Date: _____

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

Tasha Brown Date
Finance Officer

CONSULTING SERVICES AGREEMENT

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Client: Town of Blowing Rock

Authorized Signature:

Print Name: Shane Fox

Title: Town Manager

Address: 1036 Main Street
Blowing Rock, North Carolina

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1. Contract Proposal including Scope of Services and Basis of Compensation.

McGill Associates, P.A.

Authorized Signature:

Print Name: Douglas Chapman, PE

Title: Vice-President, Regional Manager

Address: 1240 19th Street Lane NW
Hickory, North Carolina 28601

BASIC FEE SCHEDULE

July 2024

PROFESSIONAL FEES	I	II	III	IV
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Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

EXPENSES

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. Robotics/GPS Equipment: \$30/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

ASSOCIATED SERVICES

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

Revised July 2024

September 4, 2024

Shane Fox
Town Manager
Town of Blowing Rock
Post Office Box 47
Blowing Rock, North Carolina 28605

RE: Proposal for Services
Raw Water Reservoir Bathymetric Survey

Dear Mr. Fox:

McGill Associates, PA (McGill) appreciates the opportunity to present this proposal for surveying services to the Town of Blowing Rock (Town) to perform a bathymetric survey of the Town's raw water reservoir. McGill has performed two (2) bathymetric surveys of the reservoir over the past 20 years, with the last one performed in 2014. To evaluate the potential for sediment accumulation, an updated survey is recommended to compare against past data to determine any storage volume lost.

The Town has requested McGill prepare a bathymetric survey of the reservoir and compare it to previous surveys to estimate any accumulated sediment and its approximate location. Consequently, we propose the following scope of services:

Scope of Work

1. Perform initial conditions bathymetric survey to determine top of sediment and natural bottom elevations.
2. Evaluate the survey data and compare to estimate the volume of sediments present in the reservoir.
3. Develop a memorandum outlining the evaluation findings and provide a recommendation of any prudent next steps.

Assumptions

1. Structural, geotechnical, and environmental permitting services are specifically excluded based on coordination with the Town.
2. If the need for additional studies or investigations is found during the initial site visit, we will discuss these requirements and any additional services needed for completion, with the Town prior to performing any additional services.
3. Upon the Town's authorization, additional project work not specifically addressed by this proposal shall be charged at a time and materials rate in accordance with the attached Standard Fee Schedule.

Mr. Shane Fox
September 4, 2024
Page 2 of 2

Basis of Compensation

The scope of services described above will be performed for a lump sum fee of \$29,600. Invoices will be sent monthly as work progresses.

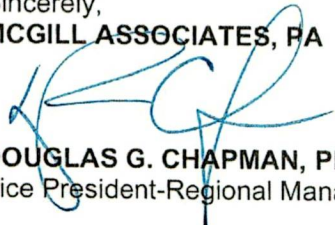
Schedule

The scope of services described above will commence upon receipt of a written notice to proceed from the Town. Our findings are anticipated to be completed within 60 days from the NTP for review by the Town.

If the above, along with the attached Consulting Services Agreement (CSA) and Standard Fee Schedule, is acceptable to you, please provide the appropriate signature on the CSA as indicated and return one (1) copy to us. We appreciate your consideration of our proposal for services and look forward to working with you. If you have any questions concerning the information contained within this proposal, please do not hesitate to call me at (828) 328-2024. We look forward to this opportunity to assist the Town of Blowing Rock with this important project.

Sincerely,

MCGILL ASSOCIATES, PA



DOUGLAS G. CHAPMAN, PE

Vice President-Regional Manager

Attachments: Consulting Services Agreement
Standard Fee Schedule

Cc: Chad Howard

CONSULTING SERVICES AGREEMENT

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Client: Town of Blowing Rock

Authorized Signature:

Print Name: Shane Fox

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McGill Associates, P.A.

Authorized Signature:

Print Name: Douglas Chapman, PE

Title: Vice-President, Regional Manager

Address: 1240 19th Street Lane NW
Hickory, North Carolina 28601

STANDARD HOURLY RATE AND FEE SCHEDULE

July 2024

PROFESSIONAL FEES	I	II	III	IV
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Revised July 2024

3a.

SE Diving Services, LLC

126 N. Washington Ave.
Greenville, SC 29611
864-220-3481 F: 864-220-3485
Email: sedivingllc@gmail.com

Bobby Caudle, EI
Engineering Associate II
McGill Associates, P.A.
1240 19th Street Lane NW, Hickory, NC 28601
T 828.328.2024
bobby.caudle@mcgillassociates.com

August 13, 2024

PROPOSAL: Blowing Rock Intake Improvements

The following outlines our services and conditions.

SCOPE OF WORK

- Clean 5-feet from center all debris and mud.
- Pump to shore into containment bags
- Owner to dispose of bags
- Provide pumps and hoses
- Replaced SS bolts on three intake pumps as needed
- Pressure wash stem and operator to determine condition

COSTS:

Daily rate dive services and dive equipment (3.5 est)	\$4,450.00	\$15,750.00
Mobilization/demob \$500.00 each	\$1,000.00	\$1,000.00
Pumps daily rental (2 at \$650.00) include delivery	\$1,300.00	\$1,300.00
Containment bags (\$500 each. Est. 2)	\$ 500.00	\$1,000.00
TOTAL:		\$19,050.00

RECOMMENDED:

Provide and Install new 12-foot aluminum ladder (OSHA)	\$1,800.00
Provide & Install 2x4 treated timbers for new decking on approx. 15 x15 top deck (\$25/sqft) 225 sf	\$5,625.00

Conditions:

1. During service water and weather conditions must be safe.
2. If any information provided to us is incorrect or if any problems exist that inhibit our ability to complete the job on a timely schedule, then we will notify you of the problem and reserve the right to add on to the quote based on our estimate of the additional time it will take to complete the work. Time delays are based on \$250 per hour. If this situation arises, you will be notified of the problem prior to our completing the work. This paragraph only applies to any problems that are your responsibility and does not apply to any potential problems that we may encounter with our equipment or with our ability to complete the job.

INSURANCE: SE Diving provides \$1 million in general liability insurance for our mutual protection. Higher limits may be furnished at additional costs.

TERMS: Net 10 days upon completion of project. Accounts not paid within twenty (20) days of billing will accrue interest at the maximum legal rate. In the event collection procedures are instituted to secure payment of any debt created hereunder, applicant hereby agrees to pay all costs of collections, including reasonable attorney's fees.

SE Diving Services, LLC.
BY: Steve Burdsal, Managing Member

Approved: Authorized sign

Date PO# if required



Town of Blowing Rock

1036 Main Street ★ Post Office Box 47 ★ Blowing Rock, North Carolina 28605

To: Mr. Shane Fox, Mayor Sellers, and Members of Town Council
From: Tasha Brown, Finance Officer
Subject: Budget Amendment Ordinance to Account for Various Items
(Ordinance #2024-51)
Date: September 10, 2024

Enclosed please find a Budget Amendment Ordinance for the fiscal year 2024-2025 for your consideration.

Section 1 (General Fund) allocates funding as follows:

- Allocates Fund Balance (\$35,000) to cover the proposed cost for Professional Planning Services for a Sidewalk Master Plan. This allocation will be directed towards Sidewalks.

Section 2 (General Fund) allocates funding as follows:

- Allocates Fund Balance (\$44,600) towards the proposed cost of a Pavement Management Study. This allocation will be directed towards Special Paving.

Section 3 (Water/Sewer Fund) allocates funding as follows:

- Allocates Fund Balance (\$29,600) towards the proposed cost for Raw Water Reservoir Bathymetric Survey. This allocation will be directed towards Contracted Services.

Section 2 (Water/Sewer Fund) allocates funding as follows:

- Allocates Fund Balance (\$26,475) towards the proposed cost of Intake Improvements at the Reservoir. This allocation will be directed towards Contracted Services.

Please let me know if you need further details on the proposed amendment.

Be it ordained by the Town Council of the Town of Blowing Rock, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2025:

Section 1. To amend the General Fund, the appropriations are to be changed as follows:

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
10-20-4500-333	Sidewalks	\$ 10,000		\$ 35,000	\$ 45,000
			\$ -	\$ 35,000	

This will result in a net increase of \$35,000 in the appropriations of the General Fund. As a result, the following revenue will be increased.

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
10-00-3400-399	Fund Balance Appropriated	\$ -	\$ -	\$ 35,000	\$ 35,000
			\$ -	\$ 35,000	

Section 2. To amend the General Fund, the appropriations are to be changed as follows:

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
10-20-4500-571	Special Paving	\$ -	\$ -	\$ 44,600	\$ 44,600
			\$ -	\$ 44,600	

This will result in a net increase of \$44,600 in the appropriations of the General Fund. As a result, the following revenue will be increased.

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
10-00-3400-399	Fund Balance Appropriated	\$ -	\$ -	\$ 44,600	\$ 44,600
			\$ -	\$ 44,600	

Section 3. To amend the Water/Sewer Fund, the appropriations are to be changed as follows:

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
30-91-7120-240	Contracted Services	\$ -	\$ -	\$ 29,600	\$ 29,600
			\$ -	\$ 29,600	

This will result in a net increase of \$29,600 in the appropriations of the Water/Sewer Fund. As a result, the following revenue will be increased.

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
30-91-3400-399	Fund Balance Appropriated	\$ -	\$ -	\$ 29,600	\$ 29,600
			\$ -	\$ 29,600	

Section 4. To amend the Water/Sewer Fund, the appropriations are to be changed as follows:

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
30-91-7120-240	Contracted Services	\$ -	\$ -	\$ 26,475	\$ 26,475
			\$ -	\$ 26,475	

This will result in a net increase of \$26,475 in the appropriations of the Water/Sewer Fund. As a result, the following revenue will be increased.

<u>Acct. No.</u>		<u>Current Appropriation</u>	<u>Decrease</u>	<u>Increase</u>	<u>Proposed Appropriation</u>
30-91-3400-399	Fund Balance Appropriated	\$ -	\$ -	\$ 26,475	\$ 26,475
			\$ -	\$ 26,475	

Copies of this budget amendment shall be furnished to the Clerk to the Town Council and to the Finance Officer for their implementation.

Adopted this 10th day of September 2024.

Attested by: Charles Sellers, Mayor

Hilari Hubner, Town Clerk

MEMORANDUM

TO: Mayor Sellers and Blowing Rock Board of Commissioners

FROM: Kevin Rothrock, Planning Director

SUBJECT: Downtown Development Standards Review and Ordinance Consideration

DATE: September 6, 2024

BACKGROUND

The downtown development subcommittee has spent the past 5 to 6 months studying the Land Use Code and the development standards for downtown zoning districts. The subcommittee specifically focused on building setbacks and building heights for the Central Business and Town Center as well as roof design, building with natural stone, and expansion of the Town Center.

On two occasions, the subcommittee walked Main Street and Sunset Drive to visually comprehend the existing conditions of building heights, setbacks, sidewalk widths, mass, landscaping, design, etc. The walk proved to be beneficial to more closely understand the relationship of buildings along both sides of Main Street and to conclude that east and west Main Street have a different character and development pattern. Additionally, the group summarized that the Town Center could extend down Sunset Drive to extend the business core in that direction.

This past week, the subcommittee agreed on a draft ordinance which: a) establishes a 3 new zoning designations: Town Center East, Town Center West, and Town Center Sunset; b) defines setbacks and building heights for each zoning district including the remainder of Central Business; c) limits the use of stone products to natural stone in the downtown; and d) simplifies the language of the Land Use Code pertaining to dimensional standards in these downtown zoning districts.

REQUEST

The subcommittee is requesting the Town Council set a date for a public hearing to consider this draft ordinance and request that the Planning Board study the proposal and provide a recommendation prior to coming back for a public hearing. It may take two Planning Board meetings to finalize these ordinance changes.

ATTACHMENTS

1. Draft ordinance to amend downtown development standards (underlined/~~strike-through~~)
2. Clean version of draft ordinance
3. Existing and proposed zoning maps for downtown

ORDINANCE NO. 2024-XX

AN ORDINANCE TO AMEND THE TOWN OF BLOWING ROCK LAND USE CODE PERTAINING TO BUILDING HEIGHTS, STREET SETBACKS, AND GREEN SPACE IN THE CENTRAL BUSINESS AND TOWN CENTER DISTRICTS

WHEREAS, the Planning Board and Town Council have recognized a need to evaluate and clarify some of the development standards for the Central Business zoning district and Town Center zoning district; and

WHEREAS, Section 16-12.6 of the Land Use Ordinance regulates various dimensional standards such as building heights, setbacks, open space and green space in the Central Business District and Town Center District; and

WHEREAS, Article 21 provides commercial design standards for the downtown area and anywhere commercial buildings are allowed; and

WHEREAS, after evaluation and study by a Planning Board subcommittee, the Planning Board recommends that current building height standards, setback criteria, and certain building materials need to be amended and specifically tailored to the Central Business District and the east side and west side of Main Street in the Town Center District, and to extend a new Town Center Zoning District along Sunset Drive to the Middle Fork New River to compliment and maintain the unique village characteristics of those specific zoning districts of the downtown; and

WHEREAS, the Planning Board and Board of Commissioners agree that this ordinance amendment is consistent with the 2024 Comprehensive Plan Update, and helps to promote the health, safety, and general welfare of the citizens of the Town of Blowing Rock.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Blowing Rock, North Carolina, that:

Section 1. Section 16-12.6 of the Land Use Ordinance is hereby amended to read as follows:

“Section 16-12.6 Central Business and Town Center Districts Setbacks, Building Height, Open Space, and Green Space Requirements. Lots developed in the Central Business District and Town Center (East/West/Sunset) Districts shall meet the following standards pertaining to setbacks, building heights, open space and green space areas, and other development criteria:

16-12.6.1 Setbacks. ~~For purposes of this section, primary streets shall be Main Street, Sunset Drive, and Hwy 221. Where a lot or property is bordered by more than one primary street, Main Street shall be the primary street. In such case, other streets shall be considered side streets.~~

Town Center – East

Street setback shall be five (5) feet. The setback shall be measured from the back of the public sidewalk. For consistency, the back of the public sidewalk shall be measured nine (9) feet from the back of the existing curb. Awnings are permitted in the street setback and may encroach over the public sidewalk provided the lowest portion is at least 7 feet above the sidewalk.

Side and rear setbacks shall be five (5) feet, unless a common or shared wall is possible. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

Town Center – West

Street setback shall be twenty-five (25) feet. The setback shall be measured from the back of the public sidewalk. For consistency, the back of the public sidewalk shall be measured nine (9) feet from the back of the existing curb. **Awnings are permitted in the street setback and may encroach over the public sidewalk provided the lowest portion is at least 7 feet above the sidewalk.**

Side and rear setbacks shall be five (5) feet. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

Town Center - Sunset

Street setback shall be fifteen (15) feet. For consistency, the back of the public sidewalk shall be measured nine (9) feet from the back of the existing curb.

Side and rear setbacks shall be five (5) feet. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

Central Business

Street setback shall be fifteen (15) feet. The setback shall be measured from the back of the public sidewalk. For consistency, the back of the public sidewalk shall be measured seven (7) feet from the back of the existing curb. Awnings are permitted in the street setback and may encroach over the public sidewalk provided the lowest portion is at least 7 feet above the sidewalk.

Side setbacks shall be five (5) feet. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

16-12.6.1.1 All buildings may be rebuilt to the existing building footprint. This option may only be applied if, prior to the development or removal of the building, a survey is performed by a licensed North Carolina Surveyor to accurately determine the existing footprint. The exception is that any building on the east side of Main Street in the Town

Center rebuilt from the original foundation must meet the 5-foot street setback.

~~16-12.6.1.2~~ If a proposed building is not built back to an existing footprint, or development is on vacant property, the following setback requirements apply.

~~16-12.6.1.2.1~~ Primary and side street setback(s) shall be the lesser of:

- ~~(a)~~ 15% of the average lot depth, or
- ~~(b)~~ 15 feet

~~16-12.6.1.2.2~~ A building may encroach into the required primary street setback along 50% of the lot width. However, no building may encroach closer than ten (10) feet from the back of the sidewalk. When a building is permitted to encroach into the required primary street setback, the displaced open/green space area must be placed within the front 1/3 of the lot.

~~16-12.6.1.3~~ In Sections ~~16-12.6.1.2.1~~ and ~~16-6.1.2.2~~ above, the setback shall be measured from the back of the public sidewalk. For the purposes of this subsection, public sidewalks are typically located within five (5) feet of the edge of the public street. The area between the buildings and the sidewalk shall be open space.

~~16-12.6.1.4~~ Side lot and rear boundary setbacks will be a minimum of five (5) feet. Common walls (i.e. zero (0) setbacks) are not allowed. Where an alley is not required by Section ~~16-12.6.7~~ "Alleys", green space is required in the areas between buildings and the side and rear property lines.

~~16-12.6.1.5~~ Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks."

Section 2. Section 16-12.6.2 of the Land Use Ordinance is hereby amended to read as follows:

"16-12.6.2 Open Space/Green Space. For purposes of this section, open space is defined as the gross land area not covered by a building, between the building and the public sidewalk.

~~16-12.6.2.1~~ In the Central Business, **Town Center West and Town Center Sunset districts,** Within the open space area, a minimum of ~~75~~ 40 % of the open space at the front of the building, must be planted green space with an emphasis on large, ~~over-story~~, shade trees. Planted green space shall be defined as areas with grass, herbaceous ground cover, shrubbery, and drip line areas of mature, shade trees. Massive areas of mulch, void of vegetation, shall not be considered green space.

~~16-12.6.2.2~~ One (1) ~~over-story~~ shade tree (as defined in Appendix E, Section 10 (c), page 41) shall be planted for every ~~300~~ 250 square feet of required green space."

Section 3. Section 16-12.6.5 of the Land Use Ordinance is hereby amended to read as follows:

“16-12.6.5 Building Height. The following standards determine the applicable building heights for buildings in the Central Business and Town Center Districts.

16-12.6.5.1 Town Center – East

Maximum building height is limited to 30 feet, measured from the sidewalk elevation to the highest point of the structure. Rooflines, parapets and facades shall have variable heights in relation to adjacent buildings, not exceeding the maximum roof height for that zoning district.

16-12.6.5.2 Town Center – West

Maximum building height is limited to 35 feet, measured from the sidewalk elevation to the highest point of the structure. ~~Where an existing rock wall is located adjacent to an existing sidewalk, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure. Buildings made nonconforming by this section can only be rebuilt in the existing footprint to the existing building height or 30 feet whichever is greater.~~

16-12.6.5.3 Central Business

The maximum building height shall be limited to ~~30~~ 35 feet, as measured from the average elevation of the existing or proposed sidewalk along the ~~primary~~ street to the highest point of the building or structure (Please refer to Appendix B for Diagram). Where an existing rock wall is located adjacent to an existing sidewalk, or where a property does not border a primary street on any side, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure.

16-12.6.5.4 Town Center - Sunset

The maximum building height shall be limited to 35 feet, as measured from the average elevation of the existing or proposed sidewalk along ~~Sunset Drive~~ to the highest point of the building or structure (Please refer to Appendix B for Diagram). Where an existing rock wall is located adjacent to an existing sidewalk, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure.

~~16-12.6.5.1 The maximum building height shall also be limited to no more than a 25% increase above the average existing height of adjacent buildings, provided that at least two (2) stories shall be permitted. The average existing height shall be determined by the average height of existing buildings located within 100 feet of the proposed building, on the same side of the street, same block and use district. The lesser of a) 25% greater than the average existing heights or b) 30 feet shall determine the maximum allowable building~~

~~height. Where the maximum building height is established, that maximum height shall govern the entire structure.~~

~~16-12.6.5.2 The maximum eave height shall be limited to 24 feet. The eave height shall be the vertical distance measured from the sidewalk to the lowest point of the eave above the primary entrance.~~

~~16-12.6.5.3 The maximum building height and maximum eave height for any building located 50 **35** feet or more from the back of the existing or proposed sidewalk adjacent to a public street shall be measured from the average finished ground elevation adjacent to the primary entrance. For purposes of this paragraph, the entire structure must be located at or beyond the 50 **35**-foot setback. If the building is located 50 feet or more from the sidewalk, the eave height shall be the vertical distance measured from the adjacent grade at the primary entrance to the lowest point of the eave above the primary entrance. Maximum building heights may exceed 30 feet, and the maximum eave height may exceed 24 feet, if the building is set back beyond the standard 15-foot setback. No building height in the Central Business or Town Center may exceed 40 feet. Additionally, ~~n~~ No other building walls (rear, side, etc.), measured from the average finished grade along the base of the wall to the highest point of the structure may exceed 40 **45** feet. Notwithstanding where the building entrance is located, no building wall facing Main Street shall exceed 35 feet. The following table shall be used to determine the maximum building height and eave height based on the proposed building setback from any street:~~

Setback	Maximum Building Height	Maximum Eave Height
15	30	24
20	31	25
25	32	26
30	33	27
35	34	28
40	35	29
45	36	30
50	37*	31*
55	38*	32*
60	39*	33*
65	40*	34*

*measured from finished ground elevation adjacent to primary entrance to building

~~Where a building is permitted to encroach into the 15-foot setback as provided in Section 16-12.6.1.2.1(b) the building height for that part of the building forward of the 15-foot setback must be reduced one (1) foot for every one (1) foot of setback encroachment."~~

Section 4. Section 16-21.4 of the Land Use Ordinance is hereby amended to read as follows:

“16-21.4.1 Exterior building materials that are used on each building elevation that is adjacent to a street, whether public or private, shall be natural stone found in the area, or equivalent cultured stone products, natural wood siding, or other equivalent materials that are specifically approved by the Planning Board and/or the Town Council, as the case may be.

In the Town Center zoning districts where stone is used as a building material, only natural stone found in the area may be used. No cultured stone products may be used as a substitute.”

Section 5. Section 16-21.5 of the Land Use Ordinance is hereby amended to read as follows:

“Section 16-21.5. Roof Lines. Roofs shall be pitched with a minimum slope of 6:12 except a flat roof may be allowed on a building facing Main Street where the majority of neighboring buildings have flat roofs. Rooflines, parapets and facades shall have variable heights in relation to adjacent buildings, not exceeding the maximum roof height for that zoning district.”

Section 6. Severability; Conflict of Laws. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to that end, the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 7. Effective Date. This ordinance shall be effective upon adoption.

Adopted this the _____ day of _____, 2024

Charlie Sellers, Mayor

ATTEST: _____
Hilari H. Hubner, Town Clerk

**Downtown Development Standards
Central Business and Town Center
(clean version)**

Section 16-12.6 Central Business and Town Center Districts Setbacks, Building Height, Open Space, and Green Space Requirements. Lots developed in the Central Business District and Town Center (East/West/Sunset) Districts shall meet the following standards pertaining to setbacks, building heights, open space and green space areas, and other development criteria:

16-12.6.1 Setbacks.

Town Center – East

Street setback shall be five (5) feet. The setback shall be measured from the back of the public sidewalk. For consistency, the back of the public sidewalk shall be measured nine (9) feet from the back of the existing curb. Awnings are permitted in the street setback and may encroach over the public sidewalk provided the lowest portion is at least 7 feet above the sidewalk.

Side and rear setbacks shall be five (5) feet, unless a common or shared wall is possible. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

Town Center – West

Street setback shall be twenty-five (25) feet. The setback shall be measured from the back of the public sidewalk. For consistency, the back of the public sidewalk shall be measured nine (9) feet from the back of the existing curb. Awnings are permitted in the street setback and may encroach over the public sidewalk provided the lowest portion is at least 7 feet above the sidewalk.

Side and rear setbacks shall be five (5) feet. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

Town Center - Sunset

Street setback shall be fifteen (15) feet. For consistency, the back of the public sidewalk shall be measured nine (9) feet from the back of the existing curb.

Side and rear setbacks shall be five (5) feet. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

Central Business

Street setback shall be fifteen (15) feet. The setback shall be measured from the back of the public sidewalk. For consistency, the back of the public sidewalk shall be measured seven (7) feet from the back of the existing curb. Awnings are permitted in the street setback and may encroach over the public sidewalk provided the lowest portion is at least 7 feet above the sidewalk.

Side setbacks shall be five (5) feet. Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

16-12.6.1.1 All buildings may be rebuilt to the existing building footprint. This option may only be applied if, prior to the development or removal of the building, a survey is performed by a licensed North Carolina Surveyor to accurately determine the existing footprint. The exception is that any building on the east side of Main Street in the Town Center rebuilt from the original foundation must meet the 5-foot street setback.

16-12.6.2 Open Space/Green Space. For purposes of this section, open space is defined as the gross land area not covered by a building, between the building and the public sidewalk.

16-12.6.2.1 In the Central Business, Town Center West and Town Center Sunset districts, a minimum of 40 % of the open space at the front of the building, must be planted green space with an emphasis on large shade trees. Planted green space shall be defined as areas with grass, herbaceous ground cover, shrubbery, and drip line areas of mature, shade trees. Massive areas of mulch, void of vegetation, shall not be considered green space.

16-12.6.2.2 One (1) shade tree shall be planted for every 250 square feet of required green space.

16-12.6.5 Building Height. The following standards determine the applicable building heights for buildings in the Central Business and Town Center Districts.

16-12.6.5.1 **Town Center East**

Maximum building height is limited to 30 feet, measured from the sidewalk elevation to the highest point of the structure. Rooflines, parapets and facades shall have variable heights in relation to adjacent buildings, not exceeding the maximum roof height for that zoning district.

16-12.6.5.2 **Town Center West**

Maximum building height is limited to 35 feet, measured from the sidewalk elevation to the highest point of the structure. Where an existing rock wall is located adjacent to an

existing sidewalk, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure. Buildings made nonconforming by this section can only be rebuilt in the existing footprint to the existing building height or 30 feet whichever is greater.

16-12.6.5.3 Central Business

The maximum building height shall be limited to 35 feet, as measured from the average elevation of the existing or proposed sidewalk along the primary street to the highest point of the building or structure (Please refer to Appendix B for Diagram). Where an existing rock wall is located adjacent to an existing sidewalk, or where a property does not border a primary street on any side, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure.

16-12.6.5.4 Town Center Sunset

The maximum building height shall be limited to 35 feet, as measured from the average elevation of the existing or proposed sidewalk along Sunset Drive to the highest point of the building or structure (Please refer to Appendix B for Diagram). Where an existing rock wall is located adjacent to an existing sidewalk, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure.

16-12.6.5.5 The maximum building height for any building located 35 feet or more from the back of the existing or proposed sidewalk adjacent to a public street shall be measured from the average finished ground elevation adjacent to the primary entrance. For purposes of this paragraph, the entire structure must be located at or beyond the 35-foot setback. No other building walls (rear, side, etc.), measured from the average finished grade along the base of the wall to the highest point of the structure may exceed 45 feet. Notwithstanding where the building entrance is located, no building wall facing Main Street shall exceed 35 feet.

Section 16-21.4. Exterior Walls and Facades of Commercial Buildings. The exterior walls of commercial buildings shall be designed to reflect, enhance, and promote the desired image of a “mountain village”. Historic structures and other buildings in the Blowing Rock area that provide important examples of the “mountain village” image is contained in Appendix F. The examples that are contained in Appendix F shall be used as a guide for building design.

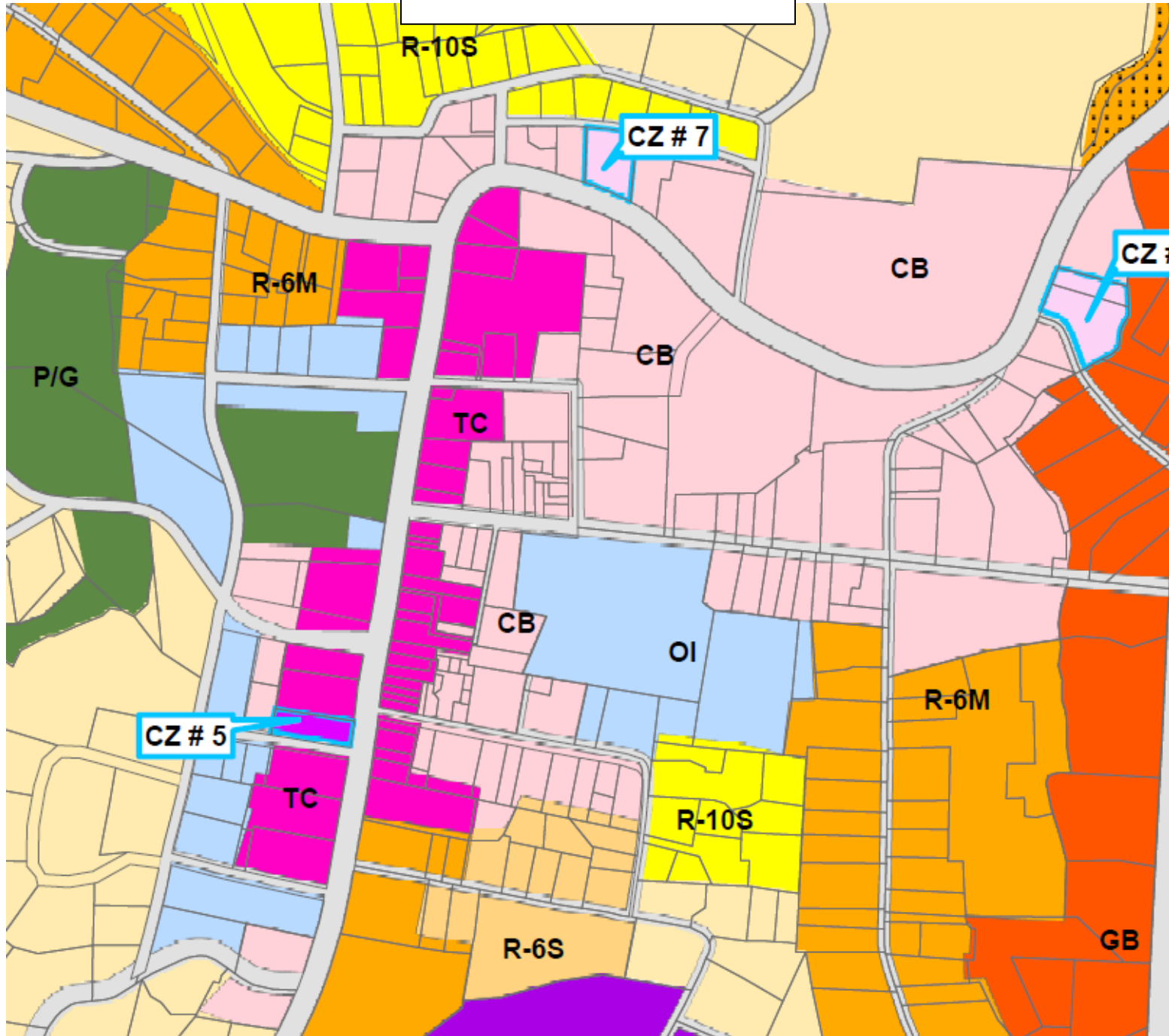
16-21.4.1 Exterior building materials that are used on each building elevation that is adjacent to a street, whether public or private, shall be natural stone found in the area, or equivalent

cultured stone products, natural wood siding, or other equivalent materials that are specifically approved by the Planning Board and/or the Town Council, as the case may be.

In the Town Center zoning districts where stone is used as a building material, only natural stone found in the area may be used. No cultured stone products may be used as a substitute.

Section 16-21.5. Roof Lines. Roofs shall be pitched with a minimum slope of 6:12 except a flat roof may be allowed on a building facing Main Street where the majority of neighboring buildings have flat roofs. Rooflines, parapets and facades shall have variable heights in relation to adjacent buildings, not exceeding the maximum roof height for that zoning district.

Downtown Current Zoning



Downtown Proposed Zoning
Adding Town Center Sunset, TC West and TC East

