Caldwell County
North Carolina
Board of Commissioners Meeting

May 13, 2024 at 6:00 PM
City-County Chambers
905 West Avenue NW, Lenoir

AGENDA

Call to Order ***Chairman Randy T. Church***

Public Comment Period

Invocation ***Pastor Jerry Stines, Solid Rock Baptist Church***

Pledge of Allegiance ***Commissioner, Donnie Potter***

Agenda Amendments from the Board, Manager & Public

Agenda Items

1.	Presentation *Keith Hindman*	Communities in Schools
2.	Proclamation *Beverly Ruppard*	Older Americans' Month
3.	Presentation *Simon Lucas*	Construction Contract with Atriax for Cajah's Mtn. EMS Base
4.	Items for Decision *Donald Duncan*	Construction Contract with Atriax for Cajah's Mtn. EMS Base
5.	Budget Revisions *Donald Duncan*	Capital Project Ordinance for Cajah's Mtn. EMS Base
6.	Resolution *Donald Duncan*	Honoring Sherry Griffin
7.	Resolution *Donald Duncan*	Opposing City of Charlotte Interbasin Transfer Request
8.	Items for Decision *Donald Duncan*	Water Purchase Agreement with the City of Lenoir
9.	Items for Decision *Donald Duncan*	MOA with City of Lenoir for Joint Communications Center
10.	Items for Decision *Donald Duncan*	Active Transportation Infrastructure Investment Program (ATIIP) Grant Application
11.	Items for Decision	Adoption of Ordinance Revisions

Donald Duncan

Consent

12.	Budget Revisions	Purchase of Buiding Inspections Software
13.	Items for Decision	Reappointment of Jerry Church to CCC&TI Board of Trustees
14.	Items for Decision	NRA Grant
15.	Items for Decision	Approval of Minutes from April 9, 2024, Meeting

Closed Session Pursuant to § 143-318.11 (a)(6)

Adjourn

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Keith Hindman

AGENDA ITEM # 1

Communities in Schools

BACKGROUND

Keith Hindman, Director of Communities in Schools, will provide a presentation of accomplishments of CIS for the 2023-2024 school year.

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

None

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	DSS	Beverly Ruppard

AGENDA ITEM # 2

Older Americans' Month

BACKGROUND

DSS Employees will be in attendance to present a proclamation for Older Americans' Month 2024.

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Proclamation for Older Americans' Month 2024

PROCLAMATION

07 - 2024

OLDER AMERICANS' MONTH 2024

Whereas, May is Older Americans Month, a time for us to recognize and honor Caldwell County's older adults and their immense influence on every facet of American society; and

Whereas, through their wealth of life experience and wisdom, older adults guide our younger generations and carry forward abundant cultural and historical knowledge; and

Whereas, older Americans improve our communities through intergenerational relationships, community service, civic engagement, and many other activities; and

Whereas, communities benefit when people of all ages, abilities, and backgrounds have the opportunity to participate and live independently; and

Whereas, Caldwell County must ensure that older Americans have the resources and support needed to stay involved in their communities — reflecting our commitment to inclusivity and connectedness; and

Now, therefore, we the Caldwell County Board of Commissioners do hereby proclaim May 2024 as Older Americans Month. This year's theme, "Powered by Connection," emphasizes the profound impact of meaningful interactions and social connection on the well-being and health of older adults in our community.

We call upon all residents to join us in recognizing the contributions of our older citizens and promoting programs and activities that foster connection, inclusion, and support for older adults.

Adopted this day 13th day of May, 2024

_____
Randy T. Church, Chairman

Attest: _____
Abigail Rich, County Clerk

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Simon Lucas

AGENDA ITEM # 3

Construction Contract with Atriax for Cajah's Mtn. EMS Base

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

None

Board of Commissioners Meeting

Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 4

Construction Contract with Atriax for Cajah's Mtn. EMS Base

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. ABS - Contract Design -Build-Caldwell County
2. Standard Gen Conds-Owner and Design_Builder Contract

Atriax GROUP
Planning, Design, Construction and Related Services

CONSTRUCTION AGREEMENT
BETWEEN OWNER AND DESIGN/BUILDER
ON THE BASIS OF A STIPULATED PRICE

This Construction Agreement (the "Agreement") is made and entered into this day **13th May 2024** ("Effective Date"), by and between Atriax Building Solutions, LLC (Design/Builder), a North Carolina Limited Liability Company having a place of business at 703 Main Avenue NE, Hickory, NC 28602, ("ABS") and Caldwell County, a having a place of business at 905 West Avenue NW, Lenoir, Caldwell County, NC 28645 ("Owner"), each a "Party" or collectively the "Parties".

WHEREAS, Owner wishes to enter into this Agreement with ABS to provide the work set forth in Article 1 (the "**Work**"), as set forth herein; and

WHEREAS, the Parties desire to set forth the duties, responsibilities and obligations of each Party with respect to the provision of Work; and

WHEREAS, the Parties agree that the terms and conditions appearing within this Agreement and the Standard Conditions, attached hereto as **Exhibit A** (Standard General Conditions of the Contract between Owner & Design Builder) (the "**Standard General Conditions**"), shall govern and control the duties, responsibilities and obligations of the Parties in connection with the provision of Work.

NOW THEREFORE, in consideration of the foregoing, the covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto acknowledge and agree as follows:

THE CONTACT INFORMATION FOR EACH PARTY IS:

ABS (Design/Builder):		OWNER:
Name:	Atriax Building Solutions, LLC	Name: Caldwell County
Address:	P.O. Box 1629 (28603)	Address: 905 West Avenue NW Lenoir NC 28645
Phone:	(828) 315-9962	Phone: (828) 757-1300

PROJECT**:** Remodel of existing medical facility and addition of a six (6) vehicle bay metal building to provide full EMS capability for the town of Cajah's Mountain.

LOCATION: 1901 Connelly Springs Road,
Cajah's Mountain,
Lenoir.
NC 28645

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ARTICLE 1 - WORK

1.01. Design/Builder shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Scope:

- Project planning to include code analysis, value engineering constructability, preliminary cost estimates, and schedule development.
- The use of design boards with materials and color selections.
- Evaluation of site to include survey, geotechnical evaluation, and existing utilities.
- Comprehensive project design, to include the building, site, and subterranean utilities.
- Working with staff to ensure a thorough visioning and design process.
- Update the budget and schedule once the location and design are finalized.
- Permitting for all aspects of the project.
- Construction of the project.
- Project management to assure subcontractors are performing to design and product specifications.
- Construction management to ensure all construction work conforms to OSHA standards.
- Timing of material delivery to ensure no interruptions in construction timeline.
- Adequate storage of materials in a secure location.
- Schedule management to assure completion in a timely manner.
- Weekly progress reports identifying current status and forecast activities.
- Project closeout, delivering manuals, establishing warrantees, equipment training, final inspection and acceptance, execution of punch list, record drawings and commissioning of systems.

1.02. The Parties have identified Atriax PLLC as the Architect of record and to provide professional engineering services.

ARTICLE 2 - THE PROJECT

2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

- The County intends through a Design- Build process to construct an EMS facility to provide full staff services for training, sleeping, living, bathrooms, storage and a six (6) EMS vehicle bay. It will also provide a satellite Sheriff's Office.

- Design/Builder to provide the following (as appropriate): civil, architectural, structural, electrical, plumbing, mechanical, fire protection, geo-tech, abatement surveying and general construction expertise through a team of registered and licensed professionals.

- Design/Builder will call and schedule all interim and final inspections with county/municipal authorities.

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ARTICLE 3 - CONTRACT TIMES

3.01. Time of the Essence

All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.02. Days to Achieve Substantial Completion and Final Payment

The Work will be substantially completed within 291 working days after the date when the Contract Times commence to run as provided in paragraph 2.02 of the General Conditions, and completed and ready for final payment in accordance with paragraph 13.08 of the General Conditions within 311 working days after the date when the Contract Times commence to run.

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 4.01.A below:

A. Lump Sum – $4,588,215

The specific cash allowances are included in the above price and have been computed in accordance with paragraph 10.02 of the General Conditions. Payment will be paid in installments or as agreed upon by Owner and Design/Builder. The first installment of $159,527 will be paid on the date of execution of this Agreement. The remainder will be paid to Design/Builder in accordance with Article 5.

Exclusions: (These are provided by way of example only and will be fully determined as contract negotiations proceed).
The scope of services specifically excludes the following items;

a. Lead based paint testing/reports
b. Asbestos testing/reports
c. Hazardous material testing/reports

As provided in paragraph 10.03.A of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Owner as provided in paragraph 10.03.A of the General Conditions. Unit prices have been computed as provided in paragraph 10.03 of the General Conditions.

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ARTICLE 5 - PAYMENT PROCEDURES

5.01. Design/Builder shall submit and Owner will process Applications for Payment.

A. Progress Payments.

Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on the 5th and 20th day of each month during performance of the Work. Payments will be due net 15 days calendar days.

B. Final Payment.

Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price. Final payment will be due net 15 calendar days upon submittal of final invoice by Design/Builder.

C. Owner's Billing Information. Send invoices / inquiries to the following:

Company Name	Caldwell County
Address	905 West Avenue NW Lenoir Caldwell County NC 28645
Attn:	Carole Brown
Phone:	828-757-1300

ARTICLE 6 - INTEREST

6.01. All moneys not paid when due shall bear interest at the rate of 1.5 % percent compounded daily until payment is received.

ARTICLE 7 - DESIGN/BUILDER'S REPRESENTATIONS

7.01.

A. Design/Builder has examined and carefully studied the Contract Documents (including the Addenda) listed in paragraphs 8.01. A through D and the other related data identified in the Request for Proposals.

B. Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Design/Builder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Design/Builder has carefully studied all: (1) reports of explorations and tests of subsurface conditions (if any) at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made

available by Owner and (2) reports and drawings of Hazardous Environmental Conditions (if any) at the Site which have been identified or made available by Owner.

E. Design/Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

F. Design/Builder has correlated the information known to Design/Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

G. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Design/Builder has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Design/Builder.

H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01. The Contract Documents consist of the following:

A. This Agreement (pages 1 to 7 inclusive)

B. Conceptual designs provided by Design/Builder - Attached

C. Design/Builder's Cost Proposal - Attached

D. Construction Schedule - Attached

The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:

1. All Work, Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents;
2. Investigative Services and any engineering designs required by the project.

8.02. The documents listed in paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).

8.03. There are no Contract Documents other than those listed above in this Article 8.

8.04. The Contract Documents may be amended, modified, or supplemented by mutual agreement between Owner and Design/Builder.

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ARTICLE 9 - MISCELLANEOUS

9.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.

9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

9.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder, who agree that the Contract Documents 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.

9.06. Other Provisions

None.

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IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed or identified by Owner and Design/Builder.

This Agreement will be effective on 13th May 2024 (which is the Effective Date of the Agreement).

OWNER:	DESIGN/BUILDER:
Caldwell County	Atriax Building Solutions, LLC
By: Donald Duncan	By: Simon Lucas
Sign:	Sign:
Address for giving notices:	Address for giving notices:
905 West Ave W	P.O. Box 1629
Lenoir	Hickory
NC 28645	NC 28603
	Contractor License No.: 51979
	State: North Carolina

Designated Representative:		Designated Representative:	
Name:	Donald Duncan	Name:	Simon Lucas
Title:	County Manager	Title:	General Manager
Address:	905 West Ave W Lenoir NC 28645	Address:	Atriax Building Solutions, LLC, P.O. Box 1629, Hickory, NC 28603
	Tel: 828-757-1300		Tel: 828-315-9962

STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
American Council of Engineering Companies

National Society of Professional Engineers
Professional Engineers in Private Practice

ASCE American Society of Civil Engineers

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STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Addenda* – Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.

2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Design/Builder covering the Work.

3. *Application for Payment* – The form which is to be used by Design/Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bonds* – Performance and payment bonds and other instruments of security.

6. *Change Order* – A written order which is signed by Design/Builder and Owner which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

7. *Claim* – A demand or assertion by Owner or Design/Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.

8. *Conceptual Documents* – The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.

9. *Construction* – The result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

10. *Construction Subagreement* – A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.

11. *Contract* – The entire and integrated written agreement between Owner and Design/Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

13. *Contract Price* – The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents.

14. *Contract Times* – The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with paragraph 13.08.

15. *Design/Builder* – The individual or entity with whom Owner has entered into the Agreement.

16. *Design Subagreement* – A written agreement between Design/Builder and a design professional for provision of Design Professional Services.

17. *Design Professional Services* – Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.

18. *Drawings* – Those portions of the Contract Documents prepared by or for Design/Builder and

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approved by Owner consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.

19. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

20. *Field Order* – A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

22. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

23. *Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

24. *Liens* – Charges, security interests or encumbrances upon real property or personal property.

25. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

26. *Notice of Award* – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.

27. *Notice to Proceed* – A written notice given by Owner to Design/Builder fixing the date on which the Contract Times will commence to run and on which Design/Builder shall start to perform the Work.

28. *Owner* – The individual or entity with whom Design/Builder has entered into the Agreement and for whom the Work is to be performed.

29. *Owner's Consultant* – An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project and who is identified as such in the Supplementary Conditions.

30. *Partial Utilization* – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

31. *PCBs* – Polychlorinated biphenyls.

32. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

33. *Project* – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

34. *Proposal* – The documents submitted by Design/Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.

35. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Request for Proposals* – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.

37. *Resident Project Representative* – The authorized representative of Owner who may be assigned to the Site or any part thereof.

38. *Schedule of Values* – A schedule prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.

39. *Site* – Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design/Builder.

40. *Specifications* – The part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

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41. *Subcontractor* – An individual or entity other than a Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.

42. *Submittal* – A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

43. *Substantial Completion* – The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) 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.

44. *Supplementary Conditions* – The part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.

46. *Unit Price Work* – Work to be paid for on the basis of unit prices.

47. *Work* – The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

48. *Work Change Directive* – A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. Intent of Certain Terms or Adjectives:

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

4 The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

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ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. Design/Builder will provide payment and performance bonds as required by G.S. 143-128.1A (f) and G.S. 44A-26, with a surety acceptable to Owner.

2.02 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. Unless agreed to in writing by Owner and Design/Builder, the Contract Times will commence to run no later than the ninetieth day after the last day for receipt of the Proposal or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.03 Starting the Work

A. Design/Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run unless authorized by the Owner.

2.04 Before Starting the Work

A. *Design/Builder's Review of Contract Documents:* Before undertaking each part of the Work, Design/Builder shall carefully study and compare those Contract Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Design/Builder knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;

3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

C. *Evidence of Insurance:* Before any Work at the Site is started, Design/Builder and Owner shall each deliver to the other, certificates of insurance as required by paragraph 5.03 which Design/Builder and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.05 Initial Conference

A. Within twenty days after the Contract Times start to run, Design/Builder will arrange a conference attended by Owner and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in paragraph 2.04.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to paragraph 8.01.A.6 and other matters.

2.06 Initial Acceptance of Schedules

A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.04.B. Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until the acceptable schedules are submitted to Owner.

1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.

2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable

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arrangement for reviewing and processing the required Submittals.

3. Design/Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws or Regulations.

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, code, or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has approved a Submittal pursuant to paragraph 6.17.B.

B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. Owner's approval of required Submittals (pursuant to paragraph 6.17.B);

2. A Work Change Directive;

3. A Change Order;

4. A Field Order.

3.05 *Reuse of Documents*

A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement are for Design/Builder's own use, and Design/Builder shall retain an ownership and property interest therein whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination without written verification or adaptation by Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder and Owner shall indemnify and hold harmless Design/Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Design/Builder to further compensation at rates to be agreed upon by Owner and Design/Builder.

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3.06 Electronic Data

A. Copies of data furnished by Owner to Design/Builder or Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design/Builder may make a Claim therefor as provided in Article 9.

B. Upon reasonable written request, Owner shall furnish Design/Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws or Regulations.

C. Design/Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Differing Site Conditions

A. Design/Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.

C. No request by Design/Builder for an equitable adjustment under paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that the time prescribed in 9.03.A for giving written notice may be extended by Owner.

D. The provisions of this paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 Reference Points

A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to paragraph 8.01.A.6.e, and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Hazardous Environmental Condition at Site

A. Design/Builder will not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design/Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design/Builder, Subcontractors, Suppliers or anyone else for whom Design/Builder is responsible.

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B. If Design/Builder encounters a Hazardous Environmental Condition, Design/Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design/Builder, either party may make a Claim therefor as provided in Article 9.

D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

E. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against 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 or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

F. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against 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 or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by Design/Builder or anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.F shall obligate Design/Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. Design/Builder will provide payment and performance bonds as required by G.S. 143-128.1A (f) and G.S. 44A-26, with a surety acceptable to Owner.

5.02 Licensed Sureties and Insurers

A. All insurance required by the Contract Documents to be purchased and maintained by Owner or Design/Builder shall be obtained from insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue insurance policies for the limits and coverages so required. Such insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

A. Design/Builder shall deliver to Owner, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Design/Builder is required to purchase and maintain. Owner shall deliver to Design/Builder, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Design/Builder or any other additional insured) which Owner is required to purchase and maintain.

5.04 Design/Builder's Liability Insurance

A. Design/Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations under the Contract

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Documents, whether it is to be performed by Design/Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;

4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by paragraph 5.04.A shall:

1. With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, (subject to any customary exclusion in respect of professional liability) include as additional insureds Owner and Owner's Consultants and any other persons or entities indicated in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, and employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. Include at least the specific overages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. Include completed operations insurance;

4. Include contractual liability insurance covering Design/Builder's indemnity obligations under paragraphs 6.11.A.3 and 6.21;

5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design/Builder pursuant to paragraph 5.03 will so provide);

6. Remain in effect at least until final payment and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with paragraphs 12.06 and 12.07; and

7. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Design/Builder shall furnish Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 Owner's Liability Insurance

A. In addition to the insurance required to be provided by Design/Builder under paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Construction at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance will:

1. Include the interests of Owner, Owner's Consultant, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to

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the Construction, temporary buildings, falsework and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Construction, provided that such materials and equipment have been included in an Application for Payment approved by Owner;

5. Allow partial utilization in accordance with paragraph 13.06;

6. Include testing and startup; and

7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Design/Builder with thirty days' written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws or Regulations which will include the interests of Owner, Owner's Consultants, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Design/Builder and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design/Builder, Subcontractors, Suppliers, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by Design/Builder, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Design/Builder requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Design/Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design/Builder whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Design/Builder intend that all policies purchased in accordance with paragraph 5.06 will protect Owner, Owner's Consultant, Design/Builder, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall 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 of the insureds or additional insureds thereunder. Owner and Design/Builder waive all rights against each other and their respective officers, directors, partners, employees, agents, and other 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 such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Owner's Consultant, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Design/Builder, Subcontractors, and Suppliers and the officers, directors, employees and agents of any of them for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property caused by, arising out of or resulting from fire or other peril whether or not insured by Owner; and

2. Loss or damage to the completed Project or any part thereof caused by, arising out of. or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to paragraph 13.06, after Substantial

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Completion pursuant to paragraph 13.05, or after final payment pursuant to paragraph 13.08.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Design/Builder, Subcontractors, Owner's Consultant, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Design/Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.04.C. Owner and Design/Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurance

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES

6.01 Design Professional Services

A. *Standard of Care.* The standard of care for Design Professional Services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

B. *Preliminary Design Phase.* After the Contract Times commence to run, Design/Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;

2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services of the types provided in paragraph 8.01.A.6.a-g and assist Owner in obtaining such reports, data, or services;

3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the Project;

4. Obtain such additional geotechnical and related information which it deems necessary for performance of the Work;

5. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria,

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preliminary drawings, outline specifications, and written descriptions of the Project;

6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

7. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. *Final Design Phase.* After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute);

2. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;

3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

4. Identify any deviations from other Contract Documents in accordance with paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

A. Design/Builder shall supervise, inspect and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction. Design/Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Design/Builder shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Design/Builder's representative at the Site and shall have authority to act on behalf of Design/Builder. All communications given to or received from the superintendent shall be binding on Design/Builder.

6.03 Labor, Working Hours

A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on Saturday, Sunday or any legal holiday without Owner's written consent, which will not be unreasonably withheld.

6.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 Progress Schedule

A. Design/Builder shall adhere to the progress schedule established in accordance with paragraph 2.06.A as it may be adjusted from time to time as provided below:

1. Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of

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Article 11.02. Such adjustments may only be made by a Change Order.

6.06 Concerning Subcontractors, Suppliers, and Others

A. Design/Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Design/Builder shall not be required to employ any Subcontractor, Supplier or other individual or entity to furnish or perform any of the Work against whom Design/Builder has reasonable objection.

B. Design/Builde0r shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as Design/Builder is responsible for Design/Builder's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

C. Design/Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design/Builder.

D. Design/Builder shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Design/Builder.

E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other additional insureds (and their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

Intentionally delated.

6.08 Permits

A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner shall assist Design/Builder, when necessary, in obtaining such permits, licenses and approvals. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design/Builder shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

6.09 Laws or Regulations

A. Design/Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.

B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder shall bear all costs arising therefrom.

C. Changes in Laws or Regulations not known on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

A. Design/Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design/Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas.

1. Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or

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occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Construction.

B. *Removal of Debris.* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning.* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures*. Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals, including a reproducible set of record drawings, will be delivered to Owner.

6.13 Safety and Protection

A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design/Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;

2. All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

B. Design/Builder shall comply with applicable Laws or Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design/Builder, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design/Builder.

D. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Design/Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

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6.15 Hazard Communication Programs

A. Design/Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Submittals

A. Owner will review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by paragraph 2.06.A. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

B. Owner's review and approval of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

C. Construction prior to Owner's review and approval of any required Submittal will be at the sole risk of Design/Builder.

6.18 Continuing the Work

A. Design/Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design/Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

A. Design/Builder shall:

1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.

2. Assist Owner in training staff to operate and maintain the Work.

3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Design/Builder's General Warranty and Guarantee

A. Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Design/Builder, Subcontractors, or Suppliers or any other individual for whom Design/Builder is responsible; or

2. Normal wear and tear under normal usage.

B. Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;

2. The making of any progress or final payment;

3. The issuance of a certificate of Substantial Completion;

4. Use or occupancy of the Work or any part thereof by Owner;

5. Any acceptance by Owner or any failure to do so;

6. Any review and approval of a Submittal;

7. Any inspection, test or approval by others; or

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8. Any correction of defective Construction by Owner.

6.21 Indemnification

A. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants, and the officers, directors, partners, employees, agents, other consultants and subcontractors of each from and against 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 or arbitration or other dispute resolution costs) arising out of or resulting from the performance of Construction, 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 Design/Builder, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work.

B. In any and all claims against Owner, Owner's Consultant or any of their respective consultants, agents, officers, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Design/Builder, any Subcontractor, any Supplier, any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design/Builder or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The indemnification obligations of Design/Builder under paragraph 6.21.A shall not extend to the liability of Owner's Consultant, and their officers, directors, partners, employees, agents, other consultants, and subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

A. Owner may perform other Work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and

2. Design/Builder may make a Claim therefor as provided in Article 9 if Design/Builder believes that such performance will involve additional expense to Design/Builder or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

2. The specific matters to be covered by such authority and responsibility will be itemized; and

3. The extent of such authority and responsibilities will be provided.

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B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:

1. Designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;

2. Provide such legal services as Owner may require with regard to legal issues pertaining to the Project including any that may be raised by Design/Builder;

3. If requested in writing by Design/Builder, furnish reasonable evidence satisfactory to Design/Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design/Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days notice to the Owner;

4. Make payments to Design/Builder promptly when they are due as provided in paragraph 13.03 and 13.08;

5. Furnish the Site as set forth in paragraph 4.01.A;

6. Furnish to Design/Builder, as required for performance of Design/Builder's Services the following, all of which Design/Builder may use and rely upon in performing services under this Agreement:

a. Environmental assessment and impact statements;

b. Property, boundary, easement, right-of-way, topographic, and utility surveys;

c. Property descriptions;

d. Zoning, deed, and other land use restrictions;

e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;

f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;

g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and

h. All subsurface data at or contiguous to the Site which Owner may have obtained.

7. Review Submittals subject to Owner review pursuant to paragraph 6.17.A; and

8. Provide information known to or in the possession of Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 Insurance

A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design/Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design/Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design/Builder's failure to perform the Work in accordance with the Contract Documents.

8.04 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in paragraph 4.04.

8.05 Resident Project Representation

A. Owner may furnish a Resident Project Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

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8.06 Owner's Consultant

A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Design/Builder, unless so provided in the Supplementary Conditions.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

A. Design/Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Construction as provided in paragraph 12.04.

9.03 Claims

A. *Notice.* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.

B. *Documentation.* Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by paragraph 9.03.A.

C. *Decision.* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.

D. *Time Limit Extension.* The time limits of paragraphs 9.03.B and 9.03.C may be extended by mutual agreement.

9.04 Execution of Change Orders

A. Owner and Design/Builder shall execute appropriate Change Orders covering:

1. Changes in the Work which are (i) ordered by Owner pursuant to paragraph 9.01, (ii) required because of acceptance of defective Construction under paragraph 12.08 or Owner's correction of defective Work under paragraph 12.09 or (iii) agreed to by the parties; and

2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive.

9.05 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design/Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

A. *Costs Included.* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 10.01.B:

1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.

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a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design/Builder unless Owner deposits funds with Design/Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design/Builder shall make provisions so that they may be obtained.

3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design/Builder's Cost of the Work and fee.

4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Subagreement.

5. Costs of special consultants (including but not limited to testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

6. Supplemental costs including the following items:

a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Design/Builder.

c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Design/Builder is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of Design/Builder, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design/Builder's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

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i. Cost of premiums for all Bonds and insurance Design/Builder is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded.* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by Design/Builder whether at the Site or in Design/Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.01.A.1, all of which are to be considered administrative costs covered by the Design/Builder's fee.

2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.

3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.

4. Costs due to the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.01.A.

C. *Design/Builder's Fee.* When all the Work is performed on the basis of cost-plus, Design/Builder's fee shall be as set forth in the Agreement. When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in paragraph 11.01.C.

D. *Documentation.* Whenever the cost of any Work is to be determined pursuant to paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 Cash Allowances

A. The Contract Price includes all allowances so named in the Contract Documents. Design/Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design/Builder agrees that:

1. The allowances include the cost to Design/Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Except as set forth in the Contract Documents, Design/Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Design/Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 Unit Prices

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Builder will be made by Owner.

B. Each unit price will be deemed to include an amount considered by Design/Builder to be adequate to cover Design/Builder's overhead and profit for each separately identified item.

C. Design/Builder or Owner may make a Claim for an adjustment in the Contract Price in accordance with Article 9 if:

1. the quantity of any item of Unit Price Work performed by Design/Builder differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents;

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Design/Builder believes that it is entitled to an increase in Contract Price as a result of having incurred

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additional expense or Owner believes it is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with paragraph 9.03.A.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 10.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.01.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 10.01) plus a Design/Builder's Fee for overhead and profit (determined as provided in paragraph 11.01.C).

C. Design/Builder's Fee: The Design/Builder's fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under paragraphs 10.01.A.1.a and 10.01.A.2, the Design/Builder's fee shall be 15 percent;

b. For costs incurred under paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Design/Builder's fee shall be five percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.01.C.1 and 11.01.C.2.a is that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor and Design/Builder will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. The amount of credit to be allowed by Design/Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design/Builder's fee by an amount equal to five percent of such net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in Design/Builder's fee shall be computed on the basis of the net change in accordance with paragraphs 11.01.C.2.a through 11.01.C.2.d, inclusive.

11.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to paragraph 9.03.A.

B. *Delays Beyond Design/Builder's Control.* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder’s ability to complete the Work within the Contract Times.

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D. If Design/Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design/Builder, then Design/Builder shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.C.

E. Owner and Owner's Consultant shall not be liable to Design/Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design/Builder on or in connection with any other project or anticipated project.

F. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.01 Notice of Defects

A. Owner shall give Design/Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

A. Owner, Owner's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design/Builder shall provide them proper and safe conditions for such access and advise them of Design/Builder's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/ Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.

B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.

C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation at Design/Builder's expense unless Design/ Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.

B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a Claim therefor as provided in Article 9.

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12.05 Owner May Stop Construction

A. If Construction is defective, or Design/Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design/Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other party.

12.06 Correction or Removal of Defective Construction

A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Design/Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to 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 such correction or removal.

12.07 Correction Period

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, removed or replaced under this paragraph 12.07, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Construction

A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Design/Builder to Owner.

12.09 *Owner May Correct Defective Construction*

A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design/Builder's services related thereto, take possession of Design/Builder's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's Consultant, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

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C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9.

D. Design/Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

13.01 *Schedule of Values*

A. The Schedule of Values established as provided in paragraph 2.06.A will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 *Application for Progress Payment*

A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design/Builder shall submit to Owner for review an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

B. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.

C. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

13.03 *Progress Payments*

A. *Procedure.* Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:

1. Owner will, within ten days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design/Builder indicating in writing its reasons for refusing to accept the Application. Not more than ten days after accepting such Application the amount will become due and when due will be paid by Owner to Design/Builder.

2. If Owner should fail to pay Design/Builder at the time the payment of any amount becomes due, then Design/Builder may, at any time thereafter, upon serving written notice that he will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment.* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. the Construction is defective, or completed Construction has been damaged requiring correction or replacement; or

2. the Contract Price has been reduced by Change Order; or

3. Owner has been required to correct defective Construction or complete Work in accordance with paragraph 12.09.A; or

4. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.A.; or

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5. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or

6. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

7. There are other items entitling Owner to a set off against the amount for which application is made.

C. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder corrects to Owner's satisfaction the reason for such action.

13.04 ***Design/Builder's Warranty of Title***

A. Design/Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 ***Substantial Completion***

A. When Design/Builder considers the Work ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending final payment between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

13.06 ***Partial Utilization***

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/ Builder's performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder will certify to Owner that such part of the Construction is substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

13.07 ***Final Inspection***

A. Upon written notice from Design/Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 ***Final Payment***

A. Application for Payment.

1. After Design/Builder has completed all such corrections to the satisfaction of Owner and delivered in

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accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.

3. In lieu of such releases or waivers of Liens specified in paragraph 13.08.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Final Payment and Acceptance. If Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to Design/Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design/Builder, indicating in writing the reasons for refusing to process final payment, in which case Design/Builder shall make the necessary corrections and resubmit the Application.

C. *Payment Becomes Due.* Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.09 ***Final Completion Delayed***

A. If, through no fault of Design/Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design/Builder's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design/Builder to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.10 ***Waiver of Claims***

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Design/Builder, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection pursuant to paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and

2. A waiver of all Claims by Design/Builder against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 ***Owner May Suspend Work***

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

14.02 ***Owner May Terminate for Cause***

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design/Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.06.A as adjusted from time to time pursuant to paragraph 6.05).

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2. Design/Builder's disregard of Laws or Regulations of any public body having jurisdiction.

3. Design/Builder's violation in any substantial way of provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) seven days' written notice, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of paragraph 3.05.A), exclude Design/Builder from the Site, and take possession of the Work and of all Design/Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design/Builder (without liability to Design/Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding paragraph 14.02.B, Design/Builder's services will not be terminated if Design/Builder begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.

14.03 ***Owner May Terminate for Convenience***

A. Upon seven days' written notice to Design/Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design/Builder shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. Amounts paid in settlement of terminated contracts with Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with termination of contracts with Subcontractors, Suppliers and others); and

4. Reasonable expenses directly attributable to termination.

B. Except as provided in paragraph 14.03.C, Design/Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

14.04 ***Design/Builder May Stop Work or Terminate***

A. If, through no act or fault of Design/Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within thirty days after it is submitted or Owner fails for thirty days to pay Design/Builder any sum finally determined to be due, then Design/Builder may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in paragraph 14.03.A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design/Builder any sum finally determined to be due, Design/Builder may upon seven days' written notice to Owner stop the Work until payment is made of all such amounts due Design/Builder, including interest thereon. The provisions of this paragraph 14.04.A are not intended to preclude Design/Builder from making Claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design/Builder's stopping Work as permitted by this paragraph.

ARTICLE 15 – DISPUTE RESOLUTION

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15.01 ***Methods and Procedures***

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no such method and procedure has been set forth, Owner and Design/Builder may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 ***Giving Notice***

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.02 ***Computation of Times***

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.03 ***Cumulative Remedies***

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or

2. any special warranty or guarantee; or

3. other provisions of the Contract Documents.

B. The provisions of paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 ***Survival of Obligations***

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

16.05 ***Controlling Law***

A. The Contract Documents will be construed in accordance with the law of the place of the Project.

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Board of Commissioners Meeting

Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 5

Capital Project Ordinance for Cajah's Mtn. EMS Base

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Cajah Mountain EMS Base budget revision and project ordinance

Budget Revision # _____

Item No. _____

Date: _____

Caldwell County Board of Commissioners

BUDGET REVISION

Subject:

Background and explanation for the Budget Revision:

This budget revision moves the funds that remain in the Animal Shelter captial project ($2,564,637.88) to create a new captial project for the construction of a EMS base in the Cajah's Mountain community. This revision also allows for the $500,000 pledged to this project by the Town of Cajahs Mountain to be spent on construction. It also uses $1,523,577.12 in Article 44 *524 sales tax to fund construction.

The Budget Ordinance is hereby amended by making a Supplemental Appropriation with appropriations and revenues being adjusted as follows:

SUPPLEMENTAL APPROPRIATION

Line Item #	Title	I/D		Amount
41.4726.361100.10160	Interest Earnings	I	$	303.77
41.4726.459600.10160	Construction	D	$	2,564,334.11
41.4726.391008.10184	Intra Fund Transfer	I	$	2,564,637.88
41.4726.330022.10184	Municipal Revenue	I	$	500,000.00
41.4726.313008	Sales Tax Article 44 *524	I	$	1,523,577.12
Total				**7,152,852.88**

Line Item #	Title	I/D		Amount
41.4726.498400	Intra Fund Transfer	I	$	2,564,637.88
41.4726.459600.10184	Construction	I	$	4,588,215.00
Total				**7,152,852.88**

Attachments (Yes or No): Yes

Public Hearing (Yes or No):

Distribution:
Original - Finance Office
Duplicate - Clerk to the Board
Triplicate - Department Head

Staff Recommendation:

Board Action:

Department Head	Date	Finance Director	Date	County Manager	Date
			05/07/24		

ESTABLISHMENT OF THE CAJAH'S MOUNTAIN EMS BASE PROJECT ORDINANCE

WHEREAS, there is a need to construct a new EMS base in the Cajah's Mountain area of Caldwell County to provide better response time for ambulance calls in that area.

WHEREAS, Caldwell County has obtained land and an existing building suitable for renovation.

WHEREAS, The county has sufficient funds left over in the Animal Shelter capital project that can be moved and the Town of Cajah's Mountain has pledged $500,000 towards the project.

NOW, THEREFORE, BE IT RESOLVED by the Caldwell County Board of Commissioners that:

Section 1. The governing board hereby creates a project fund for the purpose of constructing a new EMS base in Cajah's Mountin

Intra-fund Transfer	$3,259,137.88
Sales Tax Revenues	$1,523,577.12
Municipal Contribution	$500,000.00
Total Funding	**$5,282,715.00**
Construction	$4,588,215.00
Land Acquisition	$624,381.71
Design Fees	$55,118.29
Survey	$15,000.00
Total Budget	**$5,282,715.00**

Section 2. The fund will remain operational until completion of the project and the disbursement of all project funds.

Section 3. The project shall be effective May 13, 2024.

Adopted May 13, 2024.

ATTEST:

Abby Rich
Clerk to the Board

Randy Church
Chairman

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 6

Honoring Sherry Griffin

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Resolution 05-2024 Sherry Griffin Retirement

RESOLUTION

05-2024

RECOGNIZING THE RETIREMENT OF SHERRY GRFFIN

WHEREAS, Mrs. Sherry Griffin began her career with the Western Piedmont Council of Governments in 1986 as the Community Development Administrator; and

WHEREAS, after 37 years of service with the WPCOG, Mrs. Griffin is retiring as the current Assistant Executive Director; and

WHEREAS, in 2015 Mrs. Griffin was promoted to the position of Assistant Executive Director for WPCOG and made history as the first female Assistant Executive Director; and

WHEREAS, during her time with the WPCOG, Mrs. Griffin has secured millions of dollars worth of funding for local projects and has assisted with several projects in region including Google, the Manufacturing Solutions Center, the Target Distribution Center, and the Trivium Corporate Center; and

WHEREAS, Mrs. Griffin has also secured a large number of funding for water and sewer systems for almost all 28 local governments that are served by the WPCOG; and

WHEREAS, Mrs. Griffin's development of the Unifour Consortium with funding from the HOME Investment Partnership Act by the U.S. Department of Housing and Urban Development (HUD), assisted over 3,000 first-time homebuyers, leveraged $20.3 million in down-payment assistance funds for over $267 million in home purchases, and supported 14 separate community housing development organizations with over $5.7 million in allocated funding; and

WHEREAS, Mrs. Griffin wrote, secured, and administered over 750 grants during her tenure with the WPCOG; and

WHEREAS, Mrs. Griffin's volunteerism is noted by her service to numerous boards, including the board of the Western NC Housing Partnership and the board of VEDIC, both of which Mrs. Griffin serves as the chair of; and

WHEREAS, Mrs. Griffin's time with WPCOG will leave a lasting legacy to the Counties her work serviced, and her work will be reflected in decades to come; and

NOW, THEREFORE, BE IT RESOLVED that the Caldwell County Board of Commissioners hereby thanks Mrs. Griffin for her 37-year commitment to local government; and

BE IT FURTHER RESOLVED that the Caldwell County Board of Commissioners wishes Mrs. Griffin a wonderful retirement after all of her years of hard work and dedication.

Adopted this the 13 day of May 2024.

_____

Randy Church, Chairman of the Board

Caldwell County Board of Commissioners

ATTEST:

_____

Abby Rich, NCCCC
County Clerk

Board of Commissioners Meeting

Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 7

Opposing City of Charlotte Interbasin Transfer Request

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Resolution for IBT 2024

RESOLUTION

06-2024

RESOLUTION TO OPPOSE THE CITY OF CHARLOTTE INTERBASIN TRANSFER REQUEST

WHEREAS, North Carolina Environmental Management officials are currently reviewing a request from the City of Charlotte to modify their certificate increase their current transfer of 33 million gallons per day to 63 million gallons of water per day from the Catawba River Basin to the Rocky River Basin; and

WHEREAS, this latest request is a trend of additional interbasin transfer water usage from the Catawba River as evidenced by the following:

> Charlotte/Mecklenburg's previously approved certificate of 33 million gallons per day interbasin transfer to the Rocky River in 2002; and
>
> Concord and Kannapolis's previously approved certificate of 10 million gallons per day interbasin transfer to the Rocky River in 2007; and

WHEREAS, the net effect of the aforementioned actions will result in a total increased usage of 73 million gallons per day from the Catawba River Basin to the Rocky River Basin; and

WHEREAS, the Catawba River and its tributaries are not an unlimited supply of water as evidenced by previous years of drought conditions experienced most notably by the Upper Catawba Basin and the entire State of North Carolina; and

WHEREAS, Caldwell County and the Western Piedmont Region is considered a growth area for the North Carolina with additional water needs in the future; and that there's a valid concern that interbasin transfers of this magnitude may effectively subsidize growth in receiving areas using the limited water resources of the Catawba River Basin; and

WHEREAS, issues of equity and sustainability are in question, as it involves one region bearing the environmental and infrastructural costs of supporting growth in another region, and it is essential to consider the long-term implications and fairness of such resource allocations; and

WHEREAS, reducing the flow of the Catawba River by transferring water could lead to greater concentrations of pollutants in the river, a reduced flow rate diminishing the river's natural ability to dilute and transport pollutants, and have detrimental effects on aquatic ecosystems, recreational activities, and public health within the Catawba River Basin; and

WHEREAS, the Caldwell County Board of Commissioners is concerned the proposed interbasin transfer will limit the amount of water available for withdraw to support growth in our area due to regulation limits under state and federal laws; and

WHEREAS, the Caldwell County Board of Commissioners does hereby express its concern about the long-term availability of water within the Catawba River Basin and believes transferring water from the Catawba River Basin to the Rocky River Basin could indeed limit future growth opportunities for local communities in the Catawba River Basin; and

WHEREAS, the Catawba Wateree Water Resource Management Group is actively working to update its

water supply master plan for the entire river basin and Charlotte should wait until that process is complete; and

WHEREAS, previous studies for the Catawba River called for the elimination of interbasin transfers as a strategy to protect the river and water supplies during drought conditions and an IBT should be a temporary measure to accommodate growth and not a permanent solution; and

WHEREAS, the 2015 Water Supply Master Plan for the Catawba River projected Charlotte's current IBT would be sufficient through 2065 and that Charlotte should not increase its IBT for its growth needs over the next 30 years; and

WHEREAS, Charlotte should instead use that time to implement water infrastructure and policies to eliminate its current IBT certificate issued in 2002; and

WHEREAS, water availability is crucial for sustaining economic development, agriculture, and quality of life in growing communities and if water is diverted elsewhere, it may constrain the ability of communities within the Catawba River Basin to support their own development and population growth; and

WHEREAS, our region should not be forced to give up its potential growth opportunities to subsidize Charlotte growth with our water resources; and

NOW, THEREFORE, BE IT RESOLVED that the Caldwell County Board of Commisisoners requests that the North Carolina Environmental Management Commission deny the City of Charlotte interbasin transfer request to modify their certificate to transfer 63 million gallons of water per day from the Catawba River Basin to the Rocky River Basin.

Adopted this 13th day of May, 2024.

_____

Randy Church, Chairman of the Board
Caldwell County Board of Commissioners

ATTEST:

_____

Abby Rich, NCCCC
County Clerk

Board of Commissioners Meeting

Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 8

Water Purchase Agreement with the City of Lenoir

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Lenoir-Caldwell Co Water Agreement (2024)

STATE OF NORTH CAROLINA
COUNTY OF CALDWELL

AGREEMENT TO PURCHASE WATER

THIS CONTRACT is made and entered into this 1st day of July, 2024 by and between the City of Lenoir, a North Carolina Municipal Corporation hereinafter referred to as "Lenoir" and the County of Caldwell, hereinafter referred to as "Caldwell County".

WITNESSETH

WHEREAS, Lenoir and Caldwell County, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the Lenoir City Council and the Caldwell County Commission; and

WHEREAS, Lenoir currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, and maintaining said system and selling potable water to the public within its service area; and

WHEREAS, Caldwell County owns and operates a water distribution system, and is also engaged in the enterprise of managing, operating, and maintaining the system and selling potable water to the public within its service area; and

WHEREAS, Lenoir and Caldwell County mutually desire to enter into an agreement to sell and purchase water in accordance with the terms and provisions contained herein; and

WHEREAS, Lenoir has determined that it has the capability to sell water to Caldwell County throughout the term of this agreement without impairing services to the users connected to its water system; and

WHEREAS, Lenoir and Caldwell County each has or holds and will continue to have or hold throughout the term of this agreement, all appropriate permits necessary to effectuate their respective responsibilities under this agreement or will use their best efforts to obtain such permits;

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. This agreement shall commence on the 1st day of July, 2024, and unless earlier terminated in accordance with the terms herein, shall expire on the 30th day of June, 2034 (Hereinafter referred to as the "Water Service Period".)

2. Lenoir agrees to provide and sell to Caldwell County up to 1,500,000 GALLONS (ONE MILLION FIVE HUNDRED THOUSAND) of potable water maximum daily flow, measured through metered connections which are located, prescribed and maintained by Lenoir, at or above minimum State of North Carolina and Federal Standards for Public Water. Such maximum daily flow shall be based on a thirty (30) day average daily flow.

   Both Lenoir and Caldwell County shall annually conduct a mutual review and joint analysis for planning purposes of past and projected future water usages and needs. The Parties shall share appropriate information and data with each other to facilitate such review and planning.

3. Caldwell County agrees to use best efforts not to exceed the above maximum daily flow provided for in Section 2 of this agreement, unless Lenoir expressly agrees that said maximum daily purchase(s) may exceed 1,500,000 gallons for a specified period of time.

4. The water purchased by Caldwell County from Lenoir shall be transmitted on a continuous basis unless there is an unforeseen break, outage or interruption of Lenoir's water supply or water distribution system. In which case, Lenoir shall notify Caldwell County of the circumstances and provide timely updates so as to keep Caldwell County informed of the status of repairs or remedy(ies) for any such interruption.

5. Caldwell County agrees to timely pay Lenoir for water purchased on a monthly basis, in accordance with invoices, which shall be based upon meter readings conducted by Lenoir at all metered connections between the Lenoir and Caldwell County water systems. Lenoir agrees to read said water meters monthly and deliver to Caldwell County a written report summarizing said meter readings within fifteen (15) working days of each monthly meter reading. Lenoir will submit to Caldwell County a written invoice based on such meter readings by the 20th day of the following month. Caldwell County agrees to pay Lenoir the amounts of each such monthly invoice within 30 calendar days of the date of each invoice.

6. The initial Base Water Rate charged to Caldwell County for water purchases shall be $2.56 per one thousand gallons of water provided by Lenoir to Caldwell County. In the event the average daily flow during any monthly billing period exceeds the maximum daily flow of 1,500,000 gallons, the following surcharges (The "Surcharge Rate") will apply to the overage:

   (1,500,001) to (1,550,000) gallons - $2.82/1000 gallons
   (1,550,001) to (1,600,000) gallons - $3.10/1000 gallons
   (1,600,001) gallons or more $3.42/1000 gallons

   Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion, increase the Base Water Rate and /or the Surcharge Rate as it deems necessary. Lenoir shall not increase said rates to Caldwell County more

than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Caldwell County in writing of planned increases with an explanation of the factors used to determine set increase in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year. Provided, however, that the percentage of any increase in the rate charged to Caldwell County shall not exceed the percentage of increase in the rate charged to any other City of Lenoir water customer.

7. Lenoir agrees to maintain /repair /replace existing Lenoir water meters at the connection point(s) between the Lenoir and the Caldwell County water system as may be necessary to accurately measure the flow of water through the meter(s) to Caldwell County under this agreement.

   Lenoir shall calibrate such metering equipment at least every five (5) years, or whenever requested in writing by Caldwell County, but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous reading of the meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If the meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered to the corresponding period immediately prior to the failure. A designated official of Caldwell County shall at all reasonable times have access to the meters for the purpose of verifying their readings.

8. Caldwell County shall provide a minimum of 180 days advance written notice to Lenoir prior to the expiration of this initial 10-year term, stating either 1) the desire to renew said agreement, or 2) the intent to terminate said agreement. Caldwell County may elect to extend the agreement for an additional 5-year period under the same terms and conditions.

9. In the event that Caldwell County elects not to extend this agreement, Lenoir shall continue to provide and sell water to Caldwell County, under the same terms of the agreement, until Caldwell County has had sufficient opportunity to secure an alternate source(s) of potable water; however, Lenoir shall not be bound to continue to provide and sell water to Caldwell County beyond a period of twenty-four (24) months past the date of its written notification to Caldwell County of its intention not to extend this agreement.

10. Caldwell County agrees that Caldwell County and its water customers shall, during the period of this agreement, abide by and adhere to all water use policies, restrictions, and ordinances adopted now or subsequently adopted by Lenoir, of which they are subsequently notified, which impose water use restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought

conditions or during other situations which for public health or financial reasons justify said policies, restrictions, and ordinances.

11. Lenoir shall promptly notify Caldwell County upon becoming aware of any activity, problem or circumstance within the Lenoir system that might present a danger to the health, safety and welfare of Caldwell County water users. Further, Lenoir shall take appropriate action to remedy such activity, problem or circumstance within the Lenoir system and to avoid or minimize disruptions in service.

12. In the event of damage or destruction of Lenoir's key water facilities or any emergency which, in the reasonable judgment of Lenoir, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety, Lenoir may suspend operation of its water system, after thirty (30) days written notice to Caldwell County of such actions unless in the event of an emergency. Lenoir's response to emergencies and other such unusual circumstances shall be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its water system in a timely manner with the least possible disruption or inconvenience to the users connected to both the Lenoir and Caldwell County water systems.

13. Upon notification by Caldwell County to Lenoir, Caldwell County may resell, give away, transfer or otherwise dispose of water purchased from Lenoir to third-party water systems. This notification should include information on the expected water usage and duration of transaction.

14. Caldwell County agrees to permit Lenoir to pass water through Caldwell County's water distribution system to destinations and/or to other third-party water systems beyond the Caldwell County system, provided that Lenoir:
    a) Submits a written notice to Caldwell County outlining the agreed-upon purposes, quantities and conditions of said pass through of water.
    b) That said request does not significantly diminish Caldwell County's capacity to provide services to its water customers.
    c) Lenoir subsequently pays to Caldwell County a Pass Through charge of $0.03 cents per 1000 gallons of pass through water. Caldwell County may request a modification of such charge with ninety (90) days advance written notice during the period of this agreement, at which time a new price will be negotiated between Lenoir and Caldwell County.
    d) Lenoir agrees to install metering equipment to measure and determine the quantities or such Pass Through water passing through Caldwell County's water system and report monthly to Caldwell County such amounts and

meter readings.

15. Lenoir and Caldwell County both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.

16. Resolution of Disputes
The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lenoir and Caldwell County that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, shall be the preferred means of resolving disputes hereunder.

17. Default and Termination
This agreement may be terminated prior to its stated expiration date by Lenoir or Caldwell County in accordance with the terms and conditions set forth below.

A. Termination for cause by Lenoir. Upon the happening of any of the following events of default by Caldwell County, Lenoir shall have the right to terminate this agreement:

a) The failure of Caldwell County to perform or observe and initiate a cure after thirty (30) days advance written notice any of its material covenants, agreements, obligations and/or duties created by this agreement.
b) The failure of Caldwell County to make any payment required pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from Lenoir that any such payment is overdue, except in the event of a good faith dispute over the amount of any invoice provided; however, that the County shall timely pay the undisputed portion if any of such disputed invoice.

B. Termination for cause by Caldwell County. Upon the happening of any of the following events of default by Lenoir, Caldwell County shall have the right to terminate this agreement:

a) The failure of Lenoir to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
b) The failure of Lenoir to provide Caldwell County with the amounts of water in accordance with the terms of this agreement or to provide adequate water quality for Caldwell County within standards established by the North Carolina Department of Environmental Quality or any other governmental agency with designated jurisdiction

over said water quality parameters as provided in this agreement.

18. Upon the happening of any event which may constitute good cause for termination of this agreement as stated above, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within thirty (30) days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution.

19. **NOTICES:** For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, Addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To Lenoir:
City of Lenoir
Scott E. Hildebran, City Manager
PO Box 958
Lenoir, North Carolina 28645

To Caldwell County:
County of Caldwell
Donald Duncan, County Manager
905 West Avenue NW
Lenoir, North Carolina 28645

20. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement. This agreement is non-assignable.

21. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. No joint agency is established by this Agreement pursuant to Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes, by other similar statutory authority authorizing interlocal cooperation between units of local government, or otherwise.

22. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.

23. The captions and article numbers appearing in this agreement are inserted

only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.

24. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

25. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

26. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

27. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

28. Except as provided herein, the rights and remedies provider for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF LENOIR, NORTH CAROLINA

By: _____
Joseph L. Gibbons, Mayor

(SEAL)
Attest:

By: _____
Shirley M. Cannon, City Clerk

COUNTY OF CALDWELL, NORTH CAROLINA

By: _____
Randy Church, Board Chair

(SEAL)
Attest:

By: _____
Abby Rich, Clerk to the Board

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

By: _____
Donna Bean, Finance Officer
City of Lenoir

By: _____
Anthony Helton, Finance Director
County of Caldwell

Board of Commissioners Meeting

Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 9

MOA with City of Lenoir for Joint Communications Center

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Memorandum of Agreement Caldwell-Lenoir

AGREEMENT FOR THE CONSOLIDATION OF 911 SERVICE AND THE CREATION OF A JOINT AGENCY PURSUANT TO NORTH CAROLINA GENERAL STATUTE 160A-462 TO PROVIDE EMERGENCY PUBLIC SAFETY COMMUNICATION SERVICES WITHIN CALDWELL COUNTY, AND THE CITY OF LENOIR

THIS AGREEMENT made and entered into the ___ day of _____, _____, by and among**, CALDWELL COUNTY**, a body politic and corporation of the State of North Carolina, hereinafter referred to as **"CALDWELL,"** and the **CITY OF LENOIR,** hereinafter referred to as **"LENOIR,"** being a municipal corporation of the State of North Carolina, and

WITNESSETH:

WHEREAS, **CALDWELL,** and **LENOIR** currently provide public safety communications services for their respective citizens which, although interrelated, function under separate organizational structures; and,

WHEREAS, CALDWELL, and **LENOIR** recognize the benefits of working together to closely share and coordinate the provision of public safety communications, telephone, and data services; and,

WHEREAS, each party to this Agreement acknowledges their understanding of the duties and responsibilities that result or may result from being a party to this **AGREEMENT;** and,

WHEREAS, the Caldwell County Board of Commissioners and City Council of Lenoir desire to establish a joint service to operate a combined public safety communications system and center for the answering and dispatching of public safety calls to replace the current structure of two communications centers operating independently as call answering locations to serve **CALDWELL** and **LENOIR.**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth herein, **CALDWELL,** and **LENOIR** hereby agree as follows:

A. **Purpose.** The purpose of this Agreement is to establish a joint agency pursuant to North Carolina General Statute 160A-464 among **CALDWELL,** and **LENOIR** to provide and maintain a consolidated public safety communications system located on property owned by Caldwell County adjacent to the Caldwell County Sheriff's Office, Health and Human Services Building, and Animal Care Facility.

   This facility shall serve all of **CALDWELL,** and **LENOIR.** This system will promote the delivery of public safety services to the residents and taxpayers **CALDWELL,** and **LENOIR** in furtherance of the public health, safety, and general welfare of all Caldwell County residents.

B. **Duration of Agreement.** This Agreement shall become effective upon execution by all

parties hereto, and shall last for a period of (5) five years, and shall automatically renew from year to year until one of the parties gives notice of withdrawal as specified in Section M.

C. Name of Joint Agency. The name of the joint agency established by this memorandum of understanding shall be **Caldwell Joint Emergency Communications Center or JECC.**

D. Organizational Objectives. The organizational objectives of the consolidated public safety communications system established under this Agreement are as follows:

1. To effectively receive calls for routine and emergency assistance, based on established structured call intake protocols, and to coordinate response resources to those calls for service based on the needs of the caller and the directions of field response agencies,
2. To provide participating agencies with a single contact point for the receipt of emergency assistance requests and to provide for the control of coordinated dispatch and radio communications services for Law Enforcement, Fire, EMS, Forestry, Emergency Management, Animal Care Enforcement, Homeland Security, Public Works and Utilities,
3. To maintain an operational emergency center within a new facility (should grant funds or other adequate funding be provided),
4. To provide the public and field response agencies with trained, certified and/or credentialed 911 communications personnel,
5. To provide funding for the provision of public service communication services by establishing a funding mechanism and defining the budget process for the system,
6. To provide for recommendations related to the oversight and management of the system and a consolidated communication center by creating a Communications Advisory Board representing the participating entities and agencies,
7. To facilitate coordination and responsiveness to the field response agencies by creating such other user advisory committees as needed and,
8. To provide a mechanism for the addition or withdrawal of parties to this interlocal agreement and,
9. To establish a credentialed program and provide adequate training for future generations of emergency dispatchers and responders.

E. Communications Advisory Board (CAB). The CAB shall consist of the following representatives:

- Caldwell County Sheriff or designee
- Lenoir Chief of Police or designee
- Caldwell County Fire Association designee
- Caldwell County Emergency Services designee
- North Carolina Emergency Management designee
- NC VIPER representative designee

The CAB shall name a Chairman from among its members, and they shall commission, develop, and present by-laws to the Caldwell County Board of Commissioners, and the

City of Lenoir for their review and approval. The CAB shall review and recommend standard operating procedures to Caldwell County staff.

F. **Equipment.** Public Safety communication equipment that will be installed in the new Caldwell Joint Emergency Communications Center and maintained by **CALDWELL**. **CALDWELL** will be responsible for maintaining the consoles and equipment in the Communications Center. **CALDWELL** shall retain ownership and future maintenance of emergency communication towers.

G. **Personnel.** All employees located at the Caldwell Joint Emergency Communications Center shall be employees of **CALDWELL** subject to its administrative, personnel and legal requirements and managed and supervised by the E911 Communications Director. Current employees of **LENOIR** engaged in in public safety communication positions because of their experience and training are encouraged to apply for open positions with Caldwell Joint Emergency Communications Center and if accepted for employment will be hired as new **CALDWELL** employees in accordance with **CALDWELL** personnel policies and employee transitional agreement in place at the time of their hire with Caldwell Joint Communications Center.

H. **Funding** Caldwell Joint Emergency Communications Center is intended to be financed by funds from Caldwell County, the City of Lenoir, grant funding from NCDIT 911 Board, and direct appropriations from the North Carolina General Assembly. Starting with the Operational Date, all 911 fees, grants, and operational funds, as established by the funding formula from the participants will be budgeted in accordance with prevailing state 911 rules and Caldwell County budget policy. The **Operational Date** is planned to coincide with the 2025-2026 Fiscal Year beginning July 1, 2025, however, in the event the initiation operations for the JECC are delayed beyond such date, the **Operational Date** shall be the date that the JECC is open for operations.

LENOIR shall appropriate funds to the annual costs of maintenance, operation, repair and capital costs of Caldwell Joint Emergency Communications Center, in a reverse grant beginning the first Operational Date. **LENOIR** will contribute over five fiscal years, beginning at $771,000 in the first year. $620,000, the second year, $465,000, the third year, $310,000 the fourth year, and $155,000 after the fifth year. Hereafter their financial obligation shall end.

I. **Budget Process and Finances.** The Communications Director shall develop the annual operating budget for Caldwell Joint Emergency Communications Center on a fiscal year basis beginning on the first day of July and ending on the thirtieth day of June, in the accordance with policies established by the Caldwell County Finance Office. The Director shall submit the proposed budget to the **CAB** on or before March 15th of each year for their review and response: approval or disapproval.

J. **Amendments.** This Agreement may be amended in writing by approval of **CALDWELL, AND LENOIR.**

K. **Existing Equipment.** Public Safety communications equipment, software, and supplies used by **LENOIR,** are no longer to be used by **LENOIR** after the date Caldwell Joint Emergency Communications Center becomes operational, shall be transferred by LENOIR to Caldwell Joint Emergency Communications Center.

L. **Withdrawal of a Party.** A participating governmental entity may withdraw from this agreement at the end of a fiscal year by giving a 12-month written notice of withdrawal by the party's Manager prior to July 1st of the fiscal year on with withdrawal is to be effective. Such written notice is to be delivered to the Caldwell County Manager and the Caldwell Emergency Communications Director. The withdrawal will become effective no sooner than 12 months after said notice is delivered. **The withdrawing party agrees to pay all cost associated with any Repayment of 911 Communications Consolidation Grant Funds that may be due to the State upon dissolution of this consolidation and continue to make all payments required by this Agreement until the effective date of such withdrawal. All Equipment and real property shall be retained by Caldwell County.**

M. **Effective Date.** This Agreement shall become effective upon execution by all parties.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

CITY OF LENOIR, NORTH CAROLINA

By: _____
Joseph L. Gibbons, Mayor

(SEAL)
Attest:

By: _____
Shirley M. Cannon, City Clerk

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

By: _____
Donna Bean, Finance Officer
City of Lenoir, NC

COUNTY OF CALDWELL, NORTH CAROLINA

By: _____
Randy Church, Board Chair

(SEAL)
Attest:

By: _____
Abby Rich, Clerk to the Board

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

By: _____
Anthony Helton, Chief Finance Officer
County of Caldwell, NC

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 10

Active Transportation Infrastructure Investment Program (ATIIP) Grant Application

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Caldwell Memo for ATIIP
2. Resolution for ATIIP 2024

Western Piedmont Council of Governments
1880 Second Avenue NW | Hickory, NC 28601
PO Box 9026 | Hickory, NC 28603
828.322.9191 | Fax: 828.322.5991 | www.wpcog.org

Creative Regional Solutions Since 1968

To: **Honorable Randy T. Church, Chairman**
Members of the Board of Commissioners

From: **Alison Adams, WPCOG Director of Community and Regional Planning**

Re: **Active Transportation Infrastructure Investment Program (ATIIP)**

Date: **May 2, 2024**

This memo is to address the Active Transportation Infrastructure Investment Program (ATIIP) planning grant application to develop a feasibility study that will explore the potential of creating a bicycle/pedestrian trail along the existing Caldwell Railroad line, extending from Lenoir to Hudson, Sawmills, Granite Falls, Rhodhiss and Hickory.

The ATIIP planning grant program is designed to support the development of plans that study potential routes that could serve as backbones to connect two or more communities with bicycle/pedestrian facilities. The following local governments in Caldwell County have each agreed to provide $3,575 in matching funds for the grant application:

- Lenoir
- Hudson
- Sawmills
- Granite Falls
- Rhodhiss
- Hickory

The grant study area will extend from the Valmead area along the railroad south to the Caldwell County side of the U.S. 321 bridge, including a section of the abandoned rail spur leading to Rhodhiss. The area will also include the end of the City of Hickory's Riverwalk trail at Alex Lee Boulevard on U.S. 321 to the Shoppes at Rivercrest. The study area would then continue to downtown Granite Falls via U.S. 321A.

The grant application will be for $100,000. Matching funds totaling $25,000 were determined by dividing $25,000 by the number of local governments in the study area (7) by $25,000, for an amount of $3,575 each.

Should you have questions please feel free to contact me. We are happy to serve all of the local governments in Caldwell County.

Respectfully,
Alison H. Adams
WPCOG Director of Community and Regional Planning

Cc. Donald Duncan, County Manager

Executive Committee: Joseph L. Gibbons, Chair | Randy Burns, Vice Chair | Larry Chapman, Secretary | George B. Holleman, Treasurer | Jill Patton, Past Chair | **At-Large Members:** Mike LaBrose | Cole Setzer | Marla Thompson | Larry Yoder | **Executive Director,** Anthony W. Starr

Serving: Alexander County | Taylorsville | Burke County | Connelly Springs | Drexel | Glen Alpine | Hildebran | Morganton | Rutherford College | Valdese | Caldwell County | Cajah's Mountain | Cedar Rock | Gamewell | Granite Falls | Hudson | Lenoir | Rhodhiss | Sawmills | Catawba County | Brookford | Catawba | Claremont | Conover | Hickory | Long View | Maiden | Newton

RESOLUTION

07-2024

A RESOLUTION OF SUPPORT FOR ACTIVE TRANSPORTATION INFRASTRUCTURE INVESTMENT PROGRAM PLANNING GRANT APPLICATION AND MATCHING FUNDS

WHEREAS the Federal Highway Administration has developed the Active Transportation Infrastructure Investment Program Planning & Design Grant program; and

WHEREAS trails and greenways have a significant impact on the economic viability of the community through increased levels of tourism as well as the ability to attract and retain businesses such as restaurants, outfitters, lodging, and entertainment; and

WHEREAS trails and greenways offer quality-of-life benefits to all by providing accessible alternative transportation to community destinations and places of work, as sites for social and cultural activities, as outdoor workshops for education, as tools for economic revitalization, and as resources for healthy recreation; and

WHEREAS, trails and greenways provide key connections to neighborhoods, parks, and schools, bringing people together to exercise, learn, play, and be outdoors; and

WHEREAS Caldwell County is home to several parks with trails, walking tracks and greenways; and

WHEREAS the parks, greenways, trails and natural areas in our community provide a common ground for people of all ages and abilities to socialize and gain access our natural, cultural, and historic resources; and

NOW, THEREFORE, BE IT RESOLVED that Caldwell County supports a Planning Grant application to study the feasibility of creating a trail along the Caldwell Railroad that would provide connections to other municipalities in Caldwell County and to the City of Hickory and agrees to provide matching funds in the amount of $3,575.

Adopted this the 13 day of May 2024.

_____

Randy Church, Chairman of the Board
Caldwell County Board of Commissioners

ATTEST:

_____

Abby Rich, NCCCC
County Clerk

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	Donald Duncan

AGENDA ITEM # 11

Adoption of Ordinance Revisions

BACKGROUND

The first reading of the ordinance revisions took place at the April 8, 2024, Board of Commissioners Meeting. There are no suggested changes to those ordinances.

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Alcoholic Beverages on County Property Prohibited Ordinance
2. Begging or Soliciting Prohibited Ordinance
3. Minimum Housing & Non-Residential Building Standards Ordinance
4. State of Emergency Ordinance
5. Animal Care and Enforcement Ordinance
6. Building Code Inspections Ordinance
7. Concealed Weapons on County Property Ordinance
8. Emergency Management Ordinance
9. Emergency Medical Services Ordinance
10. Fire and Life Safety Ordinance
11. Noise Regulations Ordinance
12. Racetracks and Drag Strips Ordinance
13. Public Water System Ordinance
14. Septage Collection, Transportation and Disposal Ordinance

CHAPTER ___ ALCOHOLIC BEVERAGES ON COUNTY PROPERTY PROHIBITED

SECTION 1. AUTHORITY

Pursuant to NCGS Chapter 153A Caldwell County hereby establishes this Ordinance.

SECTION 2. DEFINITIONS

Alcoholic Beverage means any beverage in liquid form which contains not less than one-half of 1% of alcohol by volume and is intended for human consumption including, but not limited to, wine, beer, and distilled spirits.

NCGS means the North Carolina General Statutes.

SECTION 3. CONSUMPTION OF ALCOHOLIC BEVERAGE IN COUNTY BUILDINGS

Consuming or possessing any Alcoholic Beverage on property owned or leased by the County is prohibited.

SECTION 2. PENALTY

Any person violating this Ordinance, or any Section thereof, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each occurrence of a violation shall be treated as a separate occurrence.

CHAPTER ___ BEGGING OR SOLICITING PROHIBITED

SECTION 1. AUTHORITY

Pursuant to North Carolina General Statute 153A-126, Caldwell County hereby establishes this Ordinance.

SECTION 2. BEGGING, SOLICITING ON COUNTY PROPERTY PROHIBITED

It shall be unlawful for any person to beg, solicit or otherwise canvass the public for contributions for the private benefit of the solicitor or any other person or entity while upon the premises of any County owned or leased property, including the Courthouse and judicial buildings.

SECTION 3. PENALTY

Any person violating this Ordinance, or any Section thereof, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each occurrence of a violation shall be treated as a separate occurrence.

CHAPTER ___ MINIMUM HOUSING AND NON-RESIDENTIAL BUILDING STANDARDS

SECTION 1. AUTHORITY

Pursuant to NCGS Chapter 160D, and other applicable law, Caldwell County hereby establishes these Ordinances.

SECTION 2. PURPOSE

(a) To establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as authorized by NCGS 160D-1205.

(b) The existence and occupation of dwellings unfit for human habitation are inimical to the welfare of, and dangerous and injurious to the health and safety of, the people of the County. A public necessity exists for the repair, closing or demolition of such dwellings, as allowed by NCGS 160D-1201.

(c) The County finds there exists within the County non-residential buildings and structures which fail to meet minimum standards of maintenance, sanitation, and safety, and which result in conditions dangerous and injurious to public health, safety, and welfare, and which may result in the need for repair, closing or demolition of such buildings pursuant to NCGS 160D-1129.

(d) Pursuant to NCGS 160D-1201, it is hereby found and declared there exists in the County dwellings unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, accumulations of garbage, trash and/or rubbish on the premises, or overgrowth adversely affecting the health, safety and/or well-being of the occupants, or other conditions rendering such dwellings unsafe or unsanitary, dangerous and detrimental to the health and welfare of the people of the County.

(e) The provisions of this Ordinance shall apply to all residential and non-residential Buildings and Structures within the County regardless of when constructed.

(f) To protect the health, safety, and welfare of the people of the County, this Chapter establishes minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by State Law.

SECTION 3. JURISDICTION

The provisions of this Ordinance are applicable to all places of human habitation within the planning jurisdiction of the County, as well as any portion of a planning jurisdiction of any municipality where an interlocal agreement is established in accordance with State Law, without regard to when they were constructed, altered, repaired, or improved.

SECTION 4. DEFINITIONS

When used in this Chapter, the following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where context clearly indicates a different meaning:

Abandoned and/or Unsafe Structure means a non-residential Building or Structure which has not been occupied by authorized persons for at least six months and which persistently or repeatedly becomes unprotected or unsecured, or which has been occupied by unauthorized Persons, or which presents a danger of structural collapse, fire, disease, or a threat to people.

Accessory Dwelling Unit means a residential dwelling unit, but not a mobile home, located on the same lot as a single-family dwelling unit, either within the same building as the single-family dwelling unit or in a detached building. Secondary dwelling units shall be developed in accordance with the standards set forth in the NC Building Code for Residential Dwellings and only in those zoning districts where the use is listed.

Agent means any person, firm, or corporation, who is responsible for the management, maintenance, operation, renting, leasing, or sale of any property, who makes an application for or seeks a permit on behalf of the Owner of any property, or who in any other way represents the owner of the property in any case.

Alteration means a change in or rearrangement of structural components.

Apartment means a room or suite of rooms occupied, or which is intended or designed to be occupied as the home or residence of one individual, family, or household. See “Place of Habitation” and “Dwelling, Multi-family.”

Basement means a story of a Building which is partly or entirely below finish grade.

Board means the Caldwell County Board of Commissioners.

Building means any structure used or intended for supporting or sheltering any use or occupancy. The term Building shall be construed as if followed by the words “or part thereof.”

Close means secured in such a way unauthorized persons cannot enter the Building.

Condominium means a form of legal ownership of real property where owners each have individual interests in one or more private units, as well as common interest in the underlying real property and other common areas.

County means Caldwell County.

Crawl Space means an area under a floor or roof, giving access to wiring or plumbing.

Demolish means the demolition and removal of the entire Building leaving the property free and clear of any debris and without holes or pockets which may retain water.

Detached Single-Family Rental Development means any site, tract of land, and/or development with contiguous ownership upon which the purpose and/or design is for two or more single-family detached rental dwellings which are to be leased to the tenants by the property Owner.

Deteriorated means a Dwelling unfit for human habitation which can be repaired, altered, or improved to comply with all the minimum standards established by this Ordinance at a cost less than 50% of its value, as determined by findings of the Public Officer.

Dilapidated means a Dwelling unfit for human habitation which cannot be repaired, altered, or improved to comply with all the minimum standards established by this Ordinance at a cost less than 50% of its value as determined by findings of the Public Officer.

Dwelling means a building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed in addition, except it does not include any temporary dwelling or any manufactured home or mobile home, which is used solely for a seasonal vacation purpose. "Manufactured Home" or "Mobile Home" means a structure as defined in NCGS 143-145(7). A Recreational Vehicle (RV) shall not be considered a dwelling and, therefore, is not subject to the Minimum Housing Ordinance standards and inspections.

Dwelling Unit means a single unit providing completely independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Dwelling, Multi-Family Residential means all apartments, condominiums, townhouses, and/or detached single family rental developments. See also "Apartment," "Condominium," "Townhouse" and/or "Detached Single-Family Rental Development."

Egress means the clear and unobstructed way by which a Person may leave a building.

Extermination means the control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying fumigating, trapping, or by any other recognized and legal pest elimination methods approved by the housing inspector.

Garbage means the byproduct of animal or vegetable food matter resulting from the preparation, cooking, and consumption of food or other matter which is subject to decomposition, decay, or the generation of noxious or offensive gases or odors, or which during or after decay may serve as breeding or feeding material for flies, insects, or animals.

Habitable Room means a room or enclosed floor space occupied by one or more persons used or intended to be used for living, sleeping, cooking, or eating purposes. Bathrooms, water closet compartments, laundries, pantries, foyers, communicating corridors, closets, or storage spaces are not included.

Hearing Officer means the Public Officer.

Housing means the same as Dwelling.

Housing Appeals Board means the Caldwell County Housing Appeals Board.

Infestation means the presence within or around a place of habitation of any insect, rodents, or other pests in such a number as to constitute a menace to health, safety, or welfare of the occupants or the public.

Manufactured Home means a manufactured building designed to be used as a single-family dwelling unit which has been constructed and labeled indicating compliance with the HUD administered National Manufactured Housing Construction and Safety Standards Act of 1974, as amended. Also known as a Mobile Home.

Multi-Family Housing means a building or structure occupied or intended for occupancy as the home or residence of more than two families, living independently of each other, and doing their own cooking within their respective housing units.

NCGS means the North Carolina General Statutes.

Non-Residential Building means any agricultural, commercial, industrial, institutional, public, or other building not occupied as a dwelling, including hotels and motels.

Occupant means any Person living, sleeping, cooking, or eating in, or having actual possession of a place of habitation.

Operator means any Person who has charge, care, or control of a Building in which there are places of habitation.

Owner means any Person who, alone or jointly, or severally with others, has title to any dwelling or dwelling unit, with or without accompanying actual possession thereof or has the charge, care, or control of any dwelling or dwelling unit.

Parties of Interest means any Person having an interest of record in a place of habitation, including a Person who is in possession or control as an agent of the Owner, executor, administrator, trustee, and/or guardian of the estate of the Owner.

Person means any individual, corporation, firm, partnership, association, or other legal entity.

Place of Habitation means any Dwellings, dwelling unit, habitable room, multi-family dwelling, or any other structure used for human habitation, which is occupied under a lease or holds a legal tenancy.

Plumbing means a water supply system, sanitary and storm drainage system, vent system, fixtures, and traps, and includes their respective connections, devices, appliances, and appurtenances within the property lines of the premises.

Public Officer means an inspector of the County, or designee, authorized to exercise the powers prescribed in this Chapter.

Premises means a lot, plot, or parcel of land including the Buildings or Structures thereon.

Public Authority means any officer who oversees any department or branch of the

government of the County or in the State of North Carolina who oversees enforcement of standards relating to health, human services, fire, building regulations, or other activities concerning Dwelling in the County.

Public Space means the space within any place of habitation which is open to use by the public.

Refuse means all accumulations of solid waste consisting of, without limitation, garbage, household trash, or business trash as either defined herein or in the Caldwell County Solid Waste Management Chapter.

Removal means the demolition and removal of the entire structure, leaving the property free and clear of debris and without holes or pockets which may retain water.

Residential Building means any Building or Structure, which is used, or designed or intended to be used, for human habitation, including living, sleeping, cooking, and eating or any combination thereof.

Rooming House means any Dwelling, or part of any Dwelling, containing one or more rooming units, in which space is let by the Owner or operator to three or more people who are not members of the family of the Owner or operator.

Rubbish means combustible and noncombustible waste materials, except garbage. The term includes, but is not limited to, combustible material, wood, paper, rags, cartons, boxes, tires, mattresses, tree branches, yard trimmings, metals, glass, crockery, furniture, or appliances stored in the open which are not intended for outdoor use and including immobilized vehicles or parts thereof.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

Story means the portion of a Building included between the upper surface of any floor and the upper surface of the floor or roof next above.

Structure means something built or constructed, an edifice or Building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. The term Structure shall be construed as if followed by the words "or part thereof."

Substandard means any condition existing in any place of habitation which does not meet the standards of fitness of this Chapter.

Temporary Housing means any tent, trailer, or other structure which is designed to be transportable, is not attached to the ground, to another structure, or to any

utility system on the same premise.

Tenant means any Person who alone, or jointly, occupies a place of habitation under a lease or holds a legal tenancy in a Building.

Townhouse or Townhome means a residential Dwelling unit built immediately adjacent to another Dwelling with an intervening party wall, and with each Dwelling having an individual exterior entrance. Such structures may be situated on their own lot or have a condominium ownership structure.

Unfit for Human Habitation means the conditions existing in a place of habitation which violates or does not comply with one or more of the minimum standards of fitness, or with one or more of the responsibilities of Owners and Occupants established by this Chapter.

Vacant Industrial Warehouse means any Building or Structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

Vacant Manufacturing Facility means any Building or Structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

Ventilation means the movement of air by natural or mechanical means.

SECTION 5. CONFLICT WITH OTHER PROVISIONS

(a) This Chapter does not replace or modify requirements otherwise established by the NC Building Code, the County's Unified Development Ordinance, or any other applicable County ordinances for the construction, repair, alteration, or use of buildings, equipment, or facilities except as provided within this Chapter.

(b) In the event any provision, standard, or requirement of this Chapter is found to conflict with another provision of this or any other County ordinance, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of people shall apply.

SECTION 6. PUBLIC OFFICER

(a) The Director of the County Planning and Development Department is hereby designated the Public Officer to exercise the powers herein prescribed. The Public Officer shall have such powers as may be necessary to effectuate the purpose and provisions of this Chapter which include, but are not limited to, the following:

1. To take such an action alone or together with other appropriate

departments and agencies, public and private as may be necessary to effect rehabilitation or removal of buildings which are substandard and/or unfit.

2. To take such action alone or together with other appropriate departments or agencies, public and private, as may be necessary to eliminate vegetation over-growth, clear unauthorized dump sites, or correct other environmental conditions which are harmful to public well-being, and to prevent harboring of rodents, insects, and other similar pests.

3. To serve as hearing officer, administer oaths and affirmations, examine witnesses, and receive evidence.

4. To enter upon premises for the purpose of making examinations and inspections, provided such entries are made in accordance with this Chapter and State Law, and shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.

5. To appoint and fix the duties of such Officers, agents, and employees as necessary to assist in carrying out the purposes of this Chapter and to delegate any functions and powers to such Officers, agents, and employees.

6. To determine when Buildings and accessory Structures are substandard and/or unfit for human habitation if the Public Officer finds, based on the requirements set forth in this Chapter, conditions exist in such Structures or accessory structures which are dangerous or injurious to the health, safety, or welfare of the public.

(b) Except as may otherwise be provided by State Law or County ordinance, no Public Officer, agent, or employee of the County charged with enforcement of the minimum housing and non-residential code shall be personally liable for any damage that may accrue to Persons or property because of any act required or permitted in the discharge of their duties under this Chapter. No Person who institutes or assists in the prosecution of a criminal proceeding under this Chapter shall be liable for damages unless they acted with malice and without reasonable grounds for believing the Person accused was guilty of an unlawful act or omission.

SECTION 7. HOUSING APPEALS BOARD

(a) In accordance with the authority granted under NCGS 160D-305, the Board hereby creates the Caldwell County Housing Appeals Board who shall hear all appeals of any final and binding order, requirement, or determination made by the Public Officer pursuant to this Chapter.

(b) The Board shall appoint 5 members to serve on the Housing Appeals Board. Members shall include the Sheriff, and 4 members who are County citizens.

SECTION 8. ADMINISTRATIVE LIABILITY

To the extent allowed by applicable law, no Public Officer, agent, or employee of the County, charged with the enforcement of this Chapter, shall be personally liable for any damage that may accrue to Persons or property, because of any act required or permitted in the discharge of duties under this Chapter.

SECTION 9. COMPLIANCE

(a) Places used for human habitation shall comply with all the minimum standards and requirements of this Chapter.

(b) All Owners, operators, and occupants shall comply with the requirements of this Chapter to maintain these standards.

(c) No Person shall occupy or allow occupancy of a place of habitation that violates this Chapter.

(d) The County shall not provide, nor permit another to provide, either public or private utility services such as water, gas, electricity, sewer, etc., to any dwelling unit becoming vacant until such dwelling unit has been inspected, brought into compliance with this Chapter and a valid certificate of occupancy, as required, has been issued. This requirement shall not preclude the temporary use of such utility services for alteration. The building official shall be responsible for making the determination as to when such temporary services may be necessary.

(e) No certificate of occupancy may be issued for any single-family or multi-family residential building on which construction is begun on or after January 1, 1978, until it has been certified as complaint with the minimum insulation standards, for residential construction, by the Code Official, as prescribed in the NC Building Code.

(f) It shall be unlawful for any Person to occupy, or allow another to occupy, or offer for rent, a dwelling or dwelling unit until a valid certificate of occupancy has been issued.

SECTION 10. RESPONSIBILITIES OF OWNERS AND OCCUPANTS

The general responsibilities of Owners and Occupants of places of habitation, including, but not limited to, the following:

(a) Owners shall be responsible for maintaining, in a reasonably clean and sanitary condition, the shared or public spaces of the place of habitation and premises. Occupants shall be responsible for maintaining, in a reasonably clean and sanitary condition, the part of the place of habitation and premises which they occupy and control.

(b) Occupants shall be responsible for the extermination of any insects, rodents, or other pests infesting the place of habitation; however, owners shall be responsible for extermination if the place of habitation is not reasonably impervious to pests.

(c) Occupants shall be responsible for disposing of refuse and/or garbage in a clean and sanitary manner by placing it in adequate facilities for such disposal.

(d) Owners shall be responsible for providing adequate, operable plumbing facilities, as required herein, including an adequate water heater, and maintaining such facilities in efficient operating condition. Occupants shall be responsible for exercising reasonable care in the use of such facilities and for maintaining them in a clean and sanitary condition.

(e) Owners shall be responsible for providing adequate and operable heating facilities and appliances, as required herein, and for maintaining them in efficient operating condition. Occupants shall be responsible for exercising reasonable care in the use of such facilities and appliances.

(f) Owners shall ensure the place of habitation remains closed and secured when not occupied.

(g) Occupants shall give Owners, agents, and/or employees access to any part of the place of habitation for the purpose of making repairs or alterations to bring the place of habitation into compliance with this Ordinance or any other lawful order.

(h) Owners shall ultimately be responsible for violations of this Ordinance, irrespective of any agreement between the Owner and the Occupants.

SECTION 11. STRUCTURAL STANDARDS

(a) Walls, floors, and roofs shall not have any rotted, deteriorated, or damaged supporting members that compromise structural integrity resulting in an unsafe condition.

(b) Foundations, foundation walls, piers, or other foundation supports shall not be deteriorated or damaged to a point that compromises supporting strength.

(c) Stairs, porches, and any appurtenance thereto shall be safe to use and capable of supporting a normal load.

(d) Every place of habitation shall be provided with adequate means for egress in the case of fire or panic.

(e) The roof, flashings, exterior walls, basement walls, floors, and all doors and windows exposed to the weather shall be constructed and maintained to be reasonably weatherproof and watertight.

(f) There shall be no chimney or parts thereof which are defective, deteriorated, or in danger of falling, or in such condition or location as to constitute a fire hazard.

(g) There shall be no use of exposed ground as a floor. Wood floors shall not be placed directly on exposed ground.

SECTION 12. BASIC EQUIPMENT AND FACILITIES STANDARDS

(a) Plumbing System

1. Each dwelling unit shall be connected to a potable water supply and public sewer, or an approved and permitted sewage disposal system.

2. All plumbing fixtures shall be maintained in operable condition.

3. Each dwelling unit shall contain a kitchen sink with an adequate supply of hot and cold water.

4. Each dwelling unit shall contain bathroom facilities to include a toilet, a sink, and a tub or shower with an adequate supply of hot and cold water. The tub or shower and toilet shall be in a room or rooms affording privacy to the user.

(b) Heating System

1. Each dwelling unit shall have a central or electric heating system or sufficient chimneys, flues, or gas vents with a heating appliance connected, to heat all habitable rooms to a minimum temperature of sixty-eight (68) degrees Fahrenheit measured three feet above the floor with an outside temperature of 20 degrees Fahrenheit.

2. Portable heaters are not acceptable as permanent heat sources.

(c) Electrical Systems

1. Every Dwelling unit shall be wired for electric lights and convenience receptacles.

2. All fixtures, receptacles, equipment, and wiring shall be safe and maintained in a state of good repair.

3. There shall be installed in every bathroom and laundry room at least one ceiling or wall electric light fixture.

4. Every public hall and stairway in multi-family dwellings shall always be adequately illuminated by electric lights when natural daylight is not sufficient.

5. Smoke alarms shall be provided which are operable and in good repair. The landlord is responsible to provide at least one carbon monoxide alarm when there exists an attached garage or fossil-fuel burning heater, fireplace, and/or appliance. Unless the landlord and tenant have a written agreement to the contrary, the landlord shall place new batteries in the alarms at the beginning of each tenancy and the tenant shall replace the batteries as needed during tenancy, except where the alarm is a tamper-resistant, 10-year lithium battery smoke alarm. The landlord is responsible to repair or replace alarms within fifteen days of receipt of written notification by the tenant of needed repair or replacement.

(d) Room Sizes

Every Dwelling unit shall contain at least the minimum room size in each habitable room as required by the NC Building Code at the time the Dwelling was constructed.

(e) Ventilation

1. Every habitable room and bathroom shall have a permanent means of air circulation or air exchange.

2. Except where provided by mechanical ventilation, every habitable room shall have an operable window, the size of which shall be not less than 8% of the floor area of the room.

3. Every bathroom shall comply with the light and ventilation requirements for habitable rooms, except that no window or skylight shall be required in adequately ventilated bathrooms and water closet rooms equipped with an approved ventilation system.

(f) Window Screens

When air conditioning is not provided, every door opening directly from a dwelling unit to an outdoor space shall have a screen door with a self-closing device. Every window opening to an outdoor space shall be supplied with screens.

(g) Infestation

1. Every occupant of a dwelling unit shall be responsible for the extermination

of any insects, rodents, or other pests therein or on the premises. Every occupant of a dwelling unit within a multi-family dwelling shall be responsible for such extermination whenever their dwelling unit is the only one infested.

2. Extermination shall be the responsibility of the Owner when infestation exists in one of the following circumstances:

   i. Infestation in two or more dwelling units in any multi-family dwelling; or

   ii. Infestation in the shared parts of any dwelling within a multi-family dwelling unit; or

   iii. When infestation is caused by the failure of the Owner to maintain a dwelling in a reasonably rodent and insect proof condition.

SECTION 13. RECEPTACLES AND CONTAINER REQUIREMENT

Every dwelling unit shall have an adequate and suitable receptacle or container with a lid in which garbage and household trash can be stored on a temporary basis per the Caldwell County Solid Waste Management Chapter.

SECTION 14. MOLD

Mold is not addressed under this Chapter.

SECTION 15. ENFORCEMENT – PRELIMINARY INVESTIGATION

(a) The Public Officer shall investigate a place of habitation and associated property, or a non-residential building or structure, when:

   1. A petition is filed with the Public Officer by a public authority or by at least five County residents who are at least 18 years of age in accordance with NCGS 160D-1203(2), or

   2. When it appears to the Public Officer upon inspection any place of habitation is in violation of this Ordinance.

   3. When it appears to the Public Officer any non-residential building or structure has not been properly maintained, which would jeopardize the safety or health of its occupants or members of the general public, for failure of the property to meet the minimum standards established by the Board.

(b) For conducting a preliminary investigation or inspection, the Public Officer, upon presentation of proper credentials, and being given permission, is hereby authorized to enter, examine, and survey at all reasonable hours, all places of habitation and the premises associated therewith.

(c) When permission to inspect a place of habitation or its premises, or a non-residential Building or Structure, is denied, the Public Officer may obtain an administrative warrant, or permission of the tenant.

SECTION 16. COMPLAINT AND NOTICE OF ADMINISTRATIVE HEARING

(a) If the Public Officer's preliminary investigation discloses violations of this Ordinance, they may issue a complaint and cause it to be served upon the property Owner and Parties of Interest in the place of habitation, or upon the Owner of, and Parties of Interest in, the non-residential Building or Structure.

(b) The complaint must state the basis for the charges and contain a notice that a hearing will be held before the Public Officer at a place stated in the notice, within the time required by State Law.

(c) Notice of the hearing for residential properties must also be given to at least one of the five or more people who signed the initial petition.

(d) The Owner or Party of Interest has the right to:

1. Correct the violation and notify the County to obtain approval; or

2. File an answer to the complaint, appear in person, and give testimony.

(e) Any Person may attend the hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be those controlling rules in a hearing before the Public Officer.

SECTION 17. ISSUANCE OF ORDER

(a) Generally

After the notice and hearing, the Public Officer shall issue a written determination which must include findings of fact supporting whether the place of habitation is unsafe or unfit for occupancy and whether it is deteriorated or dilapidated.

(b) Deterioration

1. If the Public Officer finds deterioration, they shall issue and cause to be served upon the Owner and Parties of Interest an order to repair, alter, and improve the place of habitation to comply with the standards of fitness established by this Ordinance within a specified period, not to exceed ninety days.

2. The order may require the Owner to vacate and close such a place of habitation while occupancy would present a significant threat of bodily harm.

3. The Public Officer may grant extensions of up to one hundred eighty days if good cause is shown.

(c) Dilapidation

1. If the Public Officer finds dilapidation, they shall issue and cause to be served upon the Owner and Parties of Interest an order to vacate and close the place of habitation.

2. The order shall require the place of habitation to be removed or demolished within a specified period, not to exceed ninety days.

3. The Public Officer may grant extensions of up to ninety days for good cause shown.

(d) If the Public Officer determines the non-residential building or structure has not been properly maintained, they shall state in writing findings of fact in support of the determination and issue and cause to be served upon the Owner the order. The order may require the Owner to take remedial action, within a reasonable time specified. The order may require the Owner to take remedial action within a specified time:

1. Repair, alter, or improve the non-residential Building or Structure to bring it into compliance; or

2. Vacate and close the non-residential Building or Structure for any use; or

3. Remove or demolish the non-residential Building or Structure if the cost of repair, alteration, or improvement of the Building or Structure exceeds fifty percent (50%) of its then-current value. If the non-residential Building or Structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district, pursuant to State Law, or in a historic district listed in the National Register of Historic Places, and the Board determines the non-residential Building or Structure is of individual significance or contributes to maintenance of the district's character, has not been condemned as unsafe, the order may require the non-residential Building or Structure be vacated and closed until it is brought into compliance.

SECTION 18. AFFORDABLE HOUSING PROVISION

(a) If the notice of order is for dilapidation, the notice of order shall be sent by first class mail to any organization involved in providing or restoring dwellings for affordable housing which has filed a written request for such notices, in accordance with State Law.

(b) A minimum period of forty-five days from the mailing of notices shall be given before the removal or demolition by action of the Public Officer, to allow the

opportunity for any organization to negotiate with the Owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing.

(c) The Public Officer shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud.

(d) Only an organization which has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the Public Officer to wait forty-five days before causing removal or demolition.

SECTION 19. FAILURE TO COMPLY WITH ORDER

(a) General Provisions

1. The duties of the Public Officer set forth in this ordinance, shall not be exercised until the Board has ordered the Public Officer to proceed to effectuate the purpose of this Chapter with respect to the particular property or properties the Public Officer has found to be unfit for human habitation.

2. The property or properties shall be described in the ordinance.

3. The ordinance shall be recorded in the Caldwell County Office of the Register of Deeds and indexed in the name of the property Owner in the grantor index.

(b) Repair, Closing and Posting

1. If the Owner fails to comply with an order to repair, alter, improve, or vacate and close the dwelling, then the Public Officer may cause the dwelling to be repaired, altered, improved, or vacated and close the dwelling.

2. The Public Officer may cause to be posted on the main entrance of any dwelling closed a placard with the following notice: “This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.”

3. Any person, contractor, firm, or corporation who violates the provisions of this Chapter shall, upon conviction, be guilty of a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

4. Any Person occupying a non-residential building shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate

occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

5. If the Owner fails to comply with an order to remove or demolish the Dwelling, the Public Officer may cause such Dwelling to be removed or demolished.

6. No Ordinance shall be adopted to require demolition of a Dwelling until the Owner has first been given a reasonable opportunity to bring it into conformity with the standards of this Chapter.

(c) Abandonment of Intent to Repair

1. If the Dwelling has been vacated and closed for a period of one year pursuant to an ordinance adopted pursuant to this Chapter, or after the Public Officer issues an order or proceedings have commenced under the substandard housing regulations regarding a Dwelling to be repaired or vacated and closed as provided in this Chapter, pursuant to NCGS 160D-1203(6), the Board may find the following:

    i. The Owner has abandoned the intent and purpose to repair, alter, or improve the Dwelling to render it fit for human habitation; or

    ii. The continuation of the dwelling in its vacated and closed status would be harmful to the health, safety, and welfare of people of the County because the Dwelling could:

        A. Continue to deteriorate,

        B. Create a fire and safety hazard,

        C. Threat children and vagrants,

        D. Attract persons intent on illegal activities,

        E. Cause or contribute to blight and the deterioration of property values in the area, and

        F. Render unavailable property and dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing.

(d) Failure to Comply with Order for Non-Residential Buildings and Structures

1. If the Owner fails to comply with an order to repair, alter, or improve or to vacate and close the non-residential Building or Structure, the Board may adopt an ordinance ordering the Public Officer to proceed to effectuate the

purpose of this Chapter with respect to the particular property or properties that the Public Officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Caldwell County Office of the Register of Deeds and shall be indexed in the name of the property Owner or Owners in the grantor index. Following adoption of an ordinance, the Public Officer may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The Public Officer may cause to be posted on the main entrance of any non-residential building or structure so closed a placard with the following notice: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any Person who occupies or knowingly allows the occupancy of a Building or Structure so posted is guilty of a Class 3 misdemeanor.

2. Any Person violating a provision of this Chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

3. If the Owner fails to comply with an order to remove or demolish the non-residential Building or Structure, the Board may adopt an ordinance ordering the Public Officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a non-residential building or structure until the Owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the Board. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the Caldwell County Office of the Register of Deeds and shall be indexed in the name of the property Owner or Owners in the grantor index. Following adoption of an ordinance, the Public Officer may cause the Building or Structure to be removed or demolished.

4. In the case of a non-residential Building or Structure, if the Board adopted an ordinance or the Public Office issued an order requiring the building or structure to be repaired, or vacated and closed, and the Building or Structure has been vacated and closed for two years pursuant to the ordinance or order, the Board may make findings the Owner has abandoned the intent and purpose to repair, alter, or improve the Building or Structure and the continuation of the Building or Structure in its vacated and closed status would be harmful to the health, safety, and welfare of the

people of the County, in that it would continue to deteriorate, create a fire or safety hazard, threaten children and vagrants, attract persons intent on illegal activities, or cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the Board may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the Owner, setting forth the following:

i. If the cost to repair the non-residential Building or Structure to bring it into compliance with the minimum standards is less than or equal to 50% of its then-current value, the ordinance shall require the Owner either repair or demolish and remove the Building or Structure within ninety days.

ii. If the cost to repair the non-residential Building or Structure to bring it into compliance with the minimum standards exceeds 50% of its then-current value, the ordinance shall require the Owner to demolish and remove the Building or Structure within ninety days.

5. In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the Building or Structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the Board. The ordinance must be recorded in the Caldwell County Office of the Register of Deeds and indexed in the name of the property Owner in the grantor index.

6. Then in such circumstances, the Board may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the Owner, setting forth the following:

i. If it is determined that the dwelling is deteriorated, the ordinance shall require that the Owner either repair or demolish and remove the Dwelling within 120 days.

ii. If it is determined that the dwelling is dilapidated, the ordinance shall require the Owner to demolish and remove the Dwelling within 120 days.

(e) Liens

1. The amount of the costs of repairs, alterations, improvements, vacating of, and closing, or removal or demolition by the County shall constitute a real property lien, upon which the cost was incurred. The real property lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in State Law.

2. If the Dwelling is removed or demolished by the County, the local government it shall sell the materials of the Dwelling, and any personal

property, fixtures, or appurtenances found in or attached to the Dwelling.

i. The proceeds of the sale will be credited against the cost of the removal or demolition, and any balance remaining shall be deposited in the Clerk of Court.

ii. It shall be secured in a manner directed by the Clerk of Court and shall be disbursed by the Clerk of Court to the Persons found to be entitled thereto by final order or decree of the Clerk of Court.

iii. If the County contracts for demolition, the contractor shall verify by affidavit the proceeds from the sale of any salvaged materials, including personal property, fixtures, or appurtenances, have been credited against the cost of demolition.

3. Nothing in this Chapter shall impair or limit in any way the authority of the County to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

(f) Civil Action

If any Owner or Occupant fails to comply with a lawful order to vacate a place of habitation, the County may file a civil action for summary ejectment to remove the occupant as authorized by State Law.

SECTION 20. METHOD OF SERVICE

(a) Complaints or orders issued by the Public Officer shall be served on Parties of Interest personally, or by certified mail, return receipt requested.

1. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed effectuated if the certified mail, return receipt requested, is unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing.

2. If regular mail is used, notice of the pending proceedings shall also be posted in a conspicuous place on the affected premises pursuant to State Law.

(b) If, after reasonable due diligence, the Public Officer cannot locate Persons to be served with notice, the Public Officer shall sign an affidavit to that affect and the complaint or order shall be published in a newspaper of general circulation within the County. Notice of the pending proceedings shall also be posted in a conspicuous place on the affected premises pursuant to State Law.

(c) Failure on the part of any Owner or Party of Interest to receive or have served upon them any complaint, notice, or order herein provided for shall not affect or invalidate the proceedings with respect to any other Owner or Party of

Interest, or any other person.

SECTION 21. APPEALS

(a) Generally

1. Any Owner or Party of Interest who has received an order under this Chapter may appeal to the Housing Appeals Board.

2. The appeal must be filed with the Public Officer and the Housing Appeals Board within ten days following service of the order. The notice of appeal must specify the grounds upon which the appeal is based.

3. Upon the filing of a notice of appeal, the Public Officer must provide the Housing Appeals Board with all documents constituting the record upon which the decision appealed from was made.

(b) Appeal of Decision

1. When an appeal is from a decision of the Public Officer refusing to allow a person to do any act, the decision shall remain in effect until modified or reversed.

2. When an appeal is from a decision of the Public Officer requiring a person to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Housing Appeals Board, unless the Public Officer certifies to the Housing Appeals Board a suspension of the requirement would cause imminent harm to life or property. In that case the requirement shall not be suspended except by a restraining order or injunction issued by a court of competent jurisdiction.

(c) The Housing Appeals Board

1. The Housing Appeals Board shall fix a reasonable time for hearing appeals, give notice to the parties, and shall render its decision within a reasonable time. Any party may appear themselves or be represented by an attorney.

2. The Housing Appeals Board may reverse, affirm, or modify the decision or order appealed.

3. The Housing Appeals Board shall have all the powers of the Public Officer. A vote of at least four members is necessary to reverse or modify any decision or order of the Public Officer.

4. Every appellate decision of the Housing Appeals Board shall be subject to review by proceedings in certiorari instituted in the Superior Court within fifteen days of the decision of the Housing Appeals Board, but not otherwise.

5. Within 30 days of the issuance of the Housing Appeal Board's decision, a Person with standing may apply to the Superior Court for relief.

SECTION 22. PENALTIES

(a) Generally

1. The remedies provided in this Section are cumulative and not exclusive. They may be independently pursued against the same person for any activity constituting a violation of this Chapter.

2. Nothing in this Chapter shall be constructed to impair or limit in any way the power of the County to define and declare nuisances, and to cause their removal or abatement by summary of proceedings or otherwise. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies in any other ordinances or laws.

(b) Civil Penalties

1. In addition to any other penalty imposed by this Chapter, a violation may subject the Owner or Party of Interest to a penalty which shall be in accordance with the Board's Fee Schedule.

2. Any penalty must be paid at the Tax Department of the County.

3. Failure of the Owner or Party of Interest to issue payment within thirty days from the initial date of noncompliance may result in the County initiating an action for collection of the debt.

4. In addition to any other penalty imposed by this Ordinance, the County may seek any other legal remedy under the law.

(c) Criminal Penalties

1. In addition to any other penalty imposed by this Ordinance, an Owner or Party of Interest which occupies a residential building which has been posted preventing occupancy shall, upon conviction, be guilty of a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

2. In addition to any other penalty imposed by this Ordinance, an Owner or Party of Interest which occupies a non-residential building which has been posted preventing occupancy shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate

occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

(d) Injunction

1. In addition to an injunction, the Court may also enter an order of abatement directing specific action be taken to bring the property into compliance with this Chapter.

2. If the Owner or Party of Interest fails or refuses to comply, the County is authorized to carry out the Court's order including attaching a lien to the property for all costs associated with execution of the Order, including attorney's fees.

(e) Ejectment

1. If any occupant fails to comply with an order to vacate a non-residential Building or Structure, the County may file a civil action to remove the occupant. The action to vacate is in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties any person occupying the non-residential Building or Structure.

2. An action to remove an occupant of a non-residential Building or Structure who is a tenant of the Owner may not be in the nature of a summary ejectment proceeding unless the occupant was served with notice, at least thirty days before the filing of the summary ejectment proceeding, that the Board has ordered the Public Officer to proceed.

CHAPTER ___ STATE OF EMERGENCY

SECTION 1. AUTHORITY

Pursuant to NCGS Chapters 130A and 153A, and other appliable law, Caldwell County hereby establishes this Ordinance.

SECTION 2. DEFINITIONS

Board means the Caldwell County Board of Commissioners.

County means Caldwell County, North Carolina.

NCGS means the North Carolina General Statutes.

Person means any individual, corporation, firm, partnership, association, or other legal entity.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

SECTION 3. STATE OF EMERGENCY; RESTRICITON AUTHORIZED

(a) A State of Emergency shall be deemed to exist whenever the Chair of the Board makes a finding and declaration that an emergency exists. Emergency means (i) any man-made disaster including any condition following an attack by an enemy or foreign nation upon the United States, resulting in substantial damage to property or injury to persons, and may include the use of bombs, missiles, shell fire, or nuclear, radiological, chemical, or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; cyber incidents; and any industrial, nuclear, or transportation accident, explosion, conflagration, power failure, resources shortage, or other condition such as sabotage, oil spills, and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship, or loss of life; (ii) any natural disaster including any hurricane, tornado, storm, flood, high water, earthquake, drought, fire, communicable disease of public health threat, or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life and (iii) otherwise defined in NCGS 166A-19.3(6) or other applicable statutes.

(b) In the event of an existing or threatened State of Emergency endangering the lives, safety, health and welfare of people within the County or any part thereof, or threatening damages to or destruction of property, the Chair of the Board is hereby authorized and empowered under NCGS 166A-19.22 and 166A-19.31

to make a finding of an Emergency and to issue a public declaration declaring to all persons the existence of a State of Emergency, and, in order to more effectively protect the lives and property of people within the County, to place in effect any or all of the restrictions hereinafter authorized.

Within 48 hours of the issuance of the State of Emergency declaration, the Chair shall contact each member of the Board and ensure they have been advised of the declaration. Upon request of any commissioner, if the declaration remains in effect, the Chair shall call an emergency meeting or a special meeting of the Board to discuss the reason for the issuance of the declaration, its provisions and expected duration.

(c) The Chair is hereby authorized and empowered to limit by the declaration the application of all or any part of such restrictions to any area specifically designated or described within the County and to specific hours of the day or night; and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, law enforcement officers, firefighters and other public employees, rescue personnel, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel, whether state or federal; on-duty employees of public utilities, public transportation companies and newspaper, magazine, radio broadcasting, and television broadcasting entities and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health, and welfare needs of people within the County.

SECTION 4. DECLARATION IMPOSING PROHIBITION AND RESTRICTIONS

(a) The Chair of the Board, by declaration, may impose the prohibitions and restrictions specified in Sections 5 through 10 of this Chapter in the manner described in those Sections. The Chair may impose as many of those specified prohibitions and restrictions necessary or appropriate, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety, and property. The Chair shall recite the findings in the declaration.

(b) The declaration shall be in writing. The Chair must take reasonable steps to give notice of the terms of the declaration to those affected by it, including the (i) posting of a signed copy of the declaration on the County website and (ii) submittal of notice and a signed copy of the declaration to the NC Department of Public Safety Web EOC critical incident management system. The Chair must send reports of the substance of the declaration to the mass communications media which serve the affected area. The Chair and Clerk to the Board shall retain a copy of the declaration and upon request, furnish certified copies of it.

SECTION 5. EVACUATION

The Chair may direct and compel the voluntary or mandatory evacuation of all or part of the population of the County; prescribe routes, modes of transportation, and destination in connection with evacuation; and control ingress and egress of an emergency area, the movement of persons within the area, and the occupancy of premises therein. Details of the evacuation may be set forth in the declaration or in a subsequent declaration which shall be publicized.

SECTION 6. CURFEW

The declaration may impose a curfew prohibiting, in certain areas and during certain periods, the appearance in public of anyone who is not a member of an exempted class. The declaration shall specify the geographical area or areas and the period during each 24-hour day to which the curfew applies. The Chair may exempt from some or all the curfew restrictions classes of people whose exemption the Chair finds necessary for the preservation of public health, safety, and welfare. The declaration shall state the exempted classes and the restrictions from which each is exempted.

SECTION 7. RESTRICTIONS ON POSSESSION, CONSUMPTION, OR TRANSFER OF ALCOHOLIC BEVERAGES

The declaration may prohibit the possession or consumption of any alcoholic beverage, including beer, wine, and spirituous liquor, other than on one's own premises, and may prohibit the transfer, transportation, sale, or purchase of any alcoholic beverage within the area of the County described in the declaration. The prohibition, if imposed, may apply to transfers of alcoholic beverages by employees of Alcoholic Beverage Control stores as well as by anyone else within the geographical area described.

SECTION 8. RESTRICTION ON POSSESSION, TRANSPORTATION, AND TRANSFER OF DANGEROUS WEAPONS AND SUBSTANCES

(a) The declaration may prohibit the transportation or possession, except on one's own premises, or the sale or purchase of any dangerous weapon or substance. The Chair may exempt from some or all, the restricted classes of people whose possession, transfer, or transportation of certain dangerous weapons or substances is necessary to the preservation of the public health, safety, and welfare. The declaration shall state the exempted classes and the restrictions.

(b) Dangerous weapon or substance means:

1. Any deadly weapon, ammunition, explosive, incendiary device, radioactive material, or device as defined in State Law,

gasoline, or other instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property.

2. Any other instrument or substance capable of being used to inflict serious bodily injury or destruction of property.

3. Any other illegal substance under State Law.

(c) Notwithstanding anything in this Chapter to the contrary, "dangerous weapon or substance" shall not be deemed to include "lawfully possessed firearms or ammunition." The term "firearm" shall have the same meaning as that term is used in NCGS 14-409.39(2): a handgun, a shotgun, or rifle which expels a projectile by action of an explosion. The term "handgun" shall have the same meaning as the term used in NCGS 14-409.39(3): a pistol, revolver, or other gun that has a short stock and is designed to be held and fired using a single hand.

(d) If imposed, the restrictions shall apply throughout the jurisdiction of the County, or such part thereof, as designated in the declaration.

SECTION 9. RESTRICTIONS ON ACCESS TO AREAS

(a) The declaration may prohibit obtaining access or attempting to obtain access to any area designated in the manner described in this Section, in violation of any order, clearly posted notice, or barricade indicating access is denied or restricted.

(b) Areas to which access is denied or restricted shall be designated by the Sheriff or subordinates or other law enforcement officer when directed in the declaration to do so by the Chair. When acting under this authority, the Sheriff or subordinates may restrict or deny access to any area, street, highway, or location within the County if the restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

SECTION 10. PROHIBITION OR RESTRICTION ON MOVEMENT, OPERATION, OR ACTIVITIES

Depending on the type of emergency, the declaration may include restrictions or prohibitions on any or all the following:

(a) Movement of people in public places; and

(b) The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate; and

(c) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives, within the area designated in the declaration or property during the State of Emergency.

SECTION 11. TERMINATION OR REMOVAL OF PROHIBITIONS AND RESTRICTIONS

By declaration, the Chair shall terminate the entire declaration of emergency or remove any of the prohibitions and restrictions when the emergency no longer requires them, or when directed to do so by the Board.

SECTION 12. SUPERSEDING AND AMENDATORY DECLARATION

The Chair has discretion to invoke the restrictions authorized by this Chapter in a separate declaration and may amend any declaration by means of a superseding declaration in accordance with the procedures set forth in this Chapter.

SECTION 13. TERRITORIAL APPLICATION

This Chapter applies throughout the County, outside of the municipalities except where a municipality's mayor or governing body has authorized the County to enforce this Chapter within the municipality.

SECTION 14. PENALTY

Any Person violating this Chapter, or any Section thereof, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisoned for not more than 30 days, or both. Each occurrence of a violation shall be treated as a separate occurrence.

SECTION 15. PERIODIC REVIEW

The Caldwell County Emergency Management Coordinator will review the State of Emergency Ordinance procedure on an annual basis; as well as perform an analysis of the procedure's effectiveness in an After-Action Report of a declared State of Emergency.

Chapter ___ ANIMAL CARE AND ENFORCEMENT

SECTION 1. AUTHORITY

Pursuant to NCGS Chapters 67, 130A, and 153A, and other applicable law, Caldwell County hereby establishes these Ordinances.

SECTION 2. PURPOSE

(a) Animal cruelty. To define and prohibit the abuse of animals.

(b) Rabies. To protect citizens and other animals from rabies transmitted by unconfined, uncontrolled, or unimmunized dogs, cats, ferrets, or other animals.

(c) Dangerous and potentially Dangerous Dogs. To regulate, restrict and/or prohibit the harboring of dogs which are dangerous or potentially dangerous to persons.

(d) Stray animals. To regulate, restrict or prohibit the keeping of any stray domestic animals.

(e) Animal nuisance. To regulate animals which may be a nuisance.

(f) Wild or exotic animals, poisonous reptiles, and dangerous animals. To regulate, restrict and/or prohibit the harboring or keeping or ownership of wild or exotic animals, poisonous reptiles, and dangerous animals.

(g) Animal bites. To establish rules and procedures for dealing with animal bites.

(h) Impoundment of animals. To regulate and establish procedures for the impoundment and confinement of animals.

(i) Redemption of impounded animals. To regulate and establish procedures for redeeming animals impounded in the County's Animal Shelter.

(j) Destruction of animals. To regulate and establish procedures for destroying diseased, stray, unwanted or unclaimed animals.

SECTION 3. DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Adequate Environment means the provisions of a safe and sanitary environment for an animal which is free of debris, hazards, waste, and filth.

Adequate Food means provisions at suitable intervals, not to exceed 24 hours of a sufficient quantity of wholesome foodstuff suitable for the species and age to maintain a reasonable level of nutrition for the animal.

Adequate Shelter means any suitable weatherproof structure intended to be inhabited by an animal, built in such a way as to have 4 sides, 1 side having ample opening to allow for an entrance for the animal. The structure must have a top and bottom large enough for the animal to turn around while inside.

Adequate Water means constant access to a supply of clean, fresh, unfrozen, and potable water is provided in a sanitary manner.

Animal Enforcement Officer means Animal Control Officers as defined by State Law.

Animal Shelter means any premises designated by the County for the purpose of impounding and caring for all animals found running at large or otherwise subject to impounding in accordance with the provisions of this Chapter.

Appeal Board means the Dangerous Dog Appeal Board.

Attack means an approach to a person by an unrestrained animal in a vicious, terrorizing, or threatening manner or apparent attitude of attack without the animal having been teased, molested, provoked, beaten, tortured, or otherwise harmed.

Board means the Caldwell County Board of Commissioners.

Breeder means any person or establishment which breeds animals for the purpose of resale to the public or dealers.

Cat means all domestic felines.

Cold Weather Shelter means a shelter which provides a secondary source of heat, with or without the inclusion of additional resources such as cedar shavings or straw, when the outside temperature is below 32 degrees Fahrenheit.

County means Caldwell County, North Carolina.

Dangerous Dog means any dog owned or harbored primarily, or in part, for the purpose of dog fighting, is trained for dog fighting, or has without provocation, killed or inflicted severe injury on a Person.

(a) This term includes, but is not limited to, any dog which either assaults, bites, attacks, or inflicts serious injury on a human being, without provocation on

public or private property, and/or has killed or injured a pet or domestic animal without provocation.

(b) Exceptions: No dog is dangerous pursuant to this definition if:

1. At the time the threat, injury, or damage was sustained, the person attacked was teasing, tormenting, abusing, or assaulting the dog; or was committing or attempting to commit a crime; or

2. The dog is used by a law enforcement officer to carry out the law enforcement officer's official duties.

3. The dog has attacked or injured a pet or domesticated animal in defense of an attack by another animal or is protecting or defending its young.

Dog means all domestic canines.

Domestic Animal means animals, such as dogs, cats, horses, sheep, cattle, goats, hogs, poultry, domesticated by man, to live and breed in a tame condition.

Exposed to Rabies means any person or animal which has bitten, been bitten by, or otherwise been exposed to the bodily fluids of any animal known or suspected to have been infected with rabies.

Hot Weather Shelter means an Adequate Shelter which shall be in a shaded area when the temperature exceeds 80 degrees Fahrenheit.

Inherently Dangerous Mammal means any live member of the Canidae, Felidae, or Ursidae families, including hybrids thereof, which, due to their inherent nature, may be considered dangerous to humans and which include:

(a) Canidae, including any member of the dog (canid) family not customarily domesticated by humans, or any hybrids thereof, including wolf hybrids which are a cross between a wolf and a domestic dog, but not including domestic dogs (Canis familiaris);

(b) Felidae, including any member of the cat family weighing over 15 pounds not customarily domesticated by man, or any hybrids thereof, but not including domestic cats (Felis catus); and

(c) Ursidae, including any member of the bear family, or any hybrids thereof.

Kennel means any Person or group of Persons engaged in boarding animals.

NCGS means the North Carolina General Statutes.

Neutered means any male animal that has been operated upon to prevent reproduction.

Nuisance means any act of an animal which annoys or disturbs rights and privileges common to the public or enjoyment of private property. The commission of a nuisance act on more than one occasion shall be evidence of a nuisance. A nuisance act includes, but is not limited to, the following:

(a) Turning garbage containers or removing garbage from a container.

(b) Damaging gardens, foliage or other real or personal property of another person.

(c) Defecating or urinating on property, other than the owners', without permission.

(d) Offensive odors of animals imminating from another property or are dangerous to public health.

(e) Continuously or frequently roaming or found on the property of another person.

(f) Not confined to a building or secure enclosure when in estrus.

(g) Diseased or dangerous to the health of the public.

(h) Loitering on school grounds or in a public recreation area.

(i) Chasing, harassing or otherwise molesting other animals, pedestrians, bicyclists, or vehicles.

Owner means any Person or group of Persons owning, keeping, having custody or control over, sheltering, feeding, harboring, or allowing an animal to remain on or about their property for more than 14 consecutive days. In the event the Owner of an animal is a minor, for purposes of this Chapter, the parent or guardian of the minor shall be considered the Owner of that animal. The Owner of an animal is responsible for the care, actions, and behavior of their animals.

Person means any individual, corporation, firm, partnership, association, or other legal entity.

Pet means a domesticated animal kept for pleasure rather than utility.

Potentially Dangerous Dog means a dog determined by the County to have:

(a) Inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization; or

(b) Killed or inflicted severe injury upon a domestic animal when not on the owner's real property; or

(c) Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.

Restraint means a portion of land owned or occupied by an Owner, not including any portion of land accessible to the public as a right-of-way.

Restraint means an animal which is:

(a) Controlled by means of a chain, leash, or other like device.

(b) On or within a vehicle being driven or parked.

(c) Within a secure enclosure.

(d) Within the dwelling house of the Owner.

Secure Enclosure means a fence or structure with 4 sides of adequate height to prevent the dog from escaping, made from metal or chain link fencing or equivalent fencing material, forming, or causing a humane secure enclosure. The door or gate must have a latch capable of being securely locked to prevent the animal from escaping or the entry of young children. The secure enclosure must have a securely fitting top made from metal or any chain link fencing or equivalent fencing to prevent the dog from climbing out, and a floor made of concrete, concrete pavers or equivalent to prevent the dog from digging out of the secure enclosure. For purposes of this definition, a home, mobile home, or separate garage does not qualify.

Spayed means any female animal that has been operated upon to prevent reproduction.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

Stray means any dog, cat, or ferret appearing to be stray, homeless, or unwanted, or is not displaying a valid rabies tag.

SECTION 4. ESTABLISHMENT OF THE OFFICE OF ANIMAL CONTROL

(a) The Department of Animal Care Enforcement is established to enforce this Chapter.

(b) Employees or agents enforcing this Chapter are designated as Animal Enforcement Officers. In the performance of their duties, Animal Enforcement Officers have all the powers, authority and immunity granted under this Chapter and State Law to enforce the provisions of this Chapter, and State Law, as they are related to the care, treatment, control or impounding of animals.

(c) Except as may be otherwise provided by State Law, local laws or ordinances, no officer, agent, or employee of the County charged with the duty of enforcing the provisions of this Chapter or other applicable laws shall be personally liable for any damage which may accrue to persons or property as a result of any act required or permitted in the discharge of those duties, unless acting with malice.

SECTION 5. GENERAL DUTIES OF THE OFFICE OF ANIMAL CARE ENFORCEMENT

(a) The Office of Animal Care Enforcement has the following responsibilities:

1. Enforcing all state laws, rules and regulations, and all County ordinances relating to the care, custody and control of domesticated dogs and cats.

2. Assisting in the enforcement of State Law regarding animals, including the vaccination of animals against rabies, and the confinement or controlling of dangerous animals and Dangerous Dogs.

3. Investigating allegations of animal cruelty or abuse.

4. Canvassing the County, including homes within the County, as deemed necessary, to confirm all animals are vaccinated against rabies, as required by local ordinance or State Law.

5. Operating in compliance with the policies of the Board and County Animal Shelter.

6. Keeping accurate and detailed records including:

    i. Impoundment and disposition of all animals coming into the County Animal Shelter.

    ii. Bite cases, violations and complaints, and related investigations of same.

iii. All County funds derived from the operation of the Animal Control Program.

iv. All rabies vaccinations administered within the County by veterinarians, Animal Care Enforcement staff and any certified rabies vaccinator appointed by the local Health Director.

v. All other records deemed necessary.

SECTION 6. ESTABLISHMENT OF A DANGEROUS DOG APPEAL BOARD

There is hereby created a The Dangerous Dog Appeal Board, hereby established, to serves as the official appellate body hearing all Dangerous Dog appeals pursuant to State Law. The Appeal Board convenes at the direction of the County Animal Care Enforcement Director or designee. The Appeal Board is composed of 5 members and 1 alternate appointed by the County Board of Public Health who serves 3-year staggered terms. The following criteria will be considered when appointing members to the Appeal Board:

(a) A person familiar with animals and experience working with them on a regular basis.

(b) A person active in animal welfare issues.

(c) A law enforcement officer.

(d) Two citizens at large.

SECTION 7. ENFORCEMENT IN MUNICIPALITIES

Animal Care Enforcement officers have no authority to enforce this Chapter within the boundaries of any municipality unless the governing body of the municipality adopts an authorizing resolution.

SECTION 8. DECEASED ANIMALS

(a) The Owner or person in charge of an animal which dies from any cause, and the Owner, lessee or person in charge of any land upon which any animals die, must bury the dead animal to a depth of at least 3 feet beneath the surface of the ground within 24 hours after the death of the animal is known, or otherwise dispose of the animal in a manner approved by the state veterinarian.

(b) It shall be unlawful for any Person to remove the carcasses of dead animals from their premises to the premises of another, without the written permission of the Person and without burying the animal in accordance with this Section.

(c) The Animal Care Enforcement Officer is not responsible for picking up any deceased animal from properties or roadways.

(d) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 9. ANIMAL CRUELTY

(a) It shall be unlawful for any Person to molest, tease, torture, torment, deprive of necessary sustenance, cruelly beat, mutilate, wound, injure, poison, abandon, kill or subject to conditions detrimental to the health or general welfare of any animal, or to cause or procure that action. The terms torture and torment include every act, omission, or neglect where unjustifiable physical pain, suffering or death is caused or permitted. Exceptions include:

1. The lawful taking of animals under the jurisdiction and regulations of the North Carolina Wildlife Resources Commission.

2. Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

3. Activities conducted for lawful veterinary purposes.

4. The lawful destruction of any animal by its Owner, veterinarian, Health Director, or Animal Care Enforcement Officer, for the purpose of protecting the public, other animals, property, or the public health.

(b) General care; prohibited acts. All animals shall be kept and treated in an Adequate Environment, and it shall be unlawful for any person to engage in any of the following:

1. Failure to provide Adequate Food, Adequate Water, and cold and hot weather shelter:

    i. All animals, unless otherwise indicated in this Chapter, shall be given at suitable intervals, not to exceed 24 hours, a quantity of wholesome

foodstuff in proper containers suitable for the age and species of the animal, and sufficient to maintain a healthy level of nutrition.

ii. All animals shall have access to a constant supply of clean, fresh water.

iii. All animals shall have Adequate Shelter from the weather.

iv. Examples of inadequate shelter include, but are not limited to, the following:

A. Underneath outside steps, decks, and stoops.

B. Underneath houses.

C. Inside or underneath motor vehicles.

D. Inside metal barrels.

E. Inside cardboard boxes.

F. Inside temporary animal carriers or crates.

G. Shelters situated in flood-prone areas.

H. Shelters surrounded by debris, obstructions, or impediments which may endanger an animal.

2. Failure by any Owner to keep an animal in good health and comfort, failure to provide veterinary care when needed to prevent suffering, and failure to provide humane care and treatment.

3. Examples of cruel treatment include, but are not limited to, the following:

i. Permitting a collar, rope, or chain to become embedded in, or cause injury, to an animal's neck.

ii. Permitting a choke or pinch collar to be used as a primary collar when an animal is left unsupervised.

iii. Permitting a dog, cat, or ferret to be tethered or contained in such a way as to prevent it from having Adequate Shelter.

iv. Intentionally permitting animals to engage in fighting.

v. Permitting animals to live in crowded or unsanitary conditions.

vi. Failure or refusal to obtain medical treatment for an animal when the need for treatment is apparent.

vii. Chaining or tethering an animal to a stationary object for a period or under conditions which are harmful or potentially harmful to the animal. Examples of improper chaining or tethering include, but are not limited to, the following:

A. Using length or weight of a chain or tether which is not appropriate for the size, weight, and age of the animal.

B. Using a chain or tether made of rope, twine, cord, or similar material.

C. Using a chain or tether less than 12 feet in length and/or without swivels on one end. All chains or tethers must be attached to the animal by a properly fitted harness or collar.

D. Allowing an animal to be chained or tethered which would prevent confinement to the owner's property, or which chain or tether could become entangled and prevent the animal from moving about freely, lying down comfortably, or having access to Adequate Food, Water and Shelter.

E. Using a chain as a primary collar. All collars used for the purpose of chaining or tethering animals must be made of nylon or leather.

viii. Selling or offering for sale, bartering or giving away within the County baby chicks, ducklings or other fowl under 6 weeks of age, or rabbits under 8 weeks of age, as pets, toys, premiums or novelties; provided, however, this Section shall not be construed to prohibit the sale or display of baby chicks, ducklings or other fowl or rabbits in proper facilities by breeders or stores engaged in the business of selling for purposes other than for pets or novelties.

ix. Coloring, dyeing, staining, or otherwise changing the natural color of baby chickens or other fowl or rabbits.

(c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 10. FEMALE IN ESTRUS (HEAT)

(a) It shall be unlawful for any Owner or keeper of a female dog in estrus (heat) not to confine the dog in a secured enclosure.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 11. KEEPING OF INHERENTLY DANGEROUS MAMMALS

(a) Inherently Dangerous Animal means either an Inherently Dangerous Mammal or an Inherently Dangerous Reptile as defined in this Section.

(b) Inherently Dangerous Mammal means any live member of the Canidae, Felidae, or Ursidae families, including any hybrid thereof, which, due to its inherent nature, may be considered dangerous to humans and includes:

1. Canidae, means any member of the dog (Canid) family not customarily domesticated by people, or any hybrids thereof, but not including a domestic dog (Canis lupus familiaris) or wolf hybrids which are a cross between a wolf and a domestic dog;

2. Felidae, means any member of the cat family not customarily domesticated by people, and any hybrid thereof, but not including a domestic cat (Felis catus);

3. Ursidae, means any member of the bear family, and any hybrid thereof; and

4. Nonhuman primates and prosimians.

(c) Inherently Dangerous Reptile means any live member of the class reptilia which:

1. Is venomous, including, but not limited to, all members of the following families: Helodermidae, Viperidae, Crotalidae, Altractaspidae, Hydrophilidae and Elapidae;

2. Is a “rear fanged” snake of the family Colubridae known to be dangerous to humans, including, but not limited to, all members of the following families: Dispholidus typus, Thebtornis kirtlandii and Rhabdophis spp.; or

3. Is a member of the order Crocodilia.

(d) Inherently Dangerous Animal at Large means an Inherently Dangerous Animal permitted or allowed to be at large outside of the approved confinement or on other property, including the property of the owner, or within the premises of the owner in such manner as to endanger any person lawfully entering such premises.

(e) Harboring an Inherently Dangerous Animal means to allow an Inherently Dangerous Animal to remain, lodge, be fed, or to be given shelter or refuge within the person's home or any other premises in which the person resides or over which the person has control.

(f) The Harboring of an Inherently Dangerous Animal is prohibited unless a person harbored the Inherently Dangerous Animal prior to the effective date of the ordinance codified in this Chapter (Second date the board adopted this Chapter). No Inherently Dangerous Animals shall be permitted to be harbored within the county after the (Second date the board adopted this Chapter).

(g) The following are exempt from all provisions of this Chapter:

1. Any facility accredited by the Association of Zoos and Aquariums (AZA);

2. Any licensed or accredited research or medical institution;

3. Any licensed or accredited educational institution;

3. A veterinary clinic in possession of an inherently dangerous animal for treatment or rehabilitation purposes;

4. A traveling circus or carnival as long as the circus or carnival does not maintain a permanent location within the County and is in compliance with all state laws; and

5. A person temporarily transporting an Inherently Dangerous Animal through the County if the transit time is not more than 24 hours, and the animal is at all times maintained within a confinement sufficient to prevent the animal from being at large.

(h) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 12. CONFINEMENT AND PROCEDURE OF POTENTIALLY DANGEROUS DOGS

(a) The Owner of a dog deemed Potentially Dangerous by the Office of Animal Care Enforcement is notified in writing and provided with the reasons for the determination.

(b) The Owner must immediately confine the dog in a humane secure enclosure; and

(c) If no humane, secure enclosure is available at the Owner's residence, the dog shall be confined at the Animal Control Shelter or a boarding facility approved by the County, at the Owner's expense.

(d) Within 3 days of the determination, the Owner may appeal by filing written objections with the Appeal Board.

1. The Appeal Board will schedule a hearing within 10 days of the filing of the objections. Based upon testimony and evidence, the Appeal Board will determine if the dog should be considered dangerous or overturn the declaration.

2. The Owner of the dog and any complainants will be notified of the determination by first class mail or email.

3. If the Appeal Board finds the dog is a Dangerous Dog, the Owner of the dog is required to keep the dog in accordance with all state and local laws pertaining to Dangerous Dogs.

(e) If the Owner of a dog that has been deemed Potentially Dangerous does not file an appeal with the Appeal Board within 3 business days of the notification of the determination, the dog shall automatically be a Dangerous Dog.

SECTION 13. CONFINEMENT REQUIREMENTS AND CONFISCATION OF DANGEROUS DOGS

(a) The Owner of a dog which has been deemed dangerous will be notified in writing and provided the reasons for the determination. The Owner shall immediately confine the dog in a humane secure enclosure. If no secure enclosure is available at the Owner's residence, the dog shall be confined at the Animal Care Enforcement shelter or a boarding facility, approved by the County, at the Owner's expense, until a humane secure enclosure is constructed on the Owner's property. The enclosure must meet the approval of the Animal Care Enforcement Director, who has the authority to mandate additional confinement requirements. If no adequate humane secure enclosure is constructed upon the Owner's property after the expiration of 30 days of notice of declaration, the dog shall be euthanized.

(b) The Owner shall conspicuously and securely display the County's Dangerous Dog warning sign on the secure enclosure. Additional uniform Dangerous Dog warning signs shall be conspicuously and securely posted at all points of entrance to the residence and must be visible and legible from the public highway or street. Uniform Dangerous Dog warning signs must be purchased from the Animal Care Enforcement Department at the Owner's expense.

(c) The Owner of a dog which has been deemed dangerous shall have the dog spayed/neutered at the Owner's expense and provide proof of the spay/neuter to the Animal Care Enforcement Department within 30 days of the date of written notification.

(d) The Owner of a dog which has been deemed dangerous shall have the dog micro-chipped at the owner's expense and register the micro-chip number with the Animal Care Enforcement Department within 2 business days of the date of written notification.

(e) A dog which has been deemed dangerous either by Animal Care Enforcement or by the Appeal Board shall be kept in a humane secure enclosure. The Owner shall post a plainly visible sign upon the secure enclosure warning a Dangerous Dog is on the premises. The humane secure enclosure shall be locked to prevent the escape of the dog or the entry of young children. The dog may be removed from the secure enclosure for exercise or veterinary care so long as it is under the control of its Owner using a securely attached leash and muzzle.

(f) An Animal Care Enforcement officer is empowered to confiscate a dog and harbor it at the Owner's expense if the dog is found in violation of state and/or local laws pertaining to Dangerous Dogs. If any Dangerous Dog is confiscated under this Section, the Owner of the Dangerous Dog shall be given written notice at the time of confiscation advising the dog will be humanely euthanized by the Animal Care Enforcement Department at the expiration of 3 business days.

(g) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 14. <u>REQUIRED NOTIFICATION TO ANIMAL CARE ENFORCEMENT BY OWNERS OF DANGEROUS DOGS</u>

(a) The Owner of a Dangerous Dog shall inform the Office of Animal Care Enforcement, as soon as practicable, but no later than 24 hours after the occurrence of any of the following:

1. An assault, attack or biting upon any human being committed by a Dangerous Dog.

2. An assault, attack or biting upon any domesticated animal or pet by a Dangerous Dog.

3. The destruction of or damage to the property of another by a Dangerous Dog.

4. The roaming or escape of any animal required to be restrained or confined to a secure enclosure.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 15. TRANSFER OF OWNERSHIP OR RELOCATION OF DANGEROUS DOGS

(a) If the Owner of a Dangerous Dog wishes to transfer ownership or possession of the dog to another Person, the Owner shall provide written notice to the authority which made the determination under this Chapter, providing the name and address of the new Owner or possessor of the dog before the ownership of the dog is transferred.

(b) If the Owner of a Dangerous Dog plans to relocate and/or change address, the Owner shall provide written notice to the authority which made the determination under this Chapter, providing the new address and or date of relocation prior to this occurrence.

(c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 16. LAW ENFORCEMENT DOGS PARTIALLY EXCLUDED

Any dog used by a law enforcement agency in the investigation of crimes, or as otherwise necessary in the enforcement of the law, is excluded from the requirements of this Chapter, except for rabies and bite requirements pursuant to State Law.

SECTION 17. DOGS USED FOR GUARD DUTY

(a) A sign warning a guard or dog is on the premises shall be displayed. The Owner shall post a plainly visible sign upon the secure enclosure, warning of a Dangerous Dog or animal on the premises. Any person owning, maintaining, or harboring a dog for sentry or guard purposes must register the dog with the Office of Animal Care Enforcement.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 18. ENFORCEMENT INTERFERENCE

(a) It shall be unlawful for any Person to interfere with, hinder or molest the Animal Care Enforcement Office agents, officers, or veterinarians in the performance of any duty authorized by this Chapter or State Law, or to seek to release any animal in the custody of those agents.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 19. ANIMALS CREATING A NUISANCE

(a) Pursuant to State Law, a County may define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety or welfare of its citizens, and the peace and dignity of the County; and may define and abate nuisances.

(b) Nothing in this Chapter shall prevent a private citizen from bringing an action to abate a nuisance, or from bringing an action for damage, loss, or injury to the private citizen or their property resulting from an animal being a public nuisance.

(c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 20. EXCLUSION FOR HUNTING DOGS

This Chapter shall not be interpreted as restricting persons owning specially trained hunting/working dogs from using the dogs for hunting/working in the presence of the Owner or an agent of the Owner and are lawfully being used for hunting or training in compliance with applicable statutes, regulations or ordinances of the State and the County.

SECTION 21. NUISANCES PROHIBITED

It shall be unlawful for any Owner to permit a dog, cat, or ferret to create a nuisance as defined by this Chapter.

(a) Nuisance acts. It shall be unlawful for an Owner to permit an animal or animals to create a public nuisance, or to maintain a public nuisance created by an animal or animals. The commission of a nuisance act on more than one occasion shall be evidence of a nuisance. A nuisance act, includes but is not limited to:

1. Continuously or frequently roaming or found on the property of another person.

2. Turning over garbage containers or removing garbage from a container.

3. Damaging gardens, foliage, or other real or personal property of another.

4. Urinating or defecating on private property without the permission of the property owner.

5. Walking on or sleeping on an automobile of another.

6. Maintaining in an unsanitary condition which is offensive to sight or smell.

7. Not confining to a building or secure enclosure while in estrus.

8. Chasing, snapping at, attacking, or otherwise molesting pedestrians, cyclists, motor vehicle passengers, farm stock, or domestic animals.

9. Housed or restrained less than 5 feet from a public street, road, or sidewalk.

10. Habitually loiters on school grounds or County recreational property.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 22. PROCEDURE FOR COMPLAINT

Any citizen who personally witnesses a violation of this Chapter may file an animal nuisance complaint by completing a nuisance/complaint form. Before initiating a civil or criminal proceeding pursuant to this Chapter or any State statute, the Animal Services Director or designee has the option of requesting the complaining party sign a sworn statement of the alleged offense and require the cooperation of the complaining party in court appearances arising from the complaint.

SECTION 23. RABIES CONTROL

(a) It shall be unlawful for any animal owner or other person to fail to comply with State Law relating to the control of rabies.

(b) It is the purpose of this Chapter to supplement State Law by providing a procedure for the enforcement of rabies control, in addition to the criminal penalties provided by State Law.

(c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 24. RABIES VACCINE OF DOGS, CATS, AND FERRETS

(a) It shall be unlawful for an Owner to fail to provide current vaccine against rabies for any dog, cat, or ferret 4 months of age or older. Should the County Animal Care Enforcement, County Board of Health, the Board, or the State Public Health Veterinarian order pets be inoculated to prevent a threatened epidemic, or to

control an existing epidemic, it shall be unlawful for an Owner to fail to provide current inoculation against rabies for that pet.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 25. RABIES VACCINE TAG

(a) Upon complying with provisions of State Law, the vaccinator shall issue to the Owner of the animal vaccinated, a metallic tag, stamped with the number and the year issued, indicating the animal has been vaccinated against rabies.

(b) It shall be unlawful for any dog to fail to provide the dog with a collar or harness to which a current tag issued under this Section is securely attached. The collar or harness, with attached tag, must be worn at all times.

(c) Pursuant to State Law, cat owners are not required to provide a cat with a collar or harness to which a current tag is attached, however, the cat owner must be able to immediately provide a current vaccine tag upon being asked by the County.

(d) It shall be unlawful for any Person to use for any animal a rabies vaccine tag issued for another animal.

(e) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 26. REPORT AND CONFINEMENT OF ANIMALS BITING PERSONS OR SHOWING SYMPTOMS OF RABIES

(a) Every dog, cat, or ferret, which has bitten any person or which shows symptoms of rabies shall be confined immediately and be promptly reported to the Animal Care Enforcement Office, and thereupon shall be securely quarantined at the direction of the Animal Care Enforcement Office for a period of 10 days and shall not be released from the quarantine except by written permission from the Animal Care Enforcement Office.

(b) Dogs, cats, and ferrets quarantined under this Section shall be confined in a veterinary hospital, boarding kennel approved by the Office of Animal Care Enforcement, or County Animal Shelter, at the expense of the Owner; provided, however, if an Animal Care Enforcement officer determines the Owner of an animal requiring quarantine has adequate confinement facilities upon his or her own premises, the animal control officer shall authorize the animal to be confined on the premises. The Animal Care Enforcement officer may not authorize the animal to be confined on the Owner's premises unless the Owner has a fenced-in area in his or her yard, and the fenced-in area has no entrances or exits which are not locked, and the animal is currently vaccinated against rabies. Proof will be required at the time of investigation. If the animal is confined on the Owner's premises, the Animal Care Enforcement officer shall revisit the premises for inspection purposes, midway through the confinement period, and again at the conclusion of the confinement period.

(c) In the case of stray dogs or cats whose ownership is not known, the dogs, cats, or ferret may be euthanized, and the head examined for rabies, or kept for the supervised quarantine period required by this Section at the County Animal Shelter.

(d) If rabies does not develop within 10 days after a dog, cat is quarantined under this Section, the dog, cat, or ferret may be released from quarantine with the written permission of the Animal Care Enforcement Office. If the dog, cat, or ferret has been confined in the County Animal Shelter, the Owner shall pay any applicable veterinarian fees and boarding fees set by and approved by the Board. Any animal which has bitten a Person, and which has not been reclaimed within 24 hours following the mandatory 10-day rabies observation quarantine period, shall be destroyed by the Animal Care Enforcement Office.

(e) In the case of any carnivore or bat, the animal may be euthanized, and the head examined for rabies.

(f) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 27. DESTRUCTION OF ANIMAL EXPOSED TO RABID ANIMAL

(a) Unvaccinated animals exposed to a known rabid animal shall be immediately destroyed. If the animal has a current rabies inoculation, it shall be revaccinated and returned to the Owner.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 28. AREA-WIDE EMERGENCY QUARANTINE

(a) When reports indicate a positive diagnosis of rabies, the County Health Director may order an area-wide quarantine for such period as deemed necessary. Upon invoking of such emergency quarantine, no dog, cat, or other carnivore shall be taken into the streets or permitted to be in the streets during such period. During such quarantine, no dog, cat, or ferret, or other carnivore may be taken or shipped from the County without written permission of the Office of Animal Care Enforcement. During the quarantine period, the local health authorities shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the County.

(b) In the event there are additional positive cases of rabies occurring during the period of quarantine, the period of quarantine may be extended at the discretion of the County Health Director.

(c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 29. POSTMORTEM DIAGNOSIS

(a) If an animal dies while under observation for rabies, the head of the animal shall be submitted to the County Health Department for shipment to the State Laboratory of Public Health for rabies diagnosis.

(b) The carcass of any animal suspected of dying of rabies shall be surrendered to the County Animal Care Enforcement Office. The head of the animal shall be submitted to the County Health Department for shipment to the State Laboratory of Public Health for rabies diagnosis.

(c) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 30. UNLAWFUL KILLING, RELEASING AND THE LIKE OF CERTAIN ANIMALS

(a) It shall be unlawful for any Person to kill or release any animal under observation for rabies, any animal suspected of having been exposed to rabies or any animal which has bitten a human, or to remove the animal from the County without written permission from the Animal Care Enforcement Office.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 31. FAILURE TO SURRENDER ANIMAL FOR QUARANTINE OR DESTRUCTION

(a) It shall be unlawful for any Person to fail or refuse to surrender any animal for quarantine or destruction as required by this Chapter and State Law when demand is made by the Animal Control Officer.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 32. IMPOUNDMENT

Any animal which appears to be lost, stray or unwanted, or which is found not to be wearing a valid rabies vaccination tag, and not under restraint in violation of this Chapter, shall be impounded by the Animal Control Office by any means necessary and confined in an animal shelter in a humane manner. Impoundment of the animal shall not relieve the Owner from any penalty which may be imposed for violation of this Chapter.

SECTION 33. TRAPPING

(a) The Animal Care Enforcement Department is authorized to place, upon request, live-capture animal traps on private property of the requestor or public property, to trap and remove stray, at-large, unwanted or nuisance animals. It is unlawful for any Person other than an Animal Care Enforcement Officer or designee to remove any animal from the trap, or to damage, destroy, move, or tamper with the trap.

(b) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 34. REDEMPTION BY OWNER GENERALLY

(a) The Owner of an impounded animal may redeem the animal within 72 hours from the time of notification of impoundment is given, as required by State Law, by complying with all applicable provisions of this Chapter, and paying any applicable veterinary fees and a boarding fee.

(b) No animal Owner may be permitted to adopt their own animal under the provisions of this Section to reclaim an animal which has been impounded pursuant to State Law or this Chapter.

SECTION 35. DESTRUCTION OR ADOPTION OF UNREDEEMED ANIMALS GENERALLY

(a) Disposition of animals in Animal Services custody.

1. Stray animals are held for a period of 96 hours to allow Owners to reclaim the animals.

2. Cats deemed to be feral by the Animal Services Director or designee are held for a period of 72 hours. For the purposes of this Section, feral shall mean a cat which has escaped from a domestic or captive status and is living as a wild animal or a cat which was never domesticated.

(b) Animals can be reclaimed by Owners for fees in accordance with the fee schedule. The Owner of an impounded animal shall be entitled to redeem the animal, except as provided in this Chapter, upon the payment of all applicable fees, and upon furnishing proof of ownership. Animals cannot be reclaimed without proof of a

current rabies vaccine, or a rabies vaccine given by Animal Services Certified Rabies Vaccinators (CRVs).

(c) Dogs must wear rabies inoculation tags upon being reclaimed.

(d) If not claimed within 96 hours, stray animals are made available for adoption, transferred to a rescue group, or euthanized.

(e) Upon proof of ownership, owner-surrendered animals are made available for disposition by the Director of Animal Services or designee after a period of 24 hours.

(f) Nothing in this Section shall prevent an animal which is seriously ill or injured from being euthanized for humane reasons prior to the end of a stray hold.

(g) No animal which has been impounded by reason of being a stray or unclaimed by its Owner, shall be allowed to be adopted from the County Animal Shelter during a period of emergency rabies quarantine, except by special authorization of the County Health Director.

(h) Any person adopting an animal from the County Animal Shelter is required to sign an adoption contract with the Animal Shelter.

(i) The Animal Control Office has the right to refuse adoption of animals to:

1. Persons less than 18 years of age.

2. Persons who have previously been cited for violations of this Chapter.

(j) The maximum number of animals adopted to the same household is 3 per calendar year.

(k) Any animals which exhibit fierce, dangerous, or aggressive behavior will not be offered for adoption.

(l) Any Person violating this Section shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

SECTION 36. PROCEDURE FOR REDEMPTION OR ADOPTION OF UNVACCINATED DOG, CAT, OR FERRET

All dogs, cats, or ferrets 4 months of age or older which leave the County Animal Shelter, or any animal hospital or veterinary clinic, shall be required to have a current rabies vaccination.

SECTION 37. DESTRUCTION OF WOUNDED OR DISEASED ANIMALS

Notwithstanding any other provision of this Chapter, any animal impounded which is badly wounded or diseased, shall be destroyed humanely, only after consultation with the Office of Animal Control and a veterinarian licensed to practice in the State of North Carolina. This consultation will include a physical review of the animal by a licensed veterinarian, and the veterinarian's agreement the animal is suffering and should be euthanized. If the animal has identification, the Office of Animal Care Enforcement shall attempt to notify the Owner before consulting with a licensed veterinarian and euthanizing the animal.

SECTION 38. PENALTY

(a) Fees shall be charged in accordance with the County's fee schedule. The Animal Care Enforcement Director has the authority, in their discretion, to reduce or waive fees for special circumstances.

(b) Any Person violating any of the provisions of this Chapter shall be subject to the imposition by citation of a civil penalty for each such violation in the amount of $25, which shall be paid in full within 30 business days of the service of the citation by a representative of the County Animal Care Enforcement Office or any law enforcement officer, or both in accordance with NCGS 153A-123. If the offender does not pay the penalty within 30 business days, the County may recover the penalty plus court costs and attorney fees in a civil action in the nature of a debt.

(c) Each subsequent violation of any of the provisions of this Chapter shall subject the violator to the imposition by citation of a civil penalty in the amount of $100, which shall be paid in full within 30 business days of the service of the citation. If the offender does not pay the penalty within 30 business days, the County may recover said penalty plus court costs and attorney fees in a civil action in the nature of a debt.

(d) Failure to make payment and correct the violation or violations within 30 business days will result in an additional penalty of $25 per violation per day until the violation is corrected and the citation is paid. All funds derived from the civil penalties collected shall be used in the operation and maintenance of the County Animal Shelter.

(e) If any dangerous animal or Dangerous Dog as defined in this Chapter shall, when unprovoked, attack, assault, wound, bite or otherwise injure or kill a human being, the Owner shall pay a $300 civil penalty and, after a 10-day waiting period, exclusive of Sundays and holidays, the dog shall be destroyed by the Office of Animal Care Enforcement.

(f) If any dangerous animal or Dangerous Dog shall, when unprovoked, kill, wound, or worry or assist in killing or wounding any domestic animal or pet, the Owner of the animal or dog shall pay a $200 civil penalty, and the dog will be humanely euthanized by the Animal Care Enforcement Department at the expiration of 3 business days.

(g) If any dangerous animal or Dangerous Dog is found in violation of State Law, the Owner of the animal or dog shall pay a $150 civil penalty, and the dog will be humanely euthanized by the Animal Care Enforcement Department at the expiration of 3 business days.

(h) Any person in possession of or keeping an inherently dangerous mammal within the County shall be in violation of this Chapter and shall be subject to the imposition by citation of a civil penalty for each such violation in the amount of $300, which shall be paid in full within 72 hours of the service of the citation by an Animal Care Enforcement Department, or any law enforcement officer. If the offender does not pay the penalty within 30 business days, the County may recover the penalty plus court costs and attorney fees in a civil action in the nature of a debt. Failure to make payment and correct the violation or violations within the 30 business days will result in an additional penalty of $600 per violation per day until the violation is corrected. All funds derived from the civil penalties collected shall be used in the operation and maintenance of the County Animal Shelter.

(i) Violation of this Chapter may subject the violator to criminal as well as civil action. Violation of this Chapter shall be a misdemeanor for which a criminal summons may be issued. Any person convicted of this violation shall be punishable as provided in NCGS 14-4. Each day's violation of this Section is a separate offense.

(j) In addition, enforcement of this Chapter may be by appropriate equitable remedy, injunction or order of abatement issued by a court of competent jurisdiction.

CHAPTER ___ BUILDING CODE INSPECTIONS

SECTION 1. AUTHORITY

Pursuant to NCGS Chapters 153A, 160D, and other applicable law, Caldwell County hereby establishes these Ordinances.

SECTION 2. JURISDICTION

This Chapter applies throughout Caldwell County, outside of the municipalities, except where a municipality's governing body has adopted a resolution authorizing the County to enforce this Chapter within its jurisdictional limits and has entered into an agreement with the County to perform building code services.

SECTION 3. DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Board means the Caldwell County Board of Commissioners.

Building means any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals, or chattels.

Building Inspector means a person authorized by the North Carolina Code Council to enforce the provisions of this Chapter.

Building Permit means a permit used by Caldwell County Central Permitting authorizing a person, contractor, firm, or corporation to construct, reconstruct, alter, repair, remove or demolish a structure in accordance with the most recent Code adopted by the North Carolina Code Council.

Building Setback Line means a line establishing the minimum allowable distance between the nearest portion of any building and the street or highway right-of-way line, when measured perpendicularly thereto.

Central Permitting means Caldwell County Central Permitting, including authorized inspectors.

Certificate of Compliance means a certificate issued by Central Permitting indicating a building is code-compliant to the point it was permitted.

Certificate of Occupancy means a certificate issued by Central Permitting indicating a building is compliant to the point it is ready to be occupied.

County means Caldwell County, North Carolina.

Dilapidated means a structure or dwelling unit which has decayed, deteriorated, or fallen into partial ruin, especially through neglect or misuse, and is unsafe for habitation.

Health Director means the Caldwell County Health Director or designee.

Lot means a parcel of land occupied, or capable of being occupied, by a building or group of buildings devoted to common use, together with the customary accessories and open spaces belonging to the same.

Lot Depth means the distance of the side lines of the lot measured.

Lot Width means the distance between the side lot lines measured at the building setback line.

Manufactured Home means a portable, manufactured housing unit designed for transportation on its own chassis and for placement on a temporary or semi-permanent foundation, having a measurement of over 32 feet in width. As used in this Section, Manufactured Home also means a double-wide manufactured home, which is 2 or more portable manufactured housing units designed for transportation on their own chassis, which connect on-site for placement on a temporary or semi-permanent foundation, having a measurement of over 32 feet in length and over 8 feet in width.

NCGS means the North Carolina General Statutes.

NC Building Code Council (BCC) means the North Carolina Building Code Council, which consists of 17 members appointed by the Governor, for the purpose of adopting and amending the NC State Building Code.

NC Building Code means the current editions of the NC State Building Code, NC State Residential Code, NC State Plumbing Code, NC State Mechanical Code, NC State Fuel Gas Code, NC State Energy Conservation Code, National Electrical Code, NC State Building; Existing Building Code, NC State Building; Fire Code, and State of NC Regulations for Manufactured Homes.

Person means any individual, corporation, firm, partnership, association, or other legal entity.

Rental Structures means dwelling units, structures, or properties available on a rental or lease basis.

Specialty Contractor means any licensed electrician, plumber or heating and air-conditioning contractor.

State Law means the laws, regulations, and rules of North Carolina.

Stop Work Order means a written directive issued by a code official for any

building, or part thereof, which is being demolished, constructed, reconstructed, altered or repaired in a manner in violation of State or local law, or is in a hazardous condition, and must state what is required to correct all violations.

SECTION 4. SCOPE AND ADOPTION OF REGULATORY CODES BY REFERENCE

This Chapter applies to the following:

(a) The location, design, materials, equipment, construction, reconstruction, alteration, repair, maintenance, moving, demolition, removal, use and occupancy of buildings or structures, including, but not limited, to manufactured homes and manufactured buildings; and

(b) The installation, erection, alteration, repair, use and maintenance of plumbing systems consisting of house sewers, building drains, waste and vent systems, hot and cold-water supply systems and all fixtures and appurtenances thereof; and

(c) The installation, erection, alteration, repair, use and maintenance of electrical systems and appurtenances thereof; and

(d) The installation, erection, alteration, repair, use and maintenance of heating and air conditioning systems and appurtenances thereof.

SECTION 5. COMPLIANCE WITH REGULATORY CODES

(a) All buildings or structures which are placed, manufactured, constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished, or moved shall conform to the requirements, minimum standards, and other provisions of the NC Building Code.

(b) All electrical wiring, installations and appurtenances shall be erected, altered, repaired, used, and maintained in accordance with the minimum standards, requirements, and other provisions of the NC Building Code.

(c) Every building or structure intended for human habitation, occupancy or use shall have plumbing, plumbing systems or plumbing fixtures installed, constructed, altered, extended, repaired, or reconstructed in accordance with the minimum standards, requirements, and other provisions of the NC Building Code.

(d) All heating, air conditioning, refrigeration and ventilation installations and appurtenances shall be erected, repaired, used, and maintained in accordance with minimum standards, requirements, and other provisions of the NC Building Code.

SECTION 6. INSPECTION PROCEDURES

(a) Where required, Central Permitting inspects all buildings and structures, and any work therein, for which a permit of any kind has been issued, as often as necessary

to determine whether the work complies with this Chapter and the NC Building Code.

(b) When deemed necessary by the appropriate inspector, materials and assemblies may be inspected at the point of manufacture or fabrication, or inspections may be made by approved and recognized inspection organizations; provided, no approval shall be based upon reports of those organizations unless the same are in writing and certified by a responsible officer of the organization.

(c) All holders of permits, or their agents, must notify Central Permitting at each of the following stages and obtain approval before further work is performed:

1. Building permits.

    i. Site inspection occurs following an application and issuance of a building permit; and

    ii. Footing inspection occurs after trenches are excavated and the necessary reinforcement and forms are in place, but before concrete is poured. Drilled footings, piles and similar types of foundations are inspected as installed.

    iii. Foundation inspection occurs after all foundation support is installed.

    iv. Framing inspection occurs after all structural framing is in place and all roughing-in of electrical, plumbing, heating and duct work is installed, after all fire blocking, chimneys, bracing, and vents are installed, but before any of the structure is enclosed or covered. Poured-in-place concrete structural elements must be inspected before each pour of any structural component.

    v. Insulation inspection occurs after an approved framing and rough-in inspection, and after permanent roof covering is installed, with all insulation and vapor retarders in place, but before any wall covering or ceiling covering is applied.

    vi. Fireproofing inspection occurs after all areas required to be protected by fireproofing are lathed, but before the plastering or other fireproofing is applied.

    vii. Final inspection occurs after the building or structure has all doors hung, fixtures set, and it is ready for occupancy, but before the building is occupied.

2. Plumbing permits.

    i. Inspection of plans occurs before the installation of any plumbing materials.

ii. Inspection of plumbing. As required in the most current edition of the appliable code.

3. Electrical permits.

i. Temporary service inspection occurs when temporary service has been installed.

ii. Inspection of rough wiring occurs following as required in the most recent addition of the applicable code.

iii. Construction of temporary power with all electrical components includes a minimum of one installed ground fault circuit interrupter, and all other aspects of electrical system in a safe condition.

iv. Final inspection is required when the structure is ready for occupancy but before the building is occupied.

4. Heating, air conditioning, and venting permits.

i. An inspection of rough ducts, wiring and plumbing is required after the installation of all plumbing, wiring, ductwork, or other materials related to a heating, venting, or an air conditioning system.

ii. Final inspection of the heating, air conditioning, or venting systems will be required when the structure is ready for occupancy, but before the building is occupied.

SECTION 7. REQUESTS FOR INSPECTIONS

(a) Requests for inspections must be made to Central Permitting, then inspections are scheduled within 2 business days of the request.

(b) Re-inspections are made upon request. No inspections shall be requested unless all relevant work has been completed and is ready for inspection. Any work which has been concealed before a timely inspection shall be uncovered at the request of the inspector and placed in a condition to allow for proper inspection, provided the inspection. Approval or rejection of the work will be furnished by the inspector in the form of a notice posted on the building or given to the permit holder, agent, or contractor. Failure to request inspections or proceeding without approval at each stage of construction shall be deemed a violation of this Chapter.

SECTION 8. CERTIFCATE OF COMPLIANCE

No new building, or part thereof, shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building, after being altered or moved, shall be occupied, and no change in occupancy regarding permitted uses shall be made in any existing building or part thereof, until Central Permitting issues a Certificate of Compliance. Under hardship conditions, a temporary certificate of

compliance may be issued for occupancy of part of a building before its final completion. The contractor is responsible for calling in all inspections.

SECTION 9. OVERSIGHT NOT TO LEGALIZE VIOLATION

No oversight or error on the part of any inspector or employee of Central Permitting shall be deemed to legalize the violation of any provision of this Chapter or the NC State Building Code.

SECTION 10. POWERS OF INSPECTION OFFICIALS

(a) Inspectors are authorized, empowered, and directed to enforce all provisions of this Chapter and the most current code adopted by the NC BCC.

(b) Inspectors have the right of entry to any premises for the purpose of inspection or enforcement of the requirements of this Chapter. Should permission be denied, an inspector will seek an administrative warrant to enter the premises.

(c) Whenever any building, structure or part thereof is being demolished, constructed, reconstructed, altered or repaired in a hazardous manner or in violation of any provision of this Chapter, the NC State Building Code or any other law, or there are violations of the terms of any permit, or conditions exist to potentially endanger life or property, an inspector may order a Stop Work Order for the specific part of work which is in violation or presents the hazard(s). The Stop Work Order will list the specific work to be stopped, the reasons therefore, as well as the conditions under which the work may be resumed.

SECTION 11. SEWAGE SYSTEM INSPECTION

(a) The lot size of any structure or manufactured home requiring a private sewage system must comply with all State and County Regulations.

(b) All necessary permits and fees must be paid before electricity can be obtained.

SECTION 12. PERMITS

(a) No person shall commence or proceed with the construction, reconstruction, alteration, repair, removal, or demolition of any building or other structure, or any part thereof, without first securing a written permit from Central Permitting. No building permit is required for work estimated to cost less the amounts determined by State Law, and which does not involve any change of the structural parts or the stairways, elevators, fire escapes or other means of egress of the building or the structure.

(b) A permit for any electrical, plumbing, heating, air conditioning or refrigeration installations shall only be issued to North Carolina licensed persons, firms or corporations before any work has begun.

(c) A permit and inspection shall be required, regardless of cost of construction, for the following structures:

i. The installation of heating, electrical equipment, or service change in any structure, including a; or

ii. Any change in electrical service, installation of water heaters, electric ranges, or any other electrical equipment in any structure, including a manufactured home, if a new circuit is required.

(d) Once a person, owner, contractor, corporation, or firm has satisfied all requirements, a Certificate of Compliance and Certificate of Occupancy is issued through Central Permitting.

SECTION 13. APPLICATION

(a) Written application must be made for all permits required by this Chapter on forms provided by Central Permitting. The application must be made by the owner of the building or structure affected, or their agent or contractor.

(b) The application must provide the following information:

1. Name of the property owner.

2. The address of the property to be inspected.

3. Where applicable, the name and business address of the contractor, as well as the certificate from the appropriate NC State licensing board.

4. Where applicable, permits from Environmental Health for such things as septic, well, or food and lodging.

5. Any other information an inspector deems necessary.

SECTION 14. PLANS AND SPECIFICATIONS

Adequate working drawings or detailed plans and specifications must accompany each permit application for any building or structure where plans and specifications are deemed necessary by the inspector to determine whether the proposed work complies with all requirements. Plans must be drawn to scale with sufficient clarity to indicate the nature and extent of the work proposed, and the plans and specifications must contain information sufficient to indicate the work proposed will conform to the provisions of this Chapter and the NC Building Code. Where plans and specifications are required, a copy shall be kept at the work site until all authorized operations have been completed and approved by Central Permitting.

SECTION 15. LIMITATIONS ON ISSUANCE OF PERMITS

(a) Where any provision of the North Carolina General Statutes or any County

Ordinances require work be done by a licensed specialty contractor of any kind, or a subdivision plat approved and recorded with the Register of Deeds, no permit for the work shall be issued unless it conforms to the minimum requirements.

(b) Where detailed plans and specifications are required, no building permit shall be issued unless the plans and specifications have been provided, which are identified by the name, address, and contact number of the author, and when required by North Carolina General Statutes, the state seal of a registered architect or registered engineer.

SECTION 16. ISSUANCE OF PERMIT

After a complete application is filed, and the fees paid, an inspector reviews the proposed work to ensure compliance with all requirements.

SECTION 17. REVOCATION OF PERMITS

An Inspector may revoke and require the return of any permit by notifying the permit holder in writing and stating the reason for the revocation. Permits shall be revoked for any material departure from the approved application, plans or specifications; for refusal or failure to comply with requirements of this Chapter or NC State Building Code, or for false statements or misrepresentations made in securing the permit. Permits issued based upon incorrect, false, or fraudulent information may be revoked by the County.

SECTION 18. TIME LIMITATIONS ON VALIDITY OF PERMITS

All permits issued shall expire 6 months after the date of issuance if the work authorized by the permit has not commenced. If, after commencement, the work is discontinued for a period of 12 months, the permit shall immediately expire. No work authorized by any permit which has expired shall thereafter be performed until a new permit has been secured, including the payment of applicable fees.

SECTION 19. CHANGES IN WORK

After a permit has been issued, no changes or deviations from the terms of the application, plans and specifications of the permit can be made, except where the changes or deviations are clearly permissible under the NC State Building Code and until specific written approval of the changes or deviations has been obtained from Central Permitting.

SECTION 20. PERMIT FEES

(a) Fees for permits shall be charged at the time of the issuance of the permit and are based on the Board's adopted fee schedule. All fees must be paid before a permit can be issued.

(b) Any person, firm, contractor, or corporation who performs any construction work

or installation of electrical, heating, air conditioning, plumbing, ventilation, or refrigeration systems before obtaining a permit shall be charged double the applicable fee.

(c) Applicable fees cover all trips for all inspections, except for re-inspections.

SECTION 21. PERSONAL CONSTRUCTION AND ELECTRICAL WORK PERMITTED

Any person may be permitted to perform construction and electrical work upon their own property, except property intended or used for rent, sale, or gift, provided they obtain a permit from Central Permitting to do the specific work. The Building Inspector must be satisfied with the owner's competency to perform the work and the person cannot be assisted by another person in performing the work.

SECTION 22. EROSION AND RUNOFF CONTROL

(a) Contractors and property owners are required to place gravel, and maintain the gravel on all work site driveways, including residential, commercial, and industrial construction sites.

(b) Contractors and property owners must place bales of hay, straw or silt fencing to stop the threat of any dirt and/or mud runoff onto the land of an adjoining property or into a stream, waterway, or roadway, of less than 1 acre in size or when deemed necessary by Central Permitting. Sites of more than 1 acre must comply with the North Carolina Sedimentation Control Act.

(c) The Inspector will not make any inspections until these protective measures are in place. After subsequent inspections, if the Inspector finds evidence of mud and silt runoff, a Stop Work Order will be issued, and no further inspections will be made until the appropriate measures have been taken to correct the issue.

SECTION 23. LIABILITIES FOR DAMAGE

This Chapter shall not be construed to relieve from, or lessen the responsibility or liability of, any party owning, operating, controlling, or installing any electrical wiring, devices, appliances, or equipment for damages to person or property caused by any defect therein, nor shall the County be held as assuming any liability by reason of the inspection.

SECTION 24. ELECTRICAL RECONNECTIONS

Electrical inspections shall be conducted on all properties, including manufactured homes, by the Building Inspector prior to new electrical hookups, reconnections, or when required by a utility company.

SECTION 25. PLUMBING SYSTEMS TO BE TESTED

(a) To prevent the use of defective materials and to provide for water-tight joints, the piping of the entire drainage and ventage system shall be tested in the presence of the Plumbing Inspector by application of a water test, air test or other approved method. If the test is applied to the entire system, all openings in the piping shall be tightly closed except a minimum of 3 feet above the highest fixture, and the entire system filled with water to the point of overflow. If the system is tested in sections, each opening shall be tightly plugged, except the highest openings of the section under testing, and each section filled with water. No system shall be tested with less than a 10-foot head of water. In testing successive sections, at least the upper 10 feet of the next succeeding section shall be tested so no joint or pipe in the building is submitted to a test of less than a 10-foot head of water.

(b) In lieu of a water test, the Plumbing Inspector may require an air test, to consist of not less than 5 pounds per square inch for a period of not less than 15 minutes.

(c) If the water or air test reveals defective materials or workmanship, the defective portions shall be replaced or corrected, and the tests repeated. A roughing-in test is required before any piping of the plumbing system is concealed or fixtures set.

SECTION 26. MANUFACTURED HOME INSPECTIONS

(a) Manufactured Home specifications and regulations are in the North Carolina Regulations for Manufactured Homes.

1. After approval of septic and well permits from Environmental Health, and before any inspection can be made, the owner, agent or contractor must obtain a permit for:

    i. Any manufactured home being introduced into the County; or

    ii. Any manufactured home where there is a change of ownership.

(b) No permit for electrical, plumbing, heating, air conditioning or any other construction involving manufactured home s shall be issued by Central Permitting until a septic tank improvement permit and Certificate of Completion are issued by Environmental Health.

(c) Exceptions to the permit requirement include:

1. A manufactured home in a mobile home park; or

2. A manufactured home connected to a public or community sewerage system; or

3. A manufactured home located in the County prior to October 1, 1973.

(d) The owner, agent or contractor must provide a complete description of the manufactured home, including size, serial number, and address where the is to be placed.

(e) Only licensed electricians are allowed to install an electrical system on manufactured homes.

(f) Once all the required steps have been taken to comply with all requirements, a Certificate of Compliance will be issued.

SECTION 27. SPECIFICATIONS FOR SETTING UP MANUFACTURED HOMES

(a) Gravel, sand, or grout is permissible to level piers using 8-foot by 16-foot blocks, doubled and crisscrossed every 8 feet with 4-inch cap blocks to start piers.

(b) When wooden wedges are used to level a manufactured home, the total thickness of wood blocking plus wooden wedges must not be over 4 inches thick, and a cap block or wood must cover the entire surface of block.

(c) Foundation piers around the manufactured home shall not exceed 48 inches in height as measured from the inside floor surface of the manufactured home to the ground elevation.

(d) Manufactured homes shall be anchored to the ground according to the NC Building Code. The depth of anchor would depend on the type of soil and uplift requirements for sliding or over-turning, but in no case should be less than 4 feet deep.

(e) The electrical connection must comply with the NC Building Code.

(f) Sewage connections.

i. The connection must have at least one cleanout for one bath, or two cleanouts for two baths, one at each end of the manufactured home.

ii. The sewer riser pipe must be manufactured so a noncorrosive plug can be installed when a manufactured home is relocated, or if this is not possible, the sewer riser pipe shall be cut off 12 inches underground and buried.

iii. Before a manufactured home is relocated, either on the same parcel of land or to a different parcel of land, the property owner must obtain a Zoning Permit and any other applicable permits before Central Permitting can issue a permit.

iv. Travel trailers located in the County for occupancy more than 30 days must pass an electrical inspection and a sanitary sewage connection.

SECTION 28. RECREATIONAL VEHICLES (RVs)

(a) RVs are prohibited from being used as permanent housing; and

(b) A permit for the placement of an RV for temporary housing is required and will be issued only under the following circumstances:

1. The landowner is building a stick-built home for which Central Permitting has issued a permit; and

2. The temporary occupants of the RV are the same landowners where the RV is situated; and

3. Pursuant to a permit issued by the County, septic has been installed and temporary electric is permitted and in place.

(c) Temporary RV permits are valid for 1 year. Upon a documented hardship, a permit may be extended for up to 6 months; upon additional documented hardship, a permit may be extended for an additional 6 months, for a maximum total of 24 months. After 24 months, the permit shall automatically expire, and the RV must be removed from the property.

SECTION 29. PENALTY

Any person, contractor, firm, or corporation who violates the provisions of this Chapter shall, upon conviction, be guilty of a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

CHAPTER ___ CONCEALED WEAPONS ON COUNTY PROPERTY

SECTION 1. AUTHORITY

Pursuant to NCGS Chapters 130A and 153A, Caldwell County hereby establishes this Ordinance.

SECTION 2. DEFINITIONS

The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Board means the Caldwell County Board of Commissioners.

County means Caldwell County.

County Property means real property owned, leased, operated, or otherwise controlled by the County.

Handgun means any weapon designed or redesigned, or made or remade, and intended to be fired while held in a single hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore.

NCGS means the North Carolina General Statutes.

Person(s) means any individual, firm, governmental unit, organization, partnership, corporation, or company.

Weapon means any item designed, or used for, inflicting bodily harm or physical damage.

SECTION 3. CONCEALED HANDGUNS AND OTHER WEAPONS

(a) Except as provided in Section 3(b) herein, all Persons are prohibited from carrying a concealed Handgun, or other Weapon on County Property.

(b) The prohibition in this Ordinance shall not apply to the following Person(s):

1. Officers and enlisted personnel of the armed forces of the United States, when in discharge of their official duties and acting under orders requiring them to carry arms and weapons; or

2. Civil officers of the United States while in the discharge of their official duties; or

3. Officers and members of the National Guard engaged in active service; or

4. Sworn law enforcement officers.

(c) A conspicuous notice shall be posted on County Property stating, “Carrying a concealed Handgun and/or Weapon on these premises is prohibited.

SECTION 4. PENALTIES

Penalty. Any Person(s) violating this Ordinance, or any Section thereof, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each occurrence of a violation shall be treated as a separate occurrence.

CHAPTER ___ EMERGENCY MANAGEMENT

SECTION 1. AUTHORITY

Pursuant to NCGS 166A-19 and Chapter 153A, and other applicable law, Caldwell County hereby establishes this Ordinance.

SECTION 2. INTENT AND PURPOSE

(a) The Office of Emergency Management exists to ensure the complete and efficient utilization of all resources of the County in the event of Disaster.

(b) The Office of Emergency Management is the coordinating agency for all activity in connection with emergency management within the County; and will be the agency through which the Board exercises its authority and discharges its responsibilities during states of disaster or local emergency.

(c) This Chapter does not relieve any County department or agency of the responsibilities or authority given to it by State law or by local ordinance, nor will it adversely affect the work of any volunteer agency organized for relief in disaster situations.

(d) This Chapter shall not abridge or modify the authority of the Governor or his or her delegates to implement emergency measures during declared states of disaster.

(e) The Office of Emergency Management is the central coordinating agency for activities and programs relating to emergency and disaster mitigation, preparedness, response and recovery among agencies and officials of the County and with similar agencies and officials of other counties, the state and federal agencies, the City of Lenoir, the Towns of Granite Falls, Hudson, Sawmills, Cajahs Mountain, Gamewell, Village of Cedar Rock, and with other private and quasi-official organizations.

SECTION 3. DEFINITIONS

The following definitions shall apply in the interpretation of this Chapter unless the context clearly indicates or requires a different meaning:

Attack means a direct or indirect, actual, or threatened, assault against the County, its government, or its environs, or against the State or nation, by the forces of a hostile nation or the agents thereof, including but not limited to assault by bombing, conventional, radiological, or nuclear, chemical, or biological warfare, sabotage, cyber-attack or other impending or actual calamity.

Board means the Caldwell County Board of Commissioners.

County means Caldwell County, North Carolina.

Disaster means an occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made accidental, military, or paramilitary cause.

Emergency means any man-made disaster including any condition following an attack by an enemy or foreign nation upon the United States resulting in substantial damage or property or injury to persons and may include the use of bombs, missiles, shell fire, or nuclear, radiological, chemical, or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; cyber incidents; and any industrial, nuclear, or transportation accident, explosion, conflagration, power failure, resources shortage, or other condition such as sabotage, oil spills, and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship, or loss of life; and any natural disaster including any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, communicable disease of public health threat, or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life; and otherwise as defined in NCGS 166A-19.3(6), or other applicable statutes.

Emergency Management means the governmental function which coordinates and integrates all activities to build, sustain, and improve the capability to prepare for, protect against, respond to, recover from, or mitigate against threatened or actual natural disasters, acts of terrorism or other man-made disasters. This includes plans and preparations for minimizing the adverse effect of any kind of Disaster, including prevention, mitigation, warning, response, movement, shelter, emergency assistance and recovery. Any activity that is the primary responsibility of the military forces of the United States is not included.

Emergency Management Forces means the employees, equipment, and facilities of all County departments, boards, councils, and institutions, acting in further in furtherance of the purposes of this Chapter and includes all volunteer personnel, equipment and facilities contributed by or obtained from volunteer persons or agencies while acting in the capacity of emergency management volunteers.

Emergency Management Volunteer means any County or agency contributing a service, equipment, or facilities to an emergency management agency without remuneration and assigned to participate in the emergency management activity.

Hazardous Materials means any material defined as a Hazardous Substance in 29 CFR 1910.120.

Hazardous Materials Incident or Hazardous Materials Emergency means an uncontrolled release or threatened release of a hazardous material requiring assistance to contain, control and clean up the release.

Incident Command System (ICS) means the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in domestic incident management activities.

Mutual Aid Agreements means written agreements between the County and other governments or entities, including, but not limited to, the furnishing or exchange of such supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel, and similar items; and on such terms and conditions as deemed necessary.

National Incident Management System (NIMS) means a system prescribed by the Department of Homeland Security under the direction of Presidential Directive #5 which strengthens response capabilities through a balance between flexibility and standardization, and use of common doctrine, terminology, concepts, principles, and processes. The purpose of NIMS is to provide a consistent nationwide approach for federal, state, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

NCGS means the North Carolina General Statutes.

Regulations means plans, programs, and other emergency procedures deemed essential to emergency management.

Responsible Party means a person or entity who directly or indirectly causes the release of a hazardous material, creating a hazardous materials incident, and who shall be liable for all reasonable costs incurred in responding to and mitigating the incident. If the Responsible Party cannot be determined or is unable to pay, the owner of, or person in possession of, hazardous materials at the time of the incident is liable for the costs.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

SECTION 4. ORGANIZATION AND APPOINTMENTS

(a) Emergency Management consists of the following:

1. The Office of Emergency Management within the Emergency Services Department of County Government, under the direction of the Board, through the County Manager, as authorized by NCGS 166A-19.15. The Emergency Manager works through the Director of Emergency Services.

The assistants and other employees as are deemed necessary by the Board for the proper functioning of the agency shall be appointed.

2. The employees and resources of all County departments, boards, institutions, and councils. The same shall participate in the emergency management activities. Duties assigned to the County departments shall be the same as or like the normal duties of the departments, where possible.

3. Volunteer personnel and agencies offering service to and accepted by the County.

(b) The County Manager shall appoint an Emergency Manager who is well versed and trained in planning operations involving the activities of many different agencies which will operate to protect the public health, safety, and welfare in the event of Disaster.

(c) The Emergency Manager designates deputy managers to assume the emergency duties of the Emergency Manager in the event of absence or disability.

SECTION 5. EMERGENCY POWERS AND DUTIES

(a) The Emergency Manager shall promulgate local emergency management plans and must be approved by the Board, and which are activated whenever a local state of emergency is declared by the Board or Chair pursuant to local ordinance and NCGS 166A-19, or when the Governor of the State declares a state of disaster in all or any part of the County. The local programs and plans must be in accordance with the policies and standards set by the State.

(b) During states of declared disaster or local emergency, the Board may delegate to the Emergency Manager the power to implement additional plans as are necessary for the efficient administration of state or federal disaster plans and for the preservation of public health, safety, and welfare.

(c) During states of declared disaster or local emergency, the Emergency Manager is authorized to utilize all available County resources as reasonably necessary to cope with an emergency, including the transfer and direction of personnel or functions of County agencies for the purpose of performing or facilitating emergency services in consultation with the County Manager or designee.

SECTION 6. EMERGENCY MANAGER DUTIES AND RESPONSIBILITES

(a) The Emergency Manager shall report to the Board, through the Emergency Services Director and County Manager, regarding all phases of emergency management activity. The Emergency Manager is responsible for the planning, coordination, and operation of emergency management activities in the County. The Emergency Manager shall maintain communication with the state and federal

authorities and the authorities of nearby political subdivisions to ensure the most effective operation of the emergency management plans.

(b) No person shall be employed or associated in any capacity in any emergency management agency established under this Chapter if the person:

1. Advocates or has advocated a change by force or violence in the constitutional form of the government of the United States; or

2. Advocates or has advocated the overthrow of any government in the United States by force or violence; or

3. Has been convicted of any subversive act against the United States; or

4. Is under indictment or information charging any subversive act against the United States.

(c) Duties of the Emergency Manager include, but are not limited to:

1. Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the County for emergency management purposes; and

2. Developing and coordinating plans for the immediate use of all facilities, equipment, manpower, and other resources of the County for the purpose of minimizing or preventing damage to persons and property; and protecting or restoring governmental services and public utilities necessary for the public health, safety, and welfare; and

3. Negotiating and concluding agreements with owners or persons in control of real property for the use of buildings and properties for emergency management purposes, pursuant to the agreements designating suitable buildings as public shelters; and

4. Educating the populace through public information programs about procedures required for the protection of its persons and property in case of disaster, as defined herein; and

5. Conducting public exercises to ensure efficient operation of the emergency management forces and to familiarize residents with emergency management regulations, procedures, and operations; and

6. Coordinating the activity of other public and private agencies engaged in any emergency management activities and implementing state disaster procedures; and

7. Negotiating agreements with other political subdivisions for mutual aid assistance, for approval by the Board, providing such agreements are consistent with the state emergency management program and plans.

SECTION 7. EMERGENCY MANAGEMENT PLANS

(a) Comprehensive emergency management plans shall be adopted and maintained by resolution of the Board. In the preparation of these plans, the services, equipment, facilities, and personnel of all existing departments and agencies shall be fully utilized. When comprehensive emergency management plans are approved, each County department or agency shall perform those functions assigned to it by these plans and always maintain a current state of readiness. The basic emergency operation plan shall have the full effect of local law whenever a State of Emergency or Disaster has been declared.

(b) Emergency Plans must describe the positions within the disaster organization, including lines of succession. In each instance, the responsible person shall designate and file, with the Office of Emergency Management, a current list of 3 people who are successors. The list must be in order of succession and designate people most capable of carrying out all duties and functions assigned to the position. The Emergency Manager will review and must concur on all changes in positions or responsibilities.

(c) Each service chief and department head designated in the basic plan is responsible for carrying out designated duties and functions. Duties include the organization and training of assigned employees and volunteers. Each chief formulates an operating procedure to implement the plan.

(d) Amendments to these plans must be submitted to the Office of Emergency Management. The Emergency Manager may submit proposed amendments and recommendations to the Board. The amendments shall take effect as provided by the Board.

(e) When a skill required for an emergency or disaster relief function is not available within local government, the Emergency Manager is authorized to seek assistance beyond local government resources. Duties of a supervisory nature include implicit authority to carry out the ancillary duties necessary before and after the occurrence of an emergency or disaster for the fulfillment of functions authorized by this Chapter. Services from persons other than government employees may be accepted by local government on a volunteer basis. Such citizens are enrolled as emergency management volunteers subject to approval of the department heads or service chiefs affected.

SECTION 8. HAZARDOUS MATERIALS

(a) The intent and purpose of this Section is to establish the duties of the Office of Emergency Management related to hazardous materials emergencies. Such incidents include, but are not limited to, spills, accidents, illegal dumping, and other releases or threatened releases of hazardous materials requiring control. The Office of Emergency Management has the authority to summarily remove, abate, or remedy hazardous material emergencies within the jurisdiction of the County that are, or potentially are, a threat to public safety.

(b) In the event the County forms a Hazardous Materials Team, the Emergency Manager has the authority to designate another person to coordinate the operations of the team.

(c) Liability for a hazardous material incident lies with the Responsible Party who shall be responsible for all reasonable costs incurred in responding to and mitigating the incident.

SECTION 9. NATIONAL INCIDENT MANAGEMENT SYSTEM RECOGNITION AND COMPLIANCE

(a) The County recognizes the National Incident Management System (NIMS) and adopts the principles and policies of the NIMS to ensure the complete and efficient utilization of all the County's resources to combat disasters.

(b) NIMS principles and policies must be followed by everyone involved during emergencies to provide a comprehensive approach to incident management. The Incident Command System (ICS) is used within the NIMS framework for the handling of any large scale or hazardous materials incident.

(c) The Office of Emergency Management, with guidance from the NIMS Integration Center (NIC), is the coordinating agency for all activity in connection with NIMS.

SECTION 10. NO COUNTY OR PRIVATE LIABILTY

(a) All functions and actions related to emergency management by the County are governmental functions for the protection of public health, safety, and welfare.

(b) The County, its authorized agents and representatives and any individual, receiver, firm, partnership, corporation, association, or trustee, including agents thereof, who in good faith comply with or attempt to comply with this Chapter or rules, or regulations promulgated pursuant to the provisions of this Chapter, shall be liable for the death of or injury to persons, or for damage to property as a result of the activity.

(c) Any person owning or controlling real estate or other premises who voluntarily, and without compensation, grants to the County the right to inspect, designate and use the whole or any part or parts of the real estate for the purpose of sheltering

persons during an actual, impending or practice disaster situation shall not be civilly liable for the death of or injury to any persons on or about the real estate under the license, privilege or permission, or for loss of or damage to the property of the persons.

SECTION 11. VIOLATIONS

Any Person violating this Chapter, or any Section thereof, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisoned for not more than 30 days, or both. Each occurrence of a violation shall be treated as a separate occurrence.

SECTION 12. CONFLICTING ORDINANCES, ORDERS, RULES, AND REGULATIONS SUSPENDED

Whenever a declared state of emergency or disaster exists, the provisions of this Chapter shall supersede all local rules and ordinances inconsistent therewith and to the extent permitted by applicable law.

CHAPTER ___ EMERGENCY MEDICAL SERVICES

SECTION 1. AUTHORITY

Pursuant to NCGS 153A, and other applicable law, Caldwell County hereby establishes these Ordinances for the operation of emergency medical services within its jurisdiction.

SECTION 2. DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Ambulance means any publicly or privately owned vehicle which is specifically designed, constructed, or modified, and equipped, and is intended to be used, maintained, or operated for, transportation, of people who are sick, injured, wounded, or otherwise incapacitated.

Ambulance Advisory Committee means a committee which consists of the Caldwell County Office of Emergency Services Director, by virtue of position, and four members, who are appointed by the Board: two members in the healthcare field, and two members with EMS knowledge.

Ambulance Service means any publicly or privately owned enterprise engaged in the transportation of patients of emergency and nonemergency status to medical facilities.

Backup Ambulance Service means the system periodically staffed with personnel and equipment meeting the same criteria as Ambulance Service, which may be dispatched when the Ambulance Service is unavailable to respond.

Board means the Caldwell County Board of Commissioners.

County means Caldwell County, North Carolina.

Department means the NC Office of Emergency Medical Services (OEMS), which is regulated by the health service regulation assistance, a division of the North Carolina Department of Health and Human Services.

Dispatcher means an emergency telecommunicator who has completed an educational and/or training program approved by the employing agency and is credentialed by the agency, who dispatches emergency services and advises the Caldwell County Sheriff's Office, emergency medical personnel, and some police and fire departments, of any existing or threatened emergencies. The Caldwell County 911 Communication Center serves as the primary Public-Safety

Answering Point (PSAP), Lenior Police Department serves as the backup, and Burke and Catawba Counties serve as secondary PSAPs.

Emergency Medical Services (EMS) means services rendered by emergency medical services personnel responding to improve the health and wellness of the community and addresses people's needs for emergency medical care within the scope of practice as defined by the North Carolina Medical Board, in accordance with State Law to prevent loss of life or further aggravation of physiological or psychological illness or injury.

Emergency Medical Technician (EMT) means an individual who is credentialed by the Department.

Emergency Medical Technician-Advanced (EMT-A) means an individual who has been credentialed as an Emergency Medical Technician-Advanced by the Department.

Emergency Medical Technician-Paramedic (EMT-P) means an individual who has been credentialed as an Emergency Medical Technician-Paramedic by the Department.

Emergency Services Personnel means Dispatcher, EMT, EMT-A, EMT-P, emergency medical services instructor, or Medical Responder.

EMS Provider means a firm, a corporation, or association which engages in Emergency Medical Services within the rules and regulations of the Department.

First Responder means the first dispatched medical or rescue aid to arrive at the scene and provide emergency medical assistance to stabilize a Patient while waiting for further medical aid and/or transport.

Franchise means a permit issued by the Board to a corporation or other legal entity for the operation of an Ambulance Service.

Franchisee means any corporation or other legal entity having been issued a franchise by the Board for the operation of an Ambulance Service.

License means any driver's license or permit to operate a motor vehicle issued under or granted by State Law.

Medical Responder means an individual who has been credentialed as a medical responder by the Department.

NCGS means the North Carolina General Statutes.

Nonemergency Transportation Service means the operation of an Ambulance for any purpose other than an emergency.

Office of Emergency Services means the County's office of emergency services. The emergency services director serves as the department director and the department's mission is to develop and maintain a comprehensive emergency management program to reduce or eliminate the vulnerability of citizens to natural and/or manmade hazards and respond quickly and appropriately to emergencies.

Operator means a person in actual physical control of an Ambulance in motion or has the engine running.

Owner means a person or legal entity, authorized to do business in the State by the Secretary of State or is a political subdivision of the State, which owns and operates an Ambulance Service.

Patient means an individual who is sick, injured, wounded, or otherwise incapacitated and needs medical assistance.

Person means any individual, firm, partnership, association, corporation, or organization of any kind, including any government agency other than the United States.

Rescue means situations where the victim cannot escape an area through the normal exit or under their own power.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

SECTION 3: INSPECTIONS TO ENSURE COMPLIANCE

The County may inspect a Franchisee's records, premises, and equipment at any time to ensure compliance with this Chapter and any Franchise granted under this Chapter. Any Franchisee shall also comply with any inspections requested by a state or federal agency.

SECTION 4: PERMITS, CERTIFICATIONS AND EXEMPTIONS

(a) No Person shall furnish, operate, conduct, maintain, advertise, or otherwise be engaged in or profess to be engaged in the business or service of emergency and/or nonemergency transportation of Patients within the County unless the Person holds a valid permit for each Ambulance used in such business or service issued by the Department and has been granted a

Franchise for the operation of such business or service by the Board pursuant to this Chapter.

(b) No person shall drive an Ambulance, attend to a Patient in one, or permit one to be operated when transporting a Patient within the County unless they hold a current, valid certification issued by the State.

(c) No Franchise is required for:

1. An entity rendering assistance to a franchised Ambulance Service, upon request, when the services franchised by the Board are insufficient or unable to cope, in the event of a major catastrophe or emergency.

2. An entity operating from a location or headquarters outside the County which passes through the County for the purpose of transporting Patients from outside the County to facilities outside the County, or transporting Patients picked up outside the County to facilities within the County. No such entity shall pick up Patients within the County for transporting to locations within the County, or other locations, unless the entity is rendering County authorized assistance.

SECTION 5: APPLICATION

Application for a Franchise to operate an Ambulance Service in the County must be made upon County forms and shall include:

(a) The legal name and address of the applicant and the owner of the Ambulance Service, including registration, and authorization to do business in NC, as determined by the NC Secretary of State's office.

(b) The trade or other fictitious names, if any, under which the applicant does business, along with a certified copy, filed with the Caldwell County Register of Deed's Office, of an assumed name certificate.

(c) A resume of the training and experience of the applicant in the transportation and medical care of patients.

(d) A description and copy of state certification for each Ambulance owned and operated by the applicant.

(e) The location and description of the places from which the applicant intends to operate.

(f) An audited financial statement of the applicant as it pertains to the operations in the County, if requested by the County. The financial statement must include all details required by the County.

(g) A full description of the type and level of service to be provided, including the location of the places from where the applicant intends to operate, the process for obtaining assistance, and how the vehicles will be dispatched.

(h) Any other information the County deems necessary for a fair determination of the capability of the applicant to provide Ambulance Service in the County in accordance with State Law and this Chapter.

(i) A full description of how each component listed in the North Carolina Administrative Code is being accomplished.

SECTION 6: GRANTING

(a) Prior to accepting applications for the Franchise to operate Ambulances in the County, the Board may designate specific service areas of franchise districts. The districts will be established using criteria which include geographic size, road access, the location of existing medical transportation services, population, and response time. The Board has the authority to establish, rearrange, or dissolve districts at any time, at its discretion, in accordance with State Law.

(b) An applicant may apply for a Franchise to operate emergency transportation, nonemergency transportation, rescue, or first responder services. Each type of service requires a separate application. If more than one type of service is to be provided, separate applications must be filed for each type. The Board has sole discretion to require an applicant to operate some or all the services, regardless of the services the applicant offered within the application.

(c) Upon receipt of an application for a Franchise, the Board will schedule a time and place for hearing the applicant(s).

(d) A Franchise may be granted if the Board finds:

1. Public convenience and necessity require the proposed Ambulance Service and a need exists for the proposed service to improve the level of Ambulance Service available to residents of the County, and the Franchise is a reasonable and cost-effective manner to meet the need.

2. Each Ambulance of the applicant is permitted by OEMS.

3. Only State credentialed EMTs, EMT-As, and EMT-Ps are employed to provide Ambulance Service.

SECTION 7: TERM SUSPENSION, REVOCATION OR TERMINATION

(a) A Franchise issued pursuant to this Chapter is valid for a term to be determined by the Board, provided either party, at its option, and without cause, may terminate the franchise upon six months prior written notice to the other party subject to the terms of a contract. After a notice of service termination is given, the Ambulance Service must reapply for a Franchise if continued service is desired.

(b) Upon suspension, revocation or termination of a Franchise granted pursuant to this Chapter, the franchised Ambulance Service shall immediately cease operations. Upon suspension, revocation, or termination of EMT, EMT-A, or EMT-P's credentials or driver's license, such person shall immediately cease to drive an Ambulance or provide medical care.

SECTION 8: STANDARDS GENERALLY

(a) Each franchised Ambulance Service shall always comply with the requirements of this Chapter, the terms of the Franchise agreement granted pursuant to this Chapter, the health, sanitation, safety, equipment and Ambulance design, and local and State Law.

(b) Assignment of a Franchise permit or agreement is prohibited unless approved by the Board in writing in advance of such assignment.

SECTION 9: STANDARDS FOR VEHICLES AND EQUIPMENT

At all times vehicles and equipment shall be maintained and in compliance as required by State Law and permitted by the Department.

SECTION 10: STANDARDS FOR COMMUNICATIONS

(a) Each Ambulance or rescue vehicle designed for on-road use must be equipped with an operational 2-way radio capable of establishing good quality voice communications from within the geographic confines of the County to each hospital(s) emergency department in the County in which the Ambulance is based, all hospital emergency departments to which transportation of patients is made on a regular or routine basis anywhere in the state, and to the emergency services dispatching agencies within the County.

(b) Each Franchisee must maintain current authorizations of FCC licenses for all frequencies, equipment, and radio transmitters it operates. Copies of all authorizations and licenses must be on display and available for inspection according to FCC rules and regulations.

(c) Each base of operations must have at least one telephone landline and telephone numbers registered with each law enforcement agency and communications center in the County.

(d) Nonemergency transportation service may be dispatched by the County dispatch center or in any manner approved by the Board.

SECTION 11: INSURANCE

(a) No Ambulance Franchise shall be issued under this Chapter, nor shall such Franchise be valid after issuance, nor shall any Ambulance be operated in the County unless there is, at all times, in full force and effect occurrence-based insurance coverage issued by an insurance company licensed to do business in North Carolina, for each and every Ambulance owned and/or operated by or for the Ambulance Service providing for the payment of damages as follows:

1. Commercial general liability, medical professional liability, employment practices liability, and errors and omissions. For each respective policy, coverage shall extend to all EMTs, EMT-As, EMT-Ps, first responders, medical director(s), assistant medical directors, and all staff of the Ambulance Service franchise and include minimum limits of $2,000,000 per occurrence with a $4,000,000 annual policy aggregate.

2. Business auto coverage with a minimum limit of $2,000,000 with a combined single limit for bodily injury liability and property damage liability. This coverage shall include owned vehicles, hired non-owned vehicles, and employee non-owned vehicle.

3. Management or directors' and officers' liability coverage shall include at least minimum limits of $1,000,000 per claim and a $2,000,000 aggregate.

4. Umbrella liability coverage shall include at least a minimum limit of $3,000,000 per occurrence. Coverage shall be in excess over the underlying business auto coverage, commercial general liability coverage, and employers' liability coverage.

5. Workers' compensation coverage shall extend to all paid and volunteer members as required by law, and in amounts required by State Law.

(b) A franchisee must annually supply a certificate of insurance for all requirements contained within this Section. Additionally, Franchisee must immediately notify the Board if Franchisee's insurance lapses, or is otherwise suspended, voided, canceled, or reduced in coverage or in limits for any reason.

(c) A franchisee shall indemnify, defend, and hold harmless the County for everything under this Chapter.

(d) A franchisee must name the County as an additional insured on a primary basis for all policies required in this Chapter. Waiver of Subrogation shall be issued in favor of the County with respect to all policies as required by this Chapter.

(e) A franchisee's insurance shall be considered primary for losses which occur as a direct result of actions attributable to Franchisee. Further, Franchisee's insurance shall cover the County for any liability arising out of the activities performed by or on behalf of Franchisee, including products or completed operations of Franchisee; or automobiles owned, leased, hired, or borrowed by Franchisee. This coverage cannot contain any special limitations as to the scope of the protection afforded to the County, its elected officials, officials, officers, employees, agents, or volunteers.

(f) Any insurance maintained by the County shall be in excess of the Franchisee's insurance.

(g) Failure to comply with any portion of this Section may result in immediate termination of the Franchise upon written notice to the Franchisee by the County.

SECTION 12: FRANCHISE RECORDS

Each Ambulance Franchisee shall maintain the following records:

(a) Record of dispatch. Records shall show the time a call was received, time personnel dispatched, time arrived on scene, time arrived at destination, time in service, and time returned to base.

(b) Trip record. The trip record must provide the Patient with a copy containing all required information. A copy of the trip record may serve as a receipt for any charges paid.

(c) Biweekly checklists. There shall be a minimum of biweekly driver and attendant checklists of contents and equipment of each vehicle and organization signed by the individuals verifying vehicle operation and equipment.

SECTION 13: RATES AND CHARGES

(a) Each Franchisee must submit a schedule of rates to the Board for approval and shall not charge more or less than the approved rates without prior written authorization of the Board.

(b) No Ambulance Service shall attempt to collect rates on calls for service until the Patient:

1. Has reached the point of destination, received medical attention and is in a condition, deemed by the physician, fit to consult with the Ambulance Service. The Ambulance Service may attempt to secure guarantee of payment with the Patient's family or guardian once the Patient is in the process of receiving medical attention; or

2. Refuses to be transported to a medical facility to receive additional medical attention after the Patient received medical attention from the Ambulance Service.

(c) A Patient may be required to pay for transportation to a nonemergency facility in advance of the Ambulance trip only for nonmedically necessary transports.

SECTION 14: EMERGENCY MEDICAL SERVICES MUTUAL AID

(a) To promote and improve safety, the County uses emergency medical services from other jurisdictions when possible.

(b) Nothing in this Section shall be construed to require the County or its departments or agents to be responsible for the payment or collection of emergency medical services provided within any other county other than the County, except a county requesting mutual aid in a disaster should make provisions to reimburse the County, expenses incurred, as a result of the disaster response.

(c) The County must authorize mutual aid to surrounding counties for the use of the County gas pumps for emergency vehicles coming through the County when private gas stations are closed. The County shall be reimbursed for such costs.

SECTION 15: PENALTIES

Any Person violating a provision of this Chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

CHAPTER ___ FIRE AND LIFE SAFETY

SECTION 1. AUTHORITY

Pursuant to NCGS Chapters 143, 153A, and 160D, and other applicable law, Caldwell County hereby establishes these Ordinances.

SECTION 2. PURPOSE

The purpose of this Chapter is to establish a program for the prevention of fires and the protection of life and property in Caldwell County from the damage caused by uncontrolled fire and other conditions which are otherwise dangerous to human life, public welfare, or structural integrity of a building or structure. This Chapter incorporates the North Carolina State Building Codes as law for Caldwell County; prescribes and enforces regulations in a manner consistent with the laws of North Carolina and generally recognized practices for fire prevention; defines the duties of the Caldwell County Fire Marshal; defines and implements the powers and duties of Caldwell County and the Fire Marshal in the investigation and prevention of fire and the enforcement of the North Carolina Fire Prevention Code; and prevents interference with firefighting and fire prevention activities.

SECTION 3. DEFINITIONS

The definitions outlined in NC Building Code, which are not expressly set forth in this Chapter, shall apply to and are incorporated by reference into this Chapter.

The following words, terms and phrases, when used in this Chapter, shall the meanings ascribed to them in this Section, except were the context clearly indicates a different meaning:

Administrative Code & Policies, North Carolina means a document adopted by the NC Building Code Council, intended to provide for administration and enforcement of the NC Building Code and enforced by Code Officials legally authorized to practice such enforcement and employed by Caldwell County Government. The Administrative Code & Policies are incorporated by reference into the North Carolina Building, Accessibility, Plumbing, Mechanical, Electrical, Fire Prevention, Fuel Gas, Energy Conservation, Existing Buildings, Rehabilitation, and Residential Code, hereinafter referred to collectively as the Technical Codes; and are intended to provide for the administrative aspects of each.

Alteration means a reconfiguration or addition to an existing building system, equipment, or components regulated by the NC Building and Technical Codes to meet a new or specific objective for code compliance.

Approved means acceptable to the code official for compliance with the provisions of the

applicable code or referenced standard.

Board means the Caldwell County Board of Commissioners.

Building Official means the public officer appointed as the Caldwell County Building Official and authorized assistants, deputies, agents, and/or designees.

Compliance Inspection means a follow-up, or subsequent inspection, conducted by the appropriate Code Official to verify code compliance of a specific violation discovered during an inspection.

County means Caldwell County, North Carolina.

Fire Chief means the chief officer of the Fire Department serving the fire district or their authorized representative.

Fire Code Official means the Fire Chief or authorized representative charged with the administration and/or enforcement of the NC Fire Prevention Code.

Fire Department means any organization or agency which provides fire protection, public education, fire prevention, emergency medical care, and rescue services within Caldwell County.

Fire District means a designated boundary established by Caldwell County, where fire protection, public education, fire prevention, emergency medical care, and rescue services are provided for by a specific Fire Department within the district.

Fire Marshal means the Caldwell County Fire Marshal and authorized representatives.

Good Cause means adequate or substantial grounds or reason to permit a particular action based on specific information.

High-Piled Combustible Storage means storage of combustible materials in closely packed piles or combustible materials on pallets, racks, or shelves where the top of storage is greater than 12 feet in height. High-piled combustible storage also includes certain high-hazard commodities, such as rubber tires, Group A plastics, flammable liquids, idle pallets, and similar commodities, where the top of storage is greater than 6 feet in height.

Imminent Danger/Threat means any condition existing within a building or structure, or within a space within a building or structure, posing a dangerous or threatening condition or situation that, if not immediately corrected, could result in an event which could lead to severe harm or death.

Modification means the redesign or replacement of existing building systems, equipment, or components regulated by the NC Building and Technical Codes to current or modern standards and requirements.

NCGS means the North Carolina General Statutes.

Notice of Violation means a written document detailing a list of violations associated with a specific building, structure, or premises resulting from an inspection.

NC Building Code means the current editions of the NC State Building Code, NC State Residential Code, NC State Plumbing Code, NC State Mechanical Code, NC State Fuel Gas Code, NC State Energy Conservation Code, National Electrical Code, NC State Building; Existing Building Code, NC State Building; Fire Code, and State of NC Regulations for Manufactured Homes.

Occupant means a person who, by legal contract with an owner of a building, structure, or property, occupies a specific building structure, property, or space within for the purpose of operating a business or other occupation.

Occupancy Classification means every building or structure, and any portion thereof which is classified based on its primary function or use into one of the occupancy groups, or subgroups in accordance with the NC State Building Code.

Owner means any individual, corporation, firm, partnership, association, organization, and/or any other group acting as a unit holding legal title to any structure and/or premises with or without accompanying actual possession thereof, including an authorized agent or attorney, purchaser, devisee, fiduciary and any person having a vested or contingent interest in the premises.

Periodic Inspection means any inspection scheduled according to the outlined inspection schedule in the NC Fire Prevention Code per occupancy classification.

Permit Applicant means a person applying for a permit through the procedures required by the Code Official.

Permit Holder means a person who is appropriately credentialed and/or is legally responsible for any actions specifically designated on a permit.

Permit Scope means the specifically approved actions, work, or operations covered by a permit issued for a permit-required construction or operation.

Permit Type means a specific permit category in accordance with the NC State Building Code.

Plan of Action means a written plan submitted by the responsible party stating in detail the actions to be taken to correct violations found during an inspection including specific timeframes and/or dates for completion.

Re-occurring Violation means a specific violation of the NC Building Code, found to be

consistently occurring, within the same building, structure, or property where a prior Notice of Violation has been given for same.

Responsible Party means an individual, including heirs, executors, administrators, assigns and personal representatives of the individual, and/or a firm, partnership, corporation, governmental agency or other legal entity and successors, assigns, and agents of such individuals or entities who control a property through ownership, lease, occupancy and/or other forms of possession. The term shall also include a person or entity with direct or indirect control or management of a specific property.

Scope of Work means a document provided by a permit applicant or permit holder detailing the operation and/or construction project.

Self-Certification/Self-Certified means a method of proving a code violation has been corrected or remedied by providing proof through means acceptable to the Code Official.

Service System means any building system associated with providing a service to a particular building, structure, or premises, and regulated by the Technical Codes.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

Stop Work Order means a written directive issued by a code official for any building, or part thereof, which is being demolished, constructed, reconstructed, altered, or repaired in a manner in violation of local or State Law, or is in a hazardous condition, and must state what is required to correct all violations.

Technical Codes means those referred to in the North Carolina Administrative Code & Policies definition.

Unsafe Condition means structures or existing equipment that are, or could become, unsafe or deficient because of inadequate means of egress or which constitute a fire hazard or are otherwise dangerous to human life or public welfare, or which involve illegal or improper occupancy or inadequate maintenance.

Violation means a condition or situation not in compliance with the NC Building Code.

SECTION 4. JURISDICTION

This Chapter applies within the area of Caldwell County and shall be enforced within the area of Caldwell County outside of municipal corporate limits. Upon request by resolution from the governing body of any municipality within Caldwell County, the County may, but is not required to, exercise jurisdiction in such municipality for purposes of this Chapter.

SECTION 5. FIRE MARSHAL'S ADMINISTRATION OF ORDINANCE

The Board shall appoint a duly qualified Fire Marshal responsible for this Chapter's impartial administration of this Chapter.

SECTION 6. INVESTIGATION OF FIRES AND EXPLOSIONS

As authorized by NCGS 58-79-1, the Fire Marshal, or the Fire Chief of a Fire Department, shall have authority to investigate or cause to be investigated the circumstances, events, and actions leading to the ignition of a fire or to any explosion and to collect evidence and data to determine the origin and cause of any fire or explosion that occurs within the jurisdictional boundaries. The Fire Marshal may conduct fire or explosion origin and cause investigations or participate in such investigations in other jurisdictions upon request.

The Fire Chief of a Fire Department may request the Fire Marshal to conduct an origin and cause investigation for a fire or an explosion. Prior to requesting assistance from the Fire Marshal, a preliminary investigation should be made by the Fire Chief of the Fire Department to gather any critical information pertinent to the incident. The Fire Chief must report any preliminary findings to the Fire Marshal.

SECTION 7. ADDITIONAL DUTIES OF THE FIRE MARSHALL

In addition to enforcement of the provisions of this Chapter, the Caldwell County Fire Marshal shall:

(a) Advise the Board on improvements in the firefighting and training activities under the supervision and control of the County;

(b) Coordinate firefighting and training activities under the County's supervision or control;

(c) Coordinate fire prevention activities under the County's supervision or control;

(d) Assist contracted fire protection agencies in developing and improving firefighting and fire prevention capabilities;

(e) Make periodic inspections and reports of school buildings and childcare facilities as required by State Law. A Fire Marshal shall not make electrical inspections unless qualified to do so under State Law and holds a valid certificate issued by the North Carolina Code Officials Qualification Board;

(f) Perform those duties and activities as set forth in the Caldwell County Emergency Operation Plan;

(g) Perform necessary duties as it pertains to the operation of emergency management;

and

(h) Perform any other duties and activities as the Board may from time to time require of the Fire Marshal.

SECTION 8. RIGHT OF ENTRY, INSPECTION AND NC BUILDING CODE ENFORCEMENT AUTHORITY

The Fire Marshal is authorized to enter and examine any building, structure, marine vessel, vehicle, or premises, except for one- and two-family dwellings, within the jurisdiction of this Chapter pursuant to State Law.

SECTION 9. RESPONSE AUTHORITY

The Fire Marshal, Emergency Manager, or designee has the authority to respond to any incident within the jurisdictional boundaries of the County and to participate in any function or capacity necessary to ensure the mitigation of any incident as requested by the incident commander.

SECTION 10. NC STATE BUILDING AND TECHNICAL CODES ADOPTED

The County hereby adopts the NC State Building and Technical Codes. The codes, standards, and appendices referenced in the NC Building and Technical Codes shall be part of the requirements of this Chapter.

SECTION 11. COMMERCIAL BUILDING AND STRUCTURE PLAN REVIEW PROCESS

A person or entity wishing to make application for new commercial building construction, repair, alteration, change of occupancy, or addition, to an existing building; or alteration or modification of an existing building service system shall first complete and submit the required permit application along with required documentation to Central Permitting for review. Documents are reviewed for compliance with the NC Building and Technical Codes. The person making the application is the Permit Applicant and is responsible for all required submittals. The permit applicant is responsible for submitting the necessary documentation to inquire as to the extent of documentation necessary to meet code compliance per the Building and Technical Code, as required by the Code Official.

SECTION 12. REQUIRED DOCUMENTATION

(a) Based on the scope of work, the following are required on all commercial projects, for permit-required construction for a Building Permit:

1. Scope of Work;

2. Completed Commercial Plan Review Application;

3. Site Plan;

4. Structural Plan;

5. Life Safety Plan; and

6. Project Value Letter.

(b) The following are required for a permit-required construction pertaining to the appropriate Technical Codes:

1. Plumbing Plan;

2. Electrical Plan;

3. Mechanical Plan; and

4. Fire Protection Plan.

SECTION 13. PERMIT REQUIRED FOR CONSTRUCTION & OPERATIONS REGULATED BY THE NC FIRE PREVENTION CODE

An Owner who intends to conduct an operation or business or install or modify a fire protection system and independent equipment, regulated by the NC Fire Prevention Code, or to cause any such work to be performed, shall first make application to the Fire Marshal to secure the required permit.

When required by the NC Fire Prevention Code, a permit shall be issued by the Fire Marshal. Permits are issued to a single Permit Holder. The Permit Holder is responsible for all work being conducted within the permit scope. The Permit Holder must provide an application for permit, associated documentation or specifications, and any other requirements in accordance with the NC Administrative Code and Policies. When required by the Building and Technical Codes, associated permits must be applied for and issued in conjunction with the required construction or operational permits of the NC Fire Prevention Code.

(a) Operational Permits:

1. A permit application and a Scope of Work are required to be submitted for review and must detail the operation being performed. The details must be represented on the permit upon issuance and is known as the Permit Scope.

2. Each different permit-required operation in accordance with of the NC Fire Prevention Code requires separate permitting and is known as the Permit Type.

3. A separate fee shall be assessed for each different Permit Type in accordance with the Board's fee schedule.

4. Where a single building, or multiple buildings within an associated property of a single business or facility, has two or more permit-required operations of the same permit type, even though the Permit Scope may not be identical, a single permit can be issued to cover the Permit Scope for all operations provided each Permit Scope is specifically listed on the permit.

5. A permit issued for a permit-required operation remains valid until the permit-required operation is no longer within the parameters of the Permit Scope, the entity associated with the permit ceases to exist, or the entity is sold to another entity.

(b) Construction Permits:

1. Permit applications for permit-required construction must specifically detail the work being performed, and all details represented on the permit.

2. Each different permit-required construction in accordance with the NC Fire Prevention Code requires separate permitting.

3. Where a permit-required construction for a specific permit type requires work from more than one entity, each different entity must be permitted and inspected.

4. A separate application and fee are required for each permit issued when two or more permit scopes are associated with a single permit type for permit-required construction.

5. Where permit-required construction of the same permit type is required for more than one building or structure on the same lot or associated property of a business or facility, a single permit shall not be allowed to extend beyond the footprint of each independent building or structure, unless permitted by the NC State Building Code.

6. Where a single building has two or more permit-required construction projects of the same permit type but requires different design criteria and/or different acceptance criteria, a single permit is required for each additional design and/or acceptance criteria.

7. A permit holder for a new construction project must be a NC licensed contractor.

SECTION 14. ALTERATIONS & MODIFICATIONS OF EXISTING EQUIPMENT OR SERVICE SYSTEMS

Alterations or modifications to existing equipment or a Service System, regulated by the NC Fire Prevention Code, shall not commence before a permit is applied for and secured

when required. The permit holder for an existing building may be the Owner, Occupant, or Responsible Party, provided all work is performed by the appropriate, licensed entity when required by State Law and acceptable to the Fire Code Official.

SECTION 15. SUPPORTING DOCUMENTATION

Supporting documentation required for a permit must be submitted in the format and detail required by the Code Official. Drawings and specifications shall be provided to scale with sufficient clarity and detail to indicate the work's nature and character. The Code Official may require any details or documentation necessary to determine compliance. Documents may be required to be sealed by a registered design professional when required by State Law or the Code Official.

SECTION 16. COMMERCIAL BUILDING & STRUCTURE PLAN REVIEW PROCESS

All submitted applications for construction or operational permits are subject to plan review pursuant to the North Carolina Fire Prevention Code, local ordinances, state laws, and/or other regulatory documents prior to a permit being issued.

SECTION 17. APPROVAL OF PLANS

All commercial plans or plan sets are reviewed by the appropriate code enforcement official for compliance with the NC Building Code.

SECTION 18. DURATION OF PERMITS

An operational permit remains in effect until reissued, renewed, or revoked for such a time as prescribed on the permit. Permits are non-transferable, and any change in occupancy, operation, tenancy, or ownership requires a new permit. Construction permits are valid as specified in State Law or until the permitted work has passed final inspection and a Certificate of Compliance is issued.

SECTION 19. INSPECTIONS ON PERMITS

Inspections shall be conducted to verify compliance with permit-required construction and operations regulated by the NC Building and Technical Codes. The Code Official is authorized to conduct as many inspections as necessary to ensure compliance, based upon permit type and acceptance procedures.

SECTION 20. SCHEDULING INSPECTIONS

Only the Permit Holder is authorized to schedule inspections on permits. The Permit

Holder is permitted to authorize a designated representative who can schedule inspections on permits.

SECTION 21. FEES FOR INSPECTIONS

Fees shall not be assessed for initial inspections required on permits. The Code Official is authorized to assess a fee, when the Permit Holder schedules an inspection on a permit which is not ready or does not have the permitted work in compliance.

SECTION 22. CERTIFICATE OF COMPLIANCE

The Code Official issues a Certificate of Compliance when the conditions of a permit are deemed to be in full compliance and all inspections are completed.

SECTION 23. STOP WORK ORDER

When in the course of their duties, a Code Official discovers a commercial building or structure, or part thereof, is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State Law or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the Code Official will notify the responsible party when possible. The Code Official places a Stop Work Order in accordance with State Law. The Stop Work Order must be in writing and directed to the person doing the work and state the specific work to be stopped, the exact reasons for the stoppage, and the conditions under which the work may be resumed. Appeals to the issuance of a Stop Work Order shall be in accordance with State Law.

SECTION 24. PERIODIC INSPECTIONS FOR HAZARDOUS OR UNLAWFUL CONDITIONS

In order to preserve and protect public health, safety and welfare, and to satisfy the requirements of State Law. The County has a periodic inspection schedule, based upon the minimum frequency outlined in the NC Fire Prevention Code, to identify activities and conditions in buildings, structures, and premises posing a danger of fire, explosion, or related hazards, and conditions posing an inimical threat to human life, safety, and health.

SECTION 25. INSPECTION AUTHORITY

Under the Fire Marshal’s authority, the Fire Code Official has the authority to enter and examine any building, structure, marine vessel, vehicle, or premises, for the purpose of conducting inspections, in accordance with the NC Fire Prevention Code. The Fire Code Official is authorized to conduct inspections deemed necessary to determine the extent of compliance needed to remain in compliance with NC Building Code.

SECTION 26. EXISTING BUILDINGS

Existing buildings, structures, and premises shall be maintained to the extent required by the NC State Building Code cycle in effect when initially approved for occupancy. Changes in occupancy/use, additions, alterations, repairs, changes, or modifications to components of the means of egress, or storage features shall not be permitted unless a new permit is obtained, the permitted work inspected, and approval granted by the appropriate Code Official(s).

SECTION 27. EXISTING BUILDINGS

It shall be unlawful for a person, firm, or corporation to erect, construct, alter, repair, remove, demolish, or utilize a building, occupancy, premises, or system regulated by the NC Building Code, or cause same to be done, in conflict with, or in violation of any of the provisions of the NC Building Code and this Chapter.

SECTION 28. VIOLATIONS

If during a scheduled inspection, the Fire Code Official discovers a violation of the NC Building Code, the Code Official will prepare a written Notice of Violation. The notice must be served upon the Owner, Occupant, or the Responsible Party, and enforcement procedures followed. Hazards or violations identified during an inspection pertaining to the Technical Codes must be brought to the attention of the appropriate Code Official for remedy. Any Code Official who is authorized to practice code enforcement within the County's jurisdiction, upon receiving notification of a violation, is authorized at all reasonable hours, for the purpose of examination, to enter all buildings and premises within the jurisdiction upon presenting proper credentials. If entry is refused, an administrative search warrant will be sought.

SECTION 29. PENALTIES

(a) Criminal. Any person, contractor, firm, or corporation who violates the provisions of this Chapter shall, upon conviction, be guilty of a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

(b) Civil. When a violation constitutes an unsafe condition, as defined by State Law, the County may assess fees in accordance with State Law and the County’s fee schedule.

SECTION 30. OWNER / OCCUPANT & RESPONSIBLE PARTY

Correction and abatement of violations are the responsibility of the Responsible Party. Where an Owner or Occupant creates or permits a violation of the NC Building Code, the Owner or Occupant shall be held responsible for the abatement of such violations.

SECTION 31. COMPLIANCE WITH NOTICES OF VIOLATION

A Notice of Violation issued or served shall be complied with by the Owner, Occupant, or Responsible Party responsible.

SECTION 32. ENFORCEMENT OF VIOLATIONS OF NC STATE BUILDING CODES

(a) Violations of State Building Codes. When a violation is discovered during an inspection, the Fire Code Official provides a Notice of Violation to the Responsible Party who is responsible for repairing or remedying the violation.

(b) Correction of Violations. The Responsible Party is required to provide self-certification of corrections of any violation by a means acceptable to the Code Official. If the violation is not self-certified, and the same violation is discovered during the following scheduled periodic inspection or subsequent inspections, a civil penalty shall be assessed in accordance with State Law and the County's fee schedule.

(c) Unsafe Buildings and Conditions. If a premises, a building or structure, or any Service System, in whole or in part, constitutes a clear and inimical threat to human life, safety, or health, the Code Official shall issue orders for the Responsible Party to remedy the condition within a specified time frame. In addition, temporary alternatives may be required by the Code Official, to minimize exposure or subjection to unsafe conditions.

(d) Initial inspection. The Responsible Party is given a specific, reasonable period to repair or remedy the unsafe condition. A first compliance inspection is scheduled for a period of no less than 30 days from the initial inspection.

(e) Approved Plan of Action. The Fire Code Official has the authority to approve an extended time frame for abating a violation and/or unsafe condition. The Responsible Party must make such a written request and specify a reasonable time frame and specific measures to be enacted to meet compliance. The Responsible Party must demonstrate good cause as to the reason for the request. If approved, the plan of action must be followed, and a temporary alternative may be required by the Code Official to permit continued use.

(f) Extension of an Approved Plan of Action. The Fire Code Official is authorized to permit one extension of an approved plan of action due to extenuating circumstances, based upon proof hardship, or circumstances beyond the control of the Responsible Party.

(g) Imminent Danger and/or Imminent Threat of Danger. If an imminent threat or a dangerous condition is discovered, the building shall be evacuated immediately.

(h) Structural Hazards. Where an apparent structural hazard is caused by the faulty

installation, operation, or malfunction of any of the items or devices governed by the NC Building Code, the Fire Code Official shall immediately notify the Building Code Official.

(i) Evacuation. The Fire Code Official or the Fire Department official in charge of an incident is authorized to order the immediate evacuation of any occupied building, structure, or space within a building deemed unsafe or having hazardous conditions presenting an imminent danger to building occupants. People must immediately leave the structure or premises, and not enter until authorized to do so by the Fire Code Official or the Fire Department official in charge of the incident.

(j) Summary Abatement. Where violations of the NC Building Code are deemed hazardous to life and property, the Fire Code Official or Fire Department official in charge of an incident is authorized to abate the conditions or require the Responsible Party to abate the conditions.

(k) Service Utilities. The Fire Code Official has the authority to authorize disconnection of utility service to a building, structure, or Service System to safely execute emergency operations or to eliminate an immediate hazard constituting an imminent danger. The Fire Code Official will notify the serving utility and, when possible, the Owner, Occupant, or Responsible Party of the decision to disconnect before taking such action. When the Responsible Party is not available, or cannot be located, notification will be sent via certified mail, return receipt requested.

(l) Overcrowding. Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof is prohibited. The Fire Code Official, upon finding any overcrowding conditions or obstructions in aisles, passageways, or other means of egress, or upon finding any condition constituting a life safety hazard, is authorized to cause the event or business to be stopped until the condition or obstruction is corrected.

SECTION 33. KEY BOXES FOR EMERGENCY ENTRY BY FIRE DEPARTMENTS

A key box conforming to UL 1037 shall be provided for: any newly constructed structure or facility; an existing structure or facility undergoing a change in use or occupancy classification; or if travel along a fire apparatus access road is restricted because of a secured doors, gates, or other type of barricade; and the associated structure of facility has a means of automatically initiating a fire department response. The location of the key box must be approved by the Fire Chief of the district in which the structure or facility is located.

SECTION 34. APPROVED WATER SUPPLY REQUIRED

Subject to the Fire Code Official's approval of an adequate water supply capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings, or portions of buildings are constructed or changes to occupancy or use occur.

SECTION 35. LOCATION OF FIRE HYDRANTS

Public fire hydrants shall be located along an apparatus access within 1,000 feet of any newly constructed building or structure. Where a building or structure is situated on a property and is located more than 400 feet from a fire hydrant along an apparatus access, the Fire Code Official is authorized to require a private fire hydrant to be installed on the property. The installation of a public fire hydrant must be contracted with the responsible water purveyor. Where it is not feasible or possible to install a fire hydrant, the Fire Code Official is authorized to permit alternative methods of supplying water, such as a Fire Department water tanker.

SECTION 36. POSTING OF OUCCPANT LOAD IN COMMERCIAL BUILDINGS OR STRUTURES USED FOR ASSEMBLY PURPOSES

Commercial Buildings and Structures, or portions of buildings and structures with an occupancy classification as a Group A, Assembly occupancy, shall be required to post an occupant load posting, signed by a Fire Code Official. The occupant load shall be based on the interior design and layout and egress features associated with the same, notwithstanding the design occupant load required for building construction as required by the NC Building Code.

SECTION 37. FIRE DEPARTMENT CONNECTIONS

Where a building or structure has an automatic sprinkler system installed requiring a demand of greater than 0.25 over 2,500 square feet, the fire department connection shall be a Large Diameter Hose (L.D.H., Storz) connection acceptable to the Fire Chief of the department providing fire protection for that district. Fire department connections shall be located so that fire apparatuses and hoses connected to supply the system do not obstruct access to the buildings for other fire apparatuses. The location of fire department connections must be approved by the Fire Chief of the department serving that district.

SECTION 38. COUNTY FIRE PROTECTION & CONTRACTS FOR FIRE PROTECTION SERVICES

The County may do any of the following: establish, organize, equip, support, prescribe the duties of, and maintain a fire department; provide financial assistance to incorporated volunteer fire departments; contract for firefighting or prevention services with one or more counties, cities, or other units of local government or with an agency of the State government, or with one or more incorporated volunteer fire departments; and for these purposes appropriate funds. The Board may also designate fire districts or parts of existing districts and prescribe the boundaries thereof for the purpose of insurance grading, fire service districts, and response districts.

A contract pursuant to this Section shall not exceed 10 years in duration and have at

least a 180-calendar day termination provision.

Where the County is under contract with an entity for the provision of fire protection services and the entity merges or dissolves or ceases to provide fire protection services for any reason, any real or personal property purchased, in whole or in part, with funds provided by the Board, shall revert to the County for allocation for the purposes of insuring fire protection.

SECTION 39. CONSTRUCTION OR USE OF A STRUCTURE FOR FIRE PROTECTION

Prior to the use, construction, erection, relocation of any building, structure, or property as a fire department or fire station to which public funds provided through property tax assessments are utilized to secure, erect, finance, or otherwise encumber, the Fire Marshal and the NC Department of Insurance shall be consulted and be participating parties in the planning of such. The Fire Chief of the Fire District shall present such plans to the Board and receive approval prior to proceeding to bids for contract purposes.

SECTION 40. INJUNCTIVE RELIEF

As authorized by NCGS 153A-123(e), the County may enforce this Chapter through an action in the appropriate division of the General Court of Justice in the County to restrain any violation of this Chapter and to compel compliance with any provision of this Chapter. The County may seek a mandatory or prohibitory injunction and an abatement order commanding the violator to correct the unlawful condition or cease the unlawful use of the property. In any such action, the County may seek an order to direct that any building or other structure on the property which causes or contributes to or is used in any violation of this Chapter be closed, demolished or removed; that fixtures, furniture, or other movable property that causes or contributes or facilitates a violation be removed from buildings on the property; and any other action necessary to allow the property to be used in conformity with this Chapter be taken.

SECTION 41. COMPUTATION OF TIME

Neither the County nor any of its Commissioner's, agents, employees, or officers shall be liable for any damage to persons or property arising from any inspection or re-inspection authorized or required by this Chapter or from the failure to inspect or re-inspect or from the issuance or denial of a permit or the approval or disapproval of any equipment as authorized in this Chapter.

In computing any period prescribed by this Chapter for performing an act, the day of the act, or event upon which the designated period begins to run is not to be included. The last day of the period is to be included unless the last day is a Saturday, Sunday, a day recognized by resolution of the Board as a holiday for employees of the County Government, or a day on which weather or other conditions have caused the County to close its offices for the transaction of business, in which event the period to perform an act runs until the end of the

next day which is not one of the days mentioned in this sentence for which the last day of the period is not included.

CHAPTER ___ NOISE REGULATIONS

SECTION 1. AUTHORITY

Pursuant to NCGS Chapter 153A and NCGS 14-4, and other applicable law, Caldwell County hereby establishes these Ordinances.

SECTION 2. PURPOSE

This Chapter prohibits certain unusually loud, excessive, disturbing, or continuous noises which seriously disturb a person of ordinary sensibilities, or are a detriment to public health, safety, and welfare.

SECTION 3. DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

County means Caldwell County.

Board means the Caldwell County Board of Commissioners.

NCGS means the North Carolina General Statutes.

Noise means any sound or combination of sounds which, because of volume, duration or intensity annoys, disturbs, injures, harms, or otherwise endangers the comfort or peace of persons of ordinary sensibilities or negatively impacts public health, safety, and welfare. Noise includes repeated dog barking.

Person means any individual, corporation, firm, partnership, association, or other legal entity.

Sound means any disturbance of air detectable by the unaided human ear, or which produces vibrations detectable by persons of ordinary sensibilities.

Sound Amplification Device means any electronically powered, operated, or assisted device or instrument used to amplify the human voice, music, or other sound, including but not limited to, loudspeakers, audio equipment, stereos, and radios.

State means the State of North Carolina.

State Law means the laws, regulations, and rules of North Carolina.

SECTION 4. NOISE GENERALLY

It shall be unlawful for any Person to authorize, allow, or cause to be emitted from any property or source under their control any noise which is unreasonably loud, excessive, continuous, or disturbing, so as to frighten, pose a danger to the health, safety and welfare of, or seriously disturb any person of ordinary sensibilities who:

(a) If the noise emanates from a source located on private property, is located on other property; or

(b) If the noise emanates from a source located on a street or other public property, is located on private property or the street or other public property.

SECTION 5. PARTICULAR NOISE

Without limiting the generality of Section 4, the following acts are specifically declared to be unlawful and a violation of this Chapter:

(a) The blowing of a horn on any motor vehicle except when the horn is used as a warning device.

(b) The operation of any motor vehicle or any engine without a muffler, or with a muffler so defective or so designed that the vehicle emits an unusually loud noise.

(c) The operation of a motor vehicle which creates unusual noises through the screeching of tires or racing of engines.

(d) The operation of a motor vehicle so loaded or so out of repair or is operated in such a manner as to create loud grating, grinding, rattling, backfiring, or similar noises.

(e) The use of any mechanical device operated by compressed air unless the noise created is effectively muffled and reduced.

(f) The excavation, erection, demolition, alteration, or repair of any building in any area not zoned for commercial or industrial use at any time other than between the hours of 7:00 am and 6:00 pm on weekdays and Saturdays, except in case of urgent necessity in the interest of public safety.

(g) The keeping of any animal or bird which causes frequent, habitual, repeated, or excessive noise.

(h) The discharging of squibs, firecrackers, gunpowder, or other combustible substances without a permit issued by the County fire marshal's office.

(i) The discharge of all manner of firearms is prohibited between the hours of 11:00 pm and 7:00 am, except as required in the hunting and taking of animal prey or in the defense of person or property, so long as the discharge is in conformance with all other laws.

(j) The playing or use of any sound amplification device, television, or any musical instrument, so as to unreasonably disturb the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially with the operations of any church, school, theater, library or other similar place of assembly.

(k) The use of any sound amplification device, musical instrument, or other device for the purpose of attracting attention by the creation of noise to any performance, show, sale, display, advertisement or merchandise, or other commercial venture.

(l) Operation of garage or service station machinery or equipment between the hours of 11:00 pm and 7:00 am except where such activity is being operated in conformity with the County's zoning ordinance.

(m) Operation of construction machinery or equipment between the hours of 11:00 pm and 7:00 am.

(n) Operation of lawn mowers or other power-operated domestic tools out-of-doors between the hours of 11:00 pm and 7:00 am.

SECTION 6. EXCEPTIONS

The following are excepted from the applications of Sections 4 and 5 of this Chapter:

(a) Noise or sound emanating from scheduled outdoor, school-sanctioned athletic events.

(b) Noise or sound of safety signals, warning devices, emergency pressure relief valves or church bells, provided the church bells are not sounded for more than five minutes in any hour.

(c) Noise or sound emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations.

(d) Noise or sound emitted from any authorized emergency or public safety vehicle.

(e) Noise or sound emanating from parades, street fairs, festivals or similar events which are conducted, sponsored, or authorized by the County or a municipality.

(f) Noise or sound from railroad operations.

(g) Noise or sound emanating from farm equipment.

SECTION 7. NOISE COMPLAINT PROCEDURE

A Person with reasonable grounds for believing a provision of this Chapter is being violated may make a report to the County Sheriff's Office. The investigating officer may issue a criminal citation.

SECTION 8. PENALTIES

Any Person violating a provision of this Chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

CHAPTER ___ RACETRACKS AND DRAG STRIPS

SECTION 1. AUTHORITY

Pursuant to NCGS Chapters 130A and 153A, Caldwell County hereby establishes this Ordinance.

SECTION 2. DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Chapter, except where the context clearly indicates a different meaning:

Board means the Caldwell County Board of Commissioners.

County means Caldwell County, North Carolina.

NCGS means the North Carolina General Statutes.

Person means any individual person, corporation, partnership, association, or legal entity.

Race Vehicle means any motorized vehicle, including but not limited to, cars, trucks, motorcycles, or go-carts, used for racing.

Racetrack means a track for racing Race Vehicles.

Drag Strip means a straight track or section of road for racing.

SECTION 3. LIMITED TIMES OF OPERATION

(a) Hours of Operation. It shall be unlawful for any Person to operate, or to permit or allow any other Person to operate, any Race Vehicle, whether or not the Race Vehicle is engaged in speed competition with any other Race Vehicle, and including testing, practicing or otherwise running the motor of any Race Vehicle designed to engage in racing or speed competition on the premises of any Racetrack or Drag Strip in the County, except during the following times:

1. The months of March, April, May, June, July, August, September, and October, and the first full weekend in November; and

2. Thursdays, Fridays, and Saturdays; provided, however, no Racetrack or Drag Strip may operate on more than 2 of the permitted days in any one week; and

3. Between the hours of 12:00 pm and 9:00 pm on one of the 2 permitted days of operation each week, and between the hours of 12:00 pm and 11:00 pm on the other permitted day of operation each week.

(b) This Section is intended, and shall be construed, to apply only to commercial Racetracks and Drag Strips determined by engagement in one of more of the following practices: charging admission for spectators; awarding prizes to participants either by trophies, money or things of monetary value; selling food, drink, t-shirts, or other items; having seating for spectators; using the services of track officials; and/or intending to make money for the owner and/or operator of the Racetrack or Drag Strip. This Section is not intended, and shall not be construed, to apply to those venues constructed by, or for one or more individuals on their property consisting of circular tracks, jumps or mounds of dirt used for recreational activity such as 4-wheelers, off-road bikes and motorcycles, go carts, and other all-terrain vehicles which are used exclusively for any family members, neighbors and friends, and which do not engage in any of the activities described above.

SECTION 4. OPERATION AT TIMES NOT AUTHORIZED

The Board is authorized to grant, upon application, a permit to allow a Racetrack or Drag Strip to operate at specified date(s) and times not otherwise permitted by this Chapter, subject to the following limitations and considerations:

The application and permit must specify the date(s) and beginning and ending times of the event.

(a) Applications for all requested permits for any one year must be submitted to the Board at the same time.

(b) An application for a permit may include a requested rain date in case the event cannot be held on the primary requested date due to inclement weather.

(c) In determining whether to grant the permit, the Board may consider the following:

1. The nature of the proposed activity;

2. Previous experience with the applicant;
3. The time and duration of the proposed event;

4. Other activities in the specified geographical area at the same time as the proposed activity which could be disturbed by the proposed activity;

5. The cultural or social benefit of the proposed activity;

6. The economic benefit to the community;

7. Any economic hardship on the applicant if the permit is denied or on others if it is allowed;

8. The effect of the activity on residential areas;

9. Any previous violations of this Chapter by the applicant; and

10. Any objections raised by neighbors potentially affected by the activity.

(d) Any violations of the conditions of an issued permit are a violation of this Chapter.

(e) Permits are subject to the following limitations:

1. No more than 4 permits will be issued in any calendar year for any Racetrack or Drag Strip.

2. 3 of the 4 permits shall be issued for 1 day only.

3. One of the 4 allowable permits may be issued to accommodate a special event for 3-4 consecutive days, as follows: It may be issued to allow practice on a Thursday and racing on Friday and Saturday. This permit may conditionally allow racing on Sunday, with no firing of engines, warm-up or racing to begin earlier than noon on Sunday, and only if all racing on either Friday or Saturday is canceled because of inclement weather.

SECTION 5. PENALTIES

(a) Criminal Penalties. Any Person(s) violating this Chapter, or any Section thereof, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisoned for not more than 30 days, or both. Each occurrence of a violation shall be treated as a separate occurrence.

(b) Civil Penalties. Any violation under the provisions of this Chapter subjects the offender to a civil penalty assessed by code enforcement. The penalty is in addition to the costs incurred by the County to correct violations of this Chapter. The penalty for a first violation of this Chapter shall be $250.00. The penalty for second and subsequent violations of this Chapter by the same Person shall

be $500.00 per violation. Each occurrence of a violation shall be treated as a separate offense. Civil penalties must be paid in full within 10 days after service of the citation.

(c) Equitable Remedies. This Ordinance may be enforced by equitable remedies, including, but not limited to, those in accordance with NCGS 153A-123 and 153A-140.

CHAPTER ___ PUBLIC WATER SYSTEM

SECTION 1. AUTHORITY

Pursuant to NCGS Chapter 160D, and other applicable laws, Caldwell County hereby establishes this Ordinance.

SECTION 2. APPLICABILITY

This Ordinance shall apply to the public water system owned, operated, and maintained by Caldwell County.

SECTION 3. DEFINITIONS

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Application for Service means a written County application submitted by the prospective User to the Water Department prior to paying any fees and connecting to the water system.

Board means the Caldwell County Board of Commissioners.

Building Connection means any privately-owned water line which extends from the County-owned, operated and maintained service connection, interconnected with the service connection and capable of being used by a Customer for water service.

County means Caldwell County, North Carolina.

Cross-Connection means a connection from the County Water System carrying potable public water to any secondary system, the water supply source of which is distinct from and unrelated physically to that of the potable public supply. Cross-Connection shall also be defined as any connection from an authorized metered-service line of a water user to the plumbing system of an unauthorized user, as well as private wells and natural springs, the purpose of which is to evade the legitimate processes for obtaining water.

Customer, Consumer or User means the actual user of record, on the billing account, of the water service.

Development means a portion of land, including any land from single-family property to a subdivision, which is being improved to the extent water service is desirable.

Disconnection of Service means the stoppage of water service to a property as a result of a request by a Customer for stoppage, or for any other reason set forth in this Chapter. Disconnection of Service may be accomplished by removal of water

service connection or by locking, sealing, capping, or other action to affect water service connection.

Fire Service Connection means the portion of the water line beginning at the water main and terminating at the edge of the street right-of-way, the purpose of which is the provision of fire protection.

Fixture Unit Demand means the amount of water required to properly operate the water fixtures installed in the plumbing system of the structure.

NCGS means the North Carolina General Statutes.

Oversized Mains means a water main which is sized larger than required for servicing future demands.

Owner means the Person holding legal title to the serviced premises.

Person means any individual, corporation, firm, partnership, association, or other legal entity.

Petition means a written request on a County form submitted by the prospective users to the Water Department requesting water services be extended to their properties.

Plumbing means all pipes, fittings, and appurtenances interconnected with the delivery side of service connection, beginning at the public right-of-way, and extending to, and including, all structural plumbing, the purpose of which is the delivery of water.

Plumbing Inspector means a duly authorized employee or agent of the County, delegated with the responsibility for ensuring building connections are installed in compliance with NC building codes.

Public Water Line means a water line, installed, or acquired, owned, operated, and maintained by the County.

Publicly Dedicated Easement means a portion of land across private land, on which the Owner has given written permission for the County to install, operate, and maintain a public water line.

Reconnection Fee means a non-refundable fee charged by the County for restoration of service to a property where a disconnection of service has occurred, and where no transfer of service from one Customer to another is involved.

Reconnection of Service means any action by the County to restore water service to a property where service has been disconnected.

Renter means any Person occupying a property, other than the Owner.

Service Line means the water line from the distribution main to the meter box, and other appurtenances installed, owned, operated, and maintained by the County.

State Law means the laws, regulations, and rules of North Carolina.

Subdivision means the division of a tract of land into 2 or more lots in compliance with the County's Unified Development Ordinance.

Transfer of Service Fee means a non-refundable fee charged for the transfer of a billing account for water service from one Customer's name to another, regardless of whether a physical reconnection of the service is involved.

Water Service Connection (TAP) means all County-owned, operated and maintained appurtenances, including the service line, meter and/or curb box, and metering appurtenances, the purpose of which is the delivery of water service from the County's water system to a Customer.

SECTION 3. FACILITY LOCATION

No water facilities shall be installed and accepted for ownership and maintenance by the County unless they are in a dedicated public right-of-way, dedicated public street, or dedicated public easement.

SECTION 4. OWNERSHIP OF WATER FACILITIES AND APPURTENANCES

All water facilities and appurtenances, when installed or accepted by the County, shall become, and remain the property of the County; and no person, by payment of a charge or fee, or by any construction of facilities accepted by the County, may acquire any interest or right in any of these facilities or any portion thereof, other than for the privilege of having property connected for water service.

SECTION 5. RIGHT TO REFUSE SERVICE

(a) The payment of any costs or fees, the submittal of any petition or any other act of requesting water service does not guarantee the commencement of service. The County has the right to refuse to extend service upon any reasonable grounds; specifically, for any use considered detrimental to the water system, nonpayment of required fees, or in the sole determination of the County it is not economically feasible to do so.

(b) The County has the right to refuse service to any Person who was a previous Customer of the County water system, with an unpaid balance remaining on an account, until payment in full of the unpaid balance has been paid.

SECTION 6. WATER BILLING AND RATES

The reading of meters, billing frequency, and water rates are established by the Board. A water bill is deemed to be correct if no appeal is filed within 10 days from the date of billing.

SECTION 7. BILL ADJUSTMENT(S)

(a) A meter reading and/or billing error by the County resulting in an incorrect bill will be adjusted without penalty to the Customer. An adjustment to make a correction is based upon verification of the actual amount of water consumed by the Customer during the billing period. If the error is due to failure of the metering device(s) and results in incorrect recording of consumption and no accurate verification is possible, the bill for that month will be adjusted to the average consumption for the Customer over the most recent 11-month period. If less than 11 months' history is available, the average of the total history for the Customer determines the amount to be billed. If overpayment has occurred, the correction is applied as credit to the Customer's account.

(b) If a Customer receives a correct bill for unusually high consumption resulting from a leak in the building connection plumbing, upon request, the bill will be adjusted based on submitted evidence, including parts and/or labor invoices of repairs made to correct the leak. Upon verification of a leak occurred, and repairs made to correct the leak, the County will compute the average water consumption over the most recent 11-month period, excluding the period when the leak occurred, noting the average charges for that amount. Excess gallons above the average consumption are calculated at the actual cost to the County to purchase or produce the water. The sum of these 2 calculations determines the adjusted amount to be charged. This adjustment is limited to 1 event per 5-year period.

SECTION 8. WATER SERVICE CONNECTION APPLICATION

All water service connection applications must be completed through the County Water Department, or at any other County sites authorized to accept applications. Applications for service must be made a minimum of 10 working days prior to desired service date. Once the service connection is made, billing begins at the rate in accordance with the County's Fee Schedule.

SECTION 9. WATER SERVICE CONNECTION FEES

All service connections are charged in accordance with the County's Fee Schedule. All standard, fixed service connection fees must be paid in full at the time of application.

SECTION 10. MANIFOLD CONNECTIONS

The Owner of the property is billed, as follows:

(a) The person in whose name the account is billed, is charged the standard minimum monthly charge of the nonresidential rate, multiplied by the total number of single-family units on the property, less a unit in which the person in whose name the account is billed resides, if applicable;

(b) The single-family unit water charge is in the County's Fee Schedule; and

(c) The monthly bill is the greater of the actual charge for water consumed, or the amount of the standard minimum monthly charge, when multiplied by the total number of single-family units on the property.

SECTION 11. RENTER; TRANSFER OF SERVICE / RENTER DEPOSIT / CHARGES

A person renting or leasing a property where a service connection is in place, and where a billing account has previously been established, and the account is being placed under the renter's name, may obtain service by paying the applicable fee, and by advancing a standard (refundable) renter's deposit. The County, as a guarantee of payment for water used, holds the renter's deposit. The deposit may be applied toward payment of the final water bill. The remainder, if any, is refunded to the person who made the deposit. A renter may not be charged any portion of a previous renter's unpaid account balance.

SECTION 12. TRANSFER OF SERVICE FEE / CHARGES

(a) A property where a County-owned service connection is in place and an account has been established, becomes a new Customer, and obtains service by paying a nonrefundable transfer of service fee. The new Customer may not be charged any unpaid balance of the previous owner.

(b) A person purchasing a property where a service connection is not in place must complete a Tap application and pay the applicable fee.

SECTION 13. DISCONNECTION OF WATER SERVICE BY REQUEST

(a) No Person, other than the Person in whose name an account is billed, may request a disconnection of service.

(b) A request for disconnection of the water service must be made to the County at least 3 working days prior to the date termination of service is desired. The bill includes all water consumption of water used to the time of disconnection. No liability is assumed by the County for damage to a Customer's property resulting from disconnection of the service.

SECTION 14. DISCONNECTION OF WATER SERVICE FOR NON-PAYMENT

A delinquent water bill of 45 days or more constitutes grounds for disconnection of water service. To have the service reconnected, the applicable fee, along with any past due balance, must be paid.

SECTION 15. UNAUTHORIZED WORK OR ACCESS ON SYSTEM

(a) No unauthorized person shall tamper with, work on, or in any way alter or damage any County water facility.

(b) Unauthorized work includes the opening or closing of valves, operating fire hydrants, breaking a lock or seal on a County-owned appurtenance, or causing any water not legally paid for (bypassing) to flow from the system. No Person, except those authorized by the County, shall cut into or make any connection to the system. A Person violating this Section is responsible for all costs associated with the illegal tampering and is subject to all penalties by County Code and State Law.

(c) Absent the consent of the County, or applicable city, it shall be unlawful for any Person to tap any water or sewer pipe, or water or sewer main for the purpose of taking or using water, or to take or use any water from any water pipe, water main or water hydrant belonging to the County or applicable city, or to utilize a sewer system in any manner without the consent of the applicable city and the payment of required fees.

SECTION 16. MAINTENANCE BY CUSTOMER

(a) The Customer is responsible for the maintenance of all building connection plumbing, from the discharge side of the service connection into and including the structural plumbing. The County has the right to disconnect service to any property where the plumbing is not properly maintained, or where applicable codes are violated.

(b) The Customer is responsible for the installation and maintenance of all devices and appurtenances necessary to increase or decrease the pressure from the County water system.

SECTION 17. LIABILITY OF COUNTY

The County shall not be liable to consumers, owners or any Person for the failure to furnish water for any reason; for the quantity (pressure and/or volume) of the water furnished; or for any damage resulting from the shutting off or turning on of water from the mains or reservoirs, or opening or closing of valves and/or hydrants, even though no notice of the shutting off or turning on of water has been given. All permits and contracts for the use of water from the County water system are expressly made subject to the provisions of this Chapter.

SECTION 18. METERING DEVICES

All metering devices must be installed, owned, operated, and maintained by the County, and the County reserves the right to remove, test, seal and interfere with a metering device for any cause(s) deemed necessary without notice.

SECTION 19. BYPASS

(a) No bypass around any metered service connection shall be installed unless approved by the County in writing. The installation must be performed and inspected by the County; and where these devices exist, the use shall be regulated by the County.

(b) Unauthorized use of any bypass may result in disconnection of service as well as all other penalties, civil and/or criminal, as provided by law.

SECTION 20. CROSS-CONNECTIONS

Cross-connections are expressly prohibited and may result in removal of the service connection supplying the cross-connection, as well as all other penalties, civil and/or criminal, as provided by State Law, including the inter-connection of a well water supply with a potable public water supply. Upon discovery of a cross-connection upon

any property being furnished water through the County water system, the owner of the property will be notified the cross-connection must be shut off immediately and physically disconnected within 24 hours and a failure to remove or correct the cross-connection within 24 hours will result in the disconnection of service. If the correction is not made within the 24-hour period, the service will be disconnected and not be reconnected without payment of the applicable fee.

SECTION 21. INSPECTION OF PLUMBING

The County reserves the right to make a meter reading(s) and inspect the plumbing on a customer's property without notice. This may be done in the case of an abnormally large water bill, use of water considered detrimental to the County system, or for any other reason, as deemed necessary by the County.

SECTION 22. REFUSAL TO ACCEPT REDUCED-CHARGE SERVICE CONNECTION

Following action taken by the Board, should any person pay a reduced service connection charge during a sign-up period, and refuse to permit or allow a service connection to be installed at the time the water line is installed, and refuse to pay the minimum rate from the date water becomes available through the line, the Person is refunded the service connection charge. Thereafter, to receive water, the Person must pay the standard service connection charge.

SECTION 23. DISCONNECTED SERVICE

The County may disconnect the water service for any Customer due to a violation of this Chapter, for nonpayment of bills, or for any reason which may be detrimental to the system. Service will not be reinstated until the conditions bringing about disconnection have been rectified. These costs may include, but are not limited to, delinquent water bills, reconnection fees and any damage to the water system. If a disconnected service is reinstated without authorization, the service connection will be removed, an additional charge levied, and the owner or Person responsible for the unauthorized reinstatement of service is subject to all penalties provided by this Chapter or State Law.

SECTION 24. EXTENSION BY PETITION

A petition on a County form is required for a request for extension of water service. The petition must be filed with the County Water Department and specify the name, mailing address, block and lot numbers, name of person responsible for payment of water billing, if different than that on the petition, and type of service required. Each petitioner must agree to be responsible for the standard service connection fee, as a minimum, and not less than the minimum monthly water charge from the time water becomes available through a service connection.

SECTION 25. PROCESSING OF PETITIONS

Upon receipt of a petition, a cost estimate is calculated to determine the feasibility of installing the requested water mains. If it is determined a petition is not feasible, the petition is kept on file for later consideration. By the petitioner's signature, the petitioner

agrees to accept a service connection when or if the requested lines are installed, and to pay not less than the minimum monthly charge for a period of 7 years, after becoming a County Water Customer.

SECTION 26. RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL SUBDIVISION EXTENSIONS

(a) All existing subdivisions which have been previously developed and which are no longer under single ownership, shall follow the extension policy by petition. Developers of new subdivisions shall be responsible for all line extensions within the subdivision. A registered professional engineer licensed to practice in the State of North Carolina shall engineer the extension(s).

(b) The extensions shall be engineered in accordance with the County's Standard Technical Specifications for Water Line Construction, using sound engineering principles and in adherence to all local, state, and federal regulations. The cost of the design, state approval fees, materials and construction of the water lines and appurtenances shall be borne by the developer, except where monetary and/or in-kind participation by the County has been authorized by administrative action or policy. If during review of the design for any proposed water line extension the County decides to oversize or enlarge the line, then the County shall bear all cost differences between the original and new design.

SECTION 27. EXTENSION OF RIGHT-OF-WAY

Should it be necessary for a developer or any Person to extend the County water system along an existing street in order to reach a property or subdivision, a sign-up period of not more than 30 days may be designated, during which time a property owner(s) may obtain a service connection at the standard price, or at a reduced or surcharged price, provided the Board has taken action to reduce or increase the price.

SECTION 28. FIRE PROTECTION CONNECTIONS

(a) All fire service connections installed for the purpose of providing large quantities of water to sprinkler heads or other appurtenances, if installed by the County, shall be paid for on an actual cost basis including materials, labor, and equipment rental plus 15%.

(b) Owners may have a fire connection installed by any contractor licensed to perform water line construction in the state, after first having the plan approved in writing by the authorized agent of the County.

SECTION 29. UNAUTHORIZED USE OF WATER THROUGH FIRE CONNECTION

No water service, other than for fire protection, is permitted through the fire connection. Any use of water through an unmetered fire service is unlawful.

SECTION 30. LIABILITY OF COUNTY FOR FIRE PROTECTION

The County shall not be liable to Consumers, owners, or any person for failure to furnish water for fire protection for any purpose or under any conditions, or for the quantity

of the water furnished, or for the damages that may result from the shutting off or turning on of water from the mains, reservoirs, valves, or hydrants, even if no notice is given. All permits and contracts for the use of water from the water system of the County are expressly made subject to the provisions of this Chapter.

SECTION 31. FIRE CONNECTION INSPECTION

The County reserves the right to inspect any fire connection and the complete fire system, to ensure the system was constructed as planned and creates no hazard to public health.

SECTION 32. VIOLATIONS AND PENALTIES

(a) Any person who creates, causes to be created or maintains a cross-connection with the County Water System; any person who performs or causes to be performed any bypass or unauthorized work on system as defined under State Law; and any person who obtains water through an unmetered fire connection shall be liable to the County for a civil penalty in the sum of $1,500 for each violation; which civil penalty shall be in addition to any and all compensatory damages that the County may be entitled to recover for damage caused to the County Water System by the violation(s).

(b) Any person who is cited by the County for a violation must cease the violation and demonstrate to the County the violation has ceased within 24 hours after the citation is served. Failure to cease the violation and/or to demonstrate the violation has ceased within 24 hours after service of the citation shall result in an immediate disconnection from the County water system and the imposition of an additional $1,500 civil penalty. The County may initiate litigation in the appropriate court to enjoin the violation, to collect civil penalties and to recover compensatory damages for damage caused to the County water system.

(c) In lieu of assessing a civil penalty, the County may, in its discretion, cause any person who commits a violation to be prosecuted for violation of this Chapter pursuant to State Law, and upon conviction, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each day a violation continues, after the offender has been notified of the violation, shall constitute a separate occurrence. A third conviction within a 5-year period shall constitute a Class 1 misdemeanor, with a maximum penalty of 120 days in jail and a discretionary fine, as provided by law. Each 30 days of continued violation shall be considered a separate offense.

CHAPTER ___ SEPTAGE COLLECTION, TRANSPORTATION AND DISPOSAL

SECTION 1. AUTHORITY

Pursuant to NCGS Chapter 153A, Caldwell County hereby establishes this Ordinance.

SECTION 2. DEFINITIONS

The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

County means Caldwell County.

Domestic Septage means either liquid or solid material removed from a septic tank, cesspool, portable toilet, type III marine sanitation device, or similar treatment works receiving only domestic sewage. The term “domestic septage” does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works receiving either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap a restaurant.

Health Department means the Caldwell County Health Department.

Industrial or Commercial Septage means material pumped from septic tanks or other devices used in the collection, pretreatment, or treatment of any water-carried waste resulting from any process of industry, manufacture, trade, or business where the design disposal of the wastewater is subsurface. Domestic septage mixed with any industrial or commercial septage is considered industrial or commercial septage.

NCGS means the North Carolina General Statutes.

Owner/Operator means the individual who owns, or is responsible for, management and/or day-to-day operations of the septage management firm.

Septage means a solid waste which is a fluid mixture of untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin and is removed from septic tanks; septage as defined in NCGS; and washings from the interior of septage handling containers, including pumper trucks.

Septage Management Firm means a person involved in the activity of pumping, transporting, storing, treating, or disposing of septage. The term does not include public or community sanitary sewer systems that treat or dispose of septage. The

Owner/Operator shall be responsible for ensuring the firm's compliance with all statutory and regulatory requirements.

SECTION 3. SEPTAGE LAND APPLICATION AND SEPTAGE DETENTION SYSTEMS

(a) All Septage Management Firms discharging Septage within the boundaries of the County shall discharge into one of the designated dumping stations determined by the County. Industrial or commercial septage is not allowed to be dumped into County dumping stations.

(b) The use of a Septage detention system is prohibited.

(c) All Septage sourced from the County may be discharged into designated County dumping stations.

SECTION 4. PENALTIES AND REMEDIES

(a) Criminal Penalties. Any person violating this Ordinance, or any Section thereof, shall be guilty of a Class 3 misdemeanor and shall be fined not more than $500.00, or imprisonment for not more than 30 days, or both. Each occurrence of a violation shall be treated as a separate occurrence.

(b) Civil Remedies. In accordance with the County fee schedule, adopted by the County Board of Commissioners.

(c) Equitable Remedies. The County may seek to enforce this Ordinance through any appropriate equitable action. The public health director may bring a civil proceeding to enforce this Ordinance or abate a public health nuisance.

(d) Any violation of this Ordinance will be reported to agencies governing septage management.

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Building Inspections	

AGENDA ITEM # 12

Purchase of Buiding Inspections Software

BACKGROUND

This additional appropriation is needed to cover the cost to extend Building Inspections software, Blue Prince, for one more year while transitioning to the cloud based version of the software.

RECOMMENDED MOTION

Approve Budget Revision

BUDGET IMPACT

Funded by fees generated by the department

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Building Inspections Software

Budget Revision # _____

Item No. _____

Date: _____

Caldwell County Board of Commissioners

BUDGET REVISION

Subject:

Background and explanation for the Budget Revision:

This revision allows Buiding Inspections to pay for another year or service from its software vendor Blue Prince. It also allows for the transition to the cloud based version of the software. This is paid for with fees generated by the department.

The Budget Ordinance is hereby amended by making a Supplemental Appropriation with appropriations and revenues being adjusted as follows:

SUPPLEMENTAL APPROPRIATION

Line Item #	Title	I/D		Amount	Line Item #	Title	I/D		Amount
10.4900.322100	Building inspection Fees	I	$	9,000.00	10.4900.444100	Contractual	I	$	9,000.00
Total				**9,000.00**	**Total**				**9,000.00**

Attachments (Yes or No): No

Public Hearing (Yes or No):

Distribution:
Original - Finance Office
Duplicate - Clerk to the Board
Triplicate - Department Head

Staff Recommendation:

Board Action:

Department Head	Date	Finance Director	Date	County Manager	Date
			04/16/24		

Board of Commissioners Meeting
Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Administration	

AGENDA ITEM # 13

Reappointment of Jerry Church to CCC&TI Board of Trustees

BACKGROUND

RECOMMENDED MOTION

BUDGET IMPACT

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

None

Board of Commissioners Meeting

Agenda Item Summary

MEETING DATE	DEPARTMENT	PREPARED BY
May 13, 2024	Sheriff's Office	

AGENDA ITEM # 14

NRA Grant

BACKGROUND

These are only in the beginning stages in the application process for the 2024 NRA Law Enforcement Range Fund Grant. This program would provide $25,000 towards the cost of paving the driveway and parking at the Caldwell County Sheriff's Office Range.

RECOMMENDED MOTION

BUDGET IMPACT

The county match to complete this project would be in the amount of $14,000.

APPROVED FOR BUDGET YEAR

No

ATTACHMENTS

1. Agenda Item Summary Template Grant paving Range

Caldwell County

AGENDA ITEM SUMMARY

Submitter: **Douglas Dupell** **Meeting Date: May 13, 2024**

Agenda Section: Consent **Department: Sheriff's Office**

Suggested Motion(s): Approval of Grant Application Submission

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SUMMARY: These are only in the beginning stages in the application process.

2024 NRA Law Enforcement Range Fund Grant. This program would provide $25,000 towards the cost of paving the driveway and parking at the Caldwell County Sheriff's Office Range.

Budget Impact: **The county match to complete this project would be in the amount of $14,000.**

Is this expenditure approved in the current fiscal year budget? No

If not, describe how it will be funded.

The Sheriff's Office would have to look at other budget items we could move money from to complete the project.

ATTACHMENTS:

Caldwell County
North Carolina
Board of Commissioners Meeting

April 8, 2024 at 6:00 PM
City-County Chambers
905 West Avenue NW, Lenoir

MINUTES

Call to Order
Chairman Church began the meeting at 6:03 PM for public comment.

Regular Session was called to order at 6:07 PM after public comment.

Public Comment Period
Mr. Gabe Pipes came to the podium to speak during the public comment period. Mr. Pipes is the new site director for Fort Defiance in Lenoir, NC. Mr. Pipes told the Board he had been in his position for a few months and wanted to come by and introduce himself. Mr. Pipes then gave a brief background about Fort Defiance and stated they have been working with a class at Appalachian State University. This class will be coming to Fort Defiance on April 29th at 6:00 PM to showcase a new exhibit. Mr. Pipes stated the staff believes that they have found the original Fort of Fort Defiance, and they may be able to mark off this property and possibly recreate the Fort. Mr. Pipes told the Board he would be sending an email with an invitation to the event on April 29th and mentioned they would also be having a 4th of July event. The Board thanked Mr. Pipes for coming.

Invocation
With Pastor Brown's absence, Vice Chairman LaBrose led the invocation for those in attendance.

Pledge of Allegiance
Commissioner Robbie Wilkie led the Pledge of Allegiance for those in attendance.

Agenda Amendments from the Board, Manager & Public
The County Manager informed the Board that there were multiple amendments to the agenda. The first of these would be Item 5a, a Proclamation for Clean Caldwell 2024, the second would be Item 5b, a Proclamation for Line Workers Appreciation week, the third would be Item 23a the Reappointment of Chris Barlowe to the Planning Board, and the fourth would be the addition of a closed session for Economic development.
Vice Chairman LaBrose made the motion to adopt the agenda as presented.
The motion carried unanimously.

Agenda Items

1. National Public Health Month

Caldwell County Health Director, Anna Martin, came to the podium to read the Proclamation for National Public Health Month.
Chairman Church made the motion to adopt the proclamation.
The motion carried unanimously.
Chairman Church thanked the Health Department for all they do and noted that by being on the Board of Health, he sees a lot that goes untold.

See Proclamation 03-2024

2. Child Abuse Prevention Month

Caldwell County Clerk, Abby Rich, read the Proclamation for Child Abuse Prevention Month.
Commissioner Potter made the motion to adopt the proclamation.
The motion carried unanimously.

See Proclamation 02-2024

3. Local Library Week 2024

Caldwell County Public Library Director, Leslie Griffin, came to the podium to read the proclamation for Local Library Week 2024.
Commissioner Wilkie made the motion to adopt the proclamation.
The motion carried unanimously.

See Proclamation 05-2024

4. Supporting the Reclassification of Telecommunicators

Caldwell County Communications Director, Ronnie Rombs, came to the podium to present the Resolution for Supporting the Reclassification of Telecommunicators.
Commissioner Potter made the motion to adopt the resolution.
Commissioner Wilkie said that the employees in this department do a good job, and he appreciates all of these employees.
The motion carried unanimously.

See Resolution 04-2024

5. 2024 Telecommunicators Week

Caldwell County Telecommunications Director, Ronnie Rombs, came to the podium to read the Proclamation for 2024 Telecommunicators Week.
Commissioner Wilkie made the motion to adopt the proclamation as read.
The motion carried unanimously.

See Proclamation 04-2024

5a. Clean Caldwell 2024

Commissioner Potter read the Proclamation for a Clean Caldwell 2024. Commissioner Potter made the motion to adopt the proclamation.
Chairman Church mentioned that the information for this event is on the County's website and we are looking for volunteers to sign up.
The motion carried unanimously.

See Proclamation 06-2024

5b. Line Workers Appreciation 2024
Chairman Church read the Proclamation for Line Workers Appreciation Week 2024.
Chairman Church made the motion to adopt the proclamation.
The motion carried unanimously.

See Proclamation 07-2024

6. Conveyance of Surplus Property to Nonprofit Organization
Emergency Services Director, Dino DiBernardi, came to the podium to present information about the conveyance of surplus property to Little River Fire and Rescue. The vehicle is a 2002 Chevy Tahoe to be sold for the amount of $1.00 with the contingency that if Little River ever decided to sell the vehicle, it could be sold and the earnings given back to Caldwell County or transferred back to the County for the County to surplus. The vehicle does not have any striping or emergency lights on it.
Commissioner Branch made the motion to approve the resolution.
The motion carried unanimously.

See Resolution 03-2024

7. Forestry Service Truck Upfitting
Emergency Services Chief Dino DiBernardi, along with Forest Service members Harley Andrews and Jason Noble, came to the podium to request a budget revision for the up-fitting of a Forest Service Truck. Chief DiBernardi provided brief background information about obtaining the truck.
Commissioner Wilkie made the motion to adopt the budget revision.
The motion carried unanimously.

8. RA-20 to GB Rezoning Request
Planning Director Shelley Stevens came to the podium to present information about a rezoning request to change a parcel of land from Residential Agriculture to General Business. Derrick Dollar, owner of Hogwild BBQ, is the owner of the 5.022 acre property located on Connelly Springs Rd. in Granite Falls. (NC PIN: 2755036304) Ms. Stevens told the Board that this request is in alignment with the comprehensive plan. Ms. Stevens also provided maps to show where the property is located and noted there is no evidence that this rezoning would harm the health, safety, or welfare of the community. Commissioner Branch asked if anyone had complained about the rezoning. Ms. Stevens provided that no one had said anything.
Chairman Church declared the public hearing open. With there being no individuals signed up to speak, the public hearing was declared closed. Commissioner Branch made the motion to approve the rezoning as presented by the Planning Director.
The motion carried unanimously.

The Board thanked Ms. Stevens.

9. Ordinance Revisions and Adoption
The County Manager told the Board that these ordinance revisions were a large effort by staff and our contracted legal team with Teague and Campbell, led by Attorney Debra Bechtel. The County Manager also provided special thanks to County Clerk, Abby Rich. The County Manager reviewed the list of ordinances that had been added,

revised, and removed from the code. Those Ordinances added were Alcoholic Beverages on County Property, Begging and Soliciting Prohibited, Minimum Housing and Non-Residential Buildings, and State of Emergency. Those Ordinances revised were Animal Care and Enforcement, Building Code Inspections, Concealed Weapons on County Property, Emergency Management, Emergency Medical Services, Fire and Life Safety, Noise Regulations, Racetracks and Dragstrips, Public Water Systems, and Septage Collection, Transportation, and Disposal. Those Ordinances removed were Cable Television Systems, Alarm Systems, Massage Businesses, Hazardous Waste Management, Cemeteries, Health and Sanitation, Parking Regulations, Phase II Stormwater, and Public Safety.

Chairman Church declared the public hearing open. With there being no individuals signed up to speak, the public hearing was then declared closed.

Chairman Church offered to entertain a motion for all of the ordinances to be adopted in the reading of one motion. Vice Chairman LaBrose made the motion to adopt these ordinances in the reading of one motion. The County Manager reminded the Chairman that the proposed ordinances will go through two readings, with this one being the first. The County Manager also informed the Board that changes and adjustments can be made up until the second reading of these ordinances.
The motion carried unanimously.

Vice Chairman LaBrose made the motion to adopt the Chapters: Alcoholic Beverages on County Property, Begging and Soliciting Prohibited, Minimum Housing and Non-Residential Buildings, State of Emergency, Animal Care and Enforcement, Building Code Inspections, Concealed Weapons on County Property, Emergency Management, Emergency Medical Services, Fire and Life Safety, Noise Regulations, Racetracks and Dragstrips, Public Water Systems, and Septage Collection, Transportation, and Disposal, and that we repeal any other ordinances under Alcoholic Beverages on County Property, Begging and Soliciting Prohibited, Minimum Housing and Non-Residential Buildings, State of Emergency, Animal Care and Enforcement, Building Code Inspections, Concealed Weapons on County Property, Emergency Management, Emergency Medical Services, Fire and Life Safety, Noise Regulations, Racetracks and Dragstrips, Public Water Systems, and Septage Collection, Transportation, and Disposal, and that the County Manager has the authority to make any typographical error changes, non-substantial corrections, and any numbering, renumbering, or formatting as a result of codification.
The motion carried unanimously.

Vice Chairman LaBrose made the motion to repeal the Cable Television Systems Ordinance, Alarm Systems Ordinance, Massage Businesses Ordinance, Hazardous Waste Management Ordinance, Cemeteries Ordinance, Health and Sanitation Ordinance, Parking Regulations, Phase II Stormwater, and Public Safety Ordinances.
The motion carried unanimously.

Consent

10. Approval of Application Submission for BJA Adult Court Grant

The Sheriff's Office is requesting to submit a grant for recovery court. The grant will add to the RESTART program and the amount is $900,000 with a local match of $300,000.

11. Approval of Grant Submission for 2024 SAMHSA Outpatient Treatment Program

This item goes along with the previous grant application. This grant application is for an outpatient treatment program and would help the County establish long-term mental health treatment. Commissioner Wilkie asked if this grant was opioid funded. The County Manager told Commissioner Wilkie that these are federal dollars outside of opioid-related funding.

12. Approval of Submission for DPS MAT Grant Local Sheriffs

The Sheriff's Office is requesting to submit a grant for approval for Medically Assisted Treatment inside the Sheriff's Office in the jail. This would allow the County to begin treating individuals while they are in the jail to assist with the prevention of repeat offenders. The County Manager told the Board that this will be a future requirement in DOJ administrative law coming from the State.

13. Approval of Grant Submission for Operation Underground Railroad Grant

The Sheriff's Office is requesting to submit a grant application to fund technology to be used to investigate human trafficking. The grant amount is $25,000.

14. Approval for Submission of the North Carolina Department of Natural and Cultural Resources (DNCR) America 250 North Carolina Local Grants County Committees Application

Approval is requested for submission of a grant application to the North Carolina Department of Natural Cultural Resources to celebrate the 250th anniversary of the United States.

15. Budget Revision - Town of Gamewell Sewer Funds

These funds are a pass through in the County's budget and the County remits these funds back to the Town of Gamewell.

16. Replacement of Wrecked Patrol Vehicle

A Sheriff's Office vehicle was involved in an accident last year and the County received $11,500 from the insurance claim. This budget revision will allow for the purchase of a Ford Explorer for the Sheriff's Office.

17. Health Department Public Health Services Grant Funding

The Health Department has received $50,000 in additional funding for vaccines.

18. Health Department Food and Lodging Grant

This is an incentive grant in the amount of $7,600 to be spent on equipment and staff in Environmental Health. This grant encourages a higher percentage of health inspections to be completed.

19. Caldwell County Schools Lottery Funding Flow Through

These funds pass through the County's budget and the amount of these funds is $99,000.

20. Approval of Legal Contract for County Attorney

This is the contract for legal services with Wilson, Lackey, Rohr, and Hall and will begin in April and will extend through to June 30th of 2025. The contract will be renewed with the County's budget every year.

21. Legal Fees for Contract Services

This budget revision in the amount of $49,000 goes along with the previous item for contracted legal services. The revision also assists with covering increased legal fees for ordinance revisions.

22. DSS Donated Funds

DSS is requesting to increase its County budget appropriation for donated funds in the amount of $50,000.

23. Reappointment of Dr. Jeff Church to the Planning Board

Dr. Jeff Church is requesting reappointment to the Planning Board.

23a. Chris Barlowe is requesting reappointment to the Planning Board.

24. Appointment of Suzanne Kymer to the Council on Aging

Suzanne Kymer is requesting appointment to the Council on Aging.

25. Amity Creek Fireworks Application

Amity Creek is requesting to have a fireworks display at an upcoming wedding on April 14, 2024.

26. Town of Sawmills Fireworks Application

The Town of Sawmills is requesting to have a fireworks display at their upcoming Spring Festival on May 11, 2024.

27. Letter of Support for VAYA Health

VAYA Health is asking to be a vendor to the State to provide behavioral and mental health services, as well as other services. Commissioner Potter said the State has narrowed its selection down to four organizations across the State. The organization selected will handle several health services statewide. Commissioner Potter continued by saying this letter is to show the County's support in VAYA being the organization that is selected and VAYA is the only candidate that is a North Carolina agency.

28. Approval of Minutes from March 11, 2024, Meeting

Approval of the March 11, 2024, meeting minutes is requested.

There were a few updates shared between the County Manager and the Board for upcoming events.

Vice Chairman LaBrose made the motion to accept the Consent Agenda as the County Manager had presented.
The motion carried unanimously.

Closed Session:

At 7:12 PM Chairman Church made the motion to enter the Closed Session pursuant to § 143-318.11 (a) (4) to discuss an economic development incentive with the County Attorney, County Manager, Deputy County Manager, County Clerk, Chief Financial Officer, Economic Development Staff, and any other personnel that may attend.
The motion carried unanimously.

Chairman Church told the public there are no decisions expected to come from the

Closed Session.

Commissioner Wilkie made the motion to exit the closed session at 7:44 PM.
The motion carried unanimously.

Adjourn

With there being no more business to attend to, Commissioner Potter made the motion to adjourn at 7:44 PM.
The motion carried unanimously.