

# Alleghany County Board of Commissioners

348 South Main Street  
Post Office Box 366  
Sparta, NC 28675  
Tel: (336) 372-4179

## County Commissioners

Bill Osborne  
Mark Evans  
Bobby Irwin  
Larry Prince  
John U. Irwin, Jr.

County Manager  
Michael L. Carter

Clerk to the Board  
Drew Temple

County Attorney  
Donna Shumate

## AGENDA

Monday, August 3, 2020

6:00 pm

- 6:00 Meeting called to order  
Pledge of Allegiance and invocation  
Approval of agenda  
Motion on minutes from 7/20 (pages 1-8)

### Public Hearing on Proposed Road Name: Salva Moses Trail

(pages 9-13)

6:05 **Public Comments:** Citizens are encouraged to comment at this time on any item(s) requiring the attention of the Commissioners. Guidelines for public comment are posted in the meeting room; please use the sign-up sheet provided.

#### A. 6:20 **General Business**

- i. Special Use Permit – Diamond Communications wireless tower
- ii. Splash pad proposal
- iii. General Fund budget amendment #1 in the amount of \$6,188 for donations received for foster care. (page 14)
- iv. Transportation Fund budget amendment #1 in the amount of \$123,850 for vans that didn't arrive in 2019/20. (page 16)
- v. Transportation Fund budget amendment #2 in the amount of \$15,251 for unspent ROAP Funds from 2019/20. (page 17)
- vi. Transportation Fund budget amendment #3 in the amount of \$16,458 for replacement van that was totaled. (page 18)
- vii. Hemphill-Randel Associates contract pages 19-35)
- viii. Discussion on Fairgrounds administration
- ix. BDC contract discussion

#### B. 6:50 **County Manager Comments**

- i. Interim Finance Officer appointment

#### C. 7:00 **County Commissioner Comments**

#### D. **Adjourn**



The Alleghany County Board of Commissioners met in regular session on Monday, July 20th, 2020 at 10:00 am in the Board Meeting Room of the County Administration Building, 348 South Main Street, Sparta, North Carolina.

Present: Chair Bill Osborne, Commissioner Mark Evans, Commissioner Bobby Irwin, Commissioner Larry Prince, Commissioner John Irwin, County Manager, Michael Carter, County Attorney Donna Shumate and Clerk to the Board Drew Temple.

Commissioner Mark Evans made a motion to approve the agenda. Commissioner Larry Prince seconded. Vote 5:0.

Commissioner Larry Prince made a motion to approve minutes from 7/6 as presented. Commissioner Mark Evans seconded. Vote 5:0.

**AGENDA**  
Monday, July 20, 2020  
10:00 am

- 10:00 Meeting called to order  
Pledge of Allegiance and invocation  
Approval of agenda  
Motion on minutes from 7/6 (pages 1-6)
- A. 10:05 **Public Comments/Agenda Items:** Citizens are encouraged to comment at this time on any item(s) specifically listed on this meeting's agenda. Guidelines for public comment are posted in the meeting room.
- B. 10:10 **Presentations to the Board**
- i. TDA Annual report
  - ii. BDC year-end report
  - iii. DW Miles – Miles JOB Fund, 21 Road Market
- C. 10:20 **General Business**
- a. JCPC request for additional funds (page 7)
  - b. DSS line item transfer (page 8)
  - c. Property/Liability insurance line item transfer (page 9)

- d. Soil Water Fund budget amendment #2 in the amount of \$158 to budget for additional interest revenues (page 10)
- e. RFP to replace County Attorney
- f. Resolution Supporting the Forming of the Alleghany Chamber for Economic Development and Tourism (pages 11-12)
- g. Rules of Procedure discussion and revision (pages 13-22)
- h. Ag Board appointments – Aaron Gambill, Earl Deal (3-year terms) (page 23)
- i. JCPC Designee for the Alleghany County District Attorney’s Office replacement – Matthew Levchuk (page 24)
- j. JCPC board re-appointments – Anne Marie Erhardt, Kay Luffman, Lisa Osborne, Mark Evans (2-year terms) (page 25)

**D. 10:45 Consent Agenda (Board action requested)**

- i. Rita Miller, Tax Administrator (pages 26-56)
  - a. License Plate Agency month end report
  - b. June auto refunds
  - c. June real and personal property refunds
  - d. Real and personal property releases
  - e. Delinquent taxpayer contracts
  - f. Application for Property Tax Relief – Disabled Veteran Exclusion
  - g. Statutory requirements for fiscal year end
  - h. 2020 Solid Waste fee sticker update

**E. 11:00 Public Comments:** Citizens are encouraged to comment at this time on any item(s) requiring the attention of the Commissioners. Guidelines for public comment are posted in the meeting room.

**F. 11:10 County Manager Comments**

- i. June Building Inspection report (page 57)

**G. 11:30 County Commissioner Comments**

**H. Request for Closed Session Pursuant to G.S. 143-318.11.(a)-(6) Personnel**

## I. **Adjourn**

### **Presentations to the Board**

#### TDA Annual Report

Steve Mason gave the TDA annual report for FY19/20.

Steve Mason invited the commissioners to attend TDA meetings on a quarterly basis.

Steve Mason explained the target for some long-range funds is to establish more of an internet presence to promote local business.

Commissioner John Irwin compared Authentically Alleghany's online traffic to What's Happening Outdoors in Alleghany's online traffic.

Steve Mason explained some major projects the TDA has considered in the past including trail development, mountain biking trails and other projects that significantly impact tourism in the county.

Steve Mason said the TDA entertains any project that brings tourism to Alleghany county.

Commissioner John Irwin explained per the general statute that 2/3 of the Occupancy Tax collected must be used for tourism development and 1/3 for capital improvements.

DW Miles said the Miles JOB Fund/21 Road Market had not been paid by the TDA for 2019 or 2020.

There was discussion between the board and Steve Mason about whether the TDA will endorse the 21 Road Market and give funds to support advertising of the 21 Road Market.

#### BDC year-end report

Dale Caveny gave the BDC year-end report.

Commissioner John Irwin explained the issues with the temperature in the server room and batteries in the APUs.

Commissioner John Irwin questioned Dale Caveny about the 2017 Form 990 of the Alleghany County Economic Development Corporation.

Commissioner John Irwin asked County Manager, Michael Carter to look over the contract with the BDC and consider taking over its responsibilities.

Dale Caveny said the move to consolidate economic development efforts in the county is a good thing.

#### Miles JOB Fund, 21 Road Market

Wayne Miles said the 21 Road Market is happening with or without support from the county and explained the impact it has on travel in the county.

Wayne Miles highlighted the Miles JOB Fund.

### **General Business**

#### JCPC request for additional funds

Karen Evans, Finance Officer explained the additional funding request from JCPC for FY20/21.

County Manager, Michael Carter explained he did not recommend amending the budget to allow for additional JCPC funds or for any other organization.

Commissioner Larry Prince made a motion to deny the JCPC additional request. Commissioner Bobby Irwin seconded. Vote 5:0.

Commissioner Mark Evans asked for JCPC to have the opportunity to rework their budget request.

Karen Evans, Finance Officer clarified that if JCPC will revise their County Funding Plan to match the FY20/21 budget appropriation, she can sign off on it as the Finance Officer without bringing it back to the board.

#### DSS line item transfer

Karen Evans, Finance Officer explained the DSS line item transfer.

Commissioner Bobby Irwin made a motion to accept the DSS line item transfer. Commissioner Mark Evans seconded. Vote 5:0.

#### P&L line item transfer

Karen Evans, Finance Officer explained the P&L line item transfer.

Commissioner Mark Evans made a motion to approve the P&L line item transfer. Commissioner Larry Prince seconded. Vote 5:0.

#### Soil and Water fund budget amendment #2

Karen Evans, Finance Officer explained the Soil and Water fund budget amendment.

Commissioner Bobby Irwin made a motion to approve the Soil and Water fund budget amendment. Commissioner Mark Evans seconded. Vote 5:0.

#### RFP for County Attorney

Commissioner John Irwin made a motion to approve the RFP for County Attorney to advertise for 30 days. Commissioner Larry Prince seconded. Vote 5:0.

#### Resolution Supporting the Alleghany Chamber for Economic Development and Tourism

Commissioner John Irwin voiced his concerns with the consolidation of economic development efforts into the Alleghany Chamber for Economic Development and Tourism.

Commissioner John Irwin recommended that the board not approve the Resolution Supporting the Forming of the Alleghany Chamber for Economic Development and Tourism.

Ricky Brown explained the new Alleghany Chamber for Economic Development and Tourism, the AEDC and how consolidating money and talents will benefit economic development and tourism in the county.

There was discussion between the board and Ricky Brown about the structure and specifics of the Alleghany Chamber for Economic Development and Tourism.

Commissioner Larry Prince made a motion to approve the Resolution Supporting the Forming of the Alleghany Chamber for Economic Development and Tourism. Commissioner Mark Evans seconded. Vote 4:1 (aye: Commissioner Mark Evans, Commissioner Bobby Irwin, Chair Bill Osborne, Commissioner Larry Prince nay: Commissioner John Irwin)

#### Rules of Procedures discussion and revision

There was discussion between the board, County Manager, Michael Carter and County Attorney, Donna Shumate about how public comments should be handled moving forward.

Commissioner Mark Evans made a motion to have one 15-minute public comment period at the beginning of the meeting with a sign-up sheet. Chair Bill Osborne seconded. Vote 5:0.

#### Ag Board appointments

Commissioner John Irwin made a motion to approve the ag board appointments. Commissioner Larry Prince seconded. Vote 5:0.

#### JCPC Designee

Commissioner Mark Evans made a motion to approve Matthew Levchuk to the JCPC Designee. Commissioner Larry Prince seconded. Vote 5:0.

#### JCPC board re-appointments

Commissioner John Irwin made a motion to approve the JCPC board re-appointments. Commissioner Larry Prince seconded. Vote 5:0.

## **Consent Agenda**

Rita Miller, Tax Administrator explained the June tax packet information.

Commissioner John Irwin made a motion to approve the consent agenda.  
Commissioner Larry Prince seconded. Vote 5:0.

Rita Miller, Tax Administrator explained the settlement for the 2019-2020 tax year.

Rita Miller, Tax Administrator explained the 10 years or older insolvent report.

Rita Miller, Tax Administrator explained the Order to Collect 2020 taxes.

Rita Miller, Tax Administrator said new solid waste stickers will be going out in tax bills at the end of the month.

Rita Miller, Tax Administrator said the side door will be opened for the month of August to help with the busy time for the tax and tag office.

## **County Manager comments**

County Manager, Michael Carter highlighted the June building inspection report.

County Manager, Michael Carter gave an update on the process happening at the current courthouse in effort to remedy the water issues.

County Manager, Michael Carter said Frank Randel will be here tomorrow morning to discuss engineering on the old COA.

County Manager, Michael Carter said hopefully first quarter of next year the secondary courthouse will be finished.

County Manager, Michael Carter said there is a potential sight for secondary PSAP that would accommodate the distance requirement from primary PSAP.

County Manager, Michael Carter said the new COA is still on track to be completed at the end of the month. He said some donations have come in to purchase some of the remaining items with non-county funds. He said some non-county funds have been located to allow for paving of handicapped parking spots at the new COA.

County Manager, Michael Carter said everything is on track for the temporary courtroom facility to be the Emerson Black building at the Fairgrounds. He gave an update on jury trials for the foreseeable future.

County Manager, Michael Carter updated the board on tire recycling at the transfer station.

### **County Commissioner comments**

Commissioner Bobby Irwin asked for clarification on what the county owns and what specific departments own.

Chair Bill Osborne commended County Manager, Michael Carter on his progress on current projects.

Chair Bill Osborne said we need to start promoting ¼ cent sales tax.

Commissioner Larry Prince said we need to push ¼ cent sales tax.

Commissioner Larry Prince said he would like to see a proposal on putting in a splash pad from Beamer funds.

Chair Bill Osborne said the Farmer's Market is open.

Commissioner John Irwin said he leans towards establishing an economic development position within the county.

Commissioner Bobby Irwin made a motion to enter in to closed session pursuant to G.S.143-318.11.(A)-(6) to include April Hamm. Commissioner Larry Prince seconded. Vote 5:0.

Chair Bill Osborne said no action was taken during closed session.

Commissioner John Irwin made a motion to approve the Transfer Station Specialist job description. Commissioner Bobby Irwin seconded. Vote 5:0.

Commissioner John Irwin made a motion to approve the change in pay classification for Transfer Station Specialist from 60 to 62. Commissioner Larry Prince seconded. Vote 5:0.

Commissioner John Irwin made a motion to authorize the County Manager to hire a part-time custodian. Commissioner Mark Evans seconded. Vote 5:0.

Commissioner John Irwin made a motion to authorize the County Manager to promote Assistant Finance Officer with the new consolidated job description to pay grade 68. Commissioner Mark Evans seconded. Vote 5:0.

Commissioner John Irwin made a motion to adjourn. Commissioner Mark Evans seconded.

Respectfully Submitted,

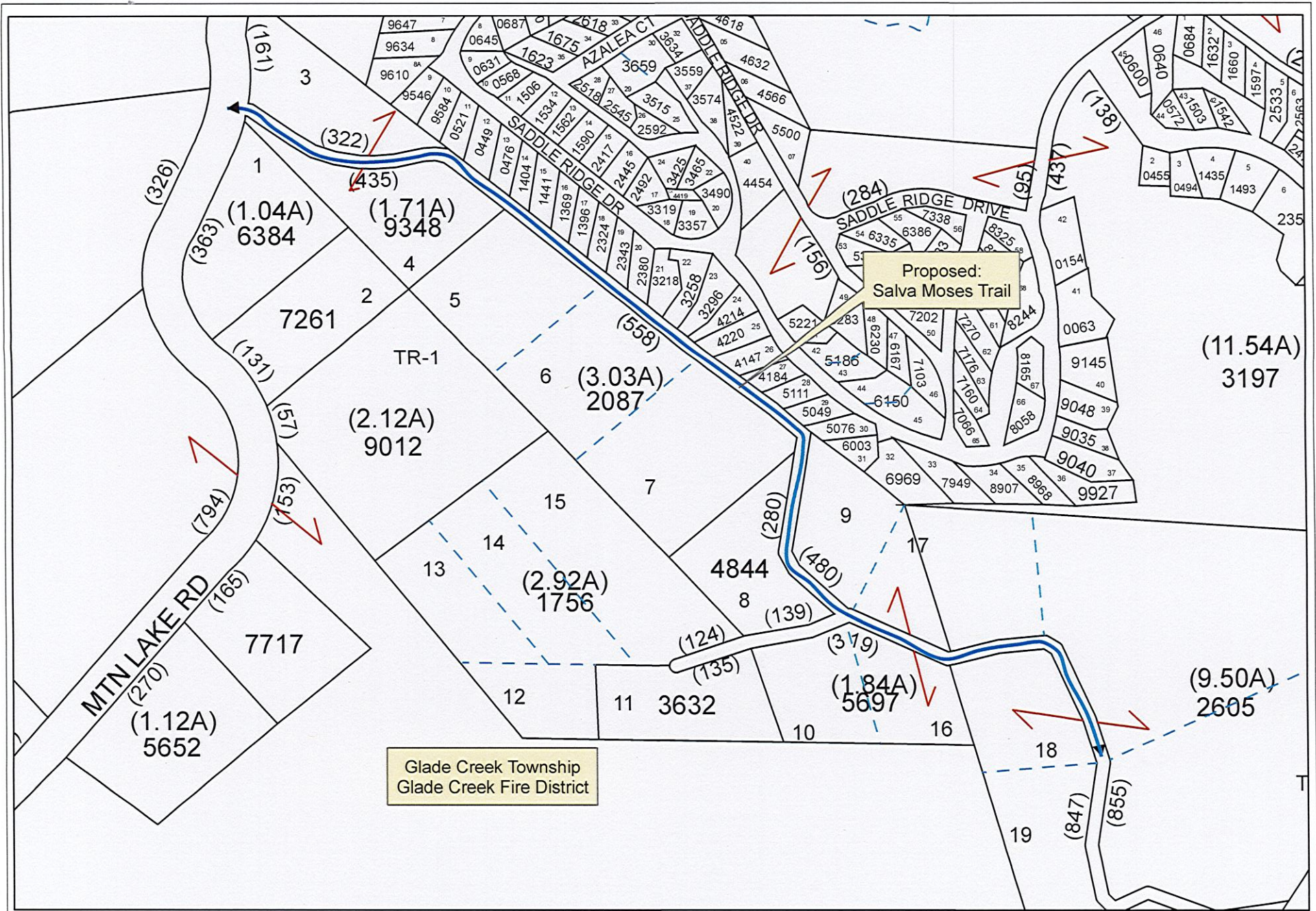


Drew Temple  
Clerk to the Board

Bill Osborne  
Chairman

**Road Name Submitted for Approval August 3, 2020**

<u>Proposed Road Name:</u>	<u>Request Submitted by:</u>	<u>Reason for request:</u>	<u>Road Location:</u>	<u>Fire District:</u>	<u>Township:</u>
Salva Moses Trail	Carlos Salvatierra & Sylvia Caddell	2+ Structures on Drive	off Mountain Lake Rd	Glade Creek	Glade Creek



Date: 7/17/2020  
 Allegheny County, NC

DISCLAIMER  
 Allegheny County assumes no  
 legal responsibility for the  
 information represented here.  
 DISCLAIMER

Legend  
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1 inch = 190.20209 feet



# Alleghany County E-911 Road Name Form

Please return form to  
Alleghany County GIS Department  
PO Box 263  
Sparta, NC 28675  
Phone: 336-372-7920  
Fax: 336-372-1438

Do you live on a road that has two or more houses, mobile homes, or businesses? \_\_\_\_\_  
If an apartment is attached to a home or business, count both as one structure. Do not count barns, garages, or storage buildings.

Do you live in a development? NO  
List development name N/A

Your road intersects with which road? MOUNTAIN LAKE RD  
Road ends with what road? N/A  
Is it a dead end road? YES

More than 50% plus one of the residents/business owners along the road being named must be in agreement to the selected name. Each home or business is entitled to one vote. Private Roads/Lanes cannot end with Road, Ave., or Blvd. If there is a survey showing the road in question, a copy must be submitted with this form.

1ST CHOICE FOR ROAD NAME SALVA MOSES TRL  
2ND CHOICE FOR ROAD NAME /

*Please select a different 1st and 2nd choice*

\_\_\_\_\_  
GIS Department Use Only

Nancy Miller

GIS Administrator

7-16-20

Date

DAVID HIGGINS - per TELEPHONE

Fire Chief

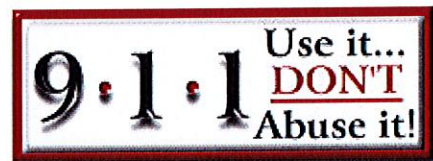
7-17-20

Date

\_\_\_\_\_  
County Commissioner

Date

*Serving the people of Alleghany County*





# Road Name Petition

As Residents/Business owners of the road being named, we are in agreement of the road name

1st Choice SALVA MOSES TRL or

2nd Choice \_\_\_\_\_

Signature

Address

Phone #

Parcel ID #

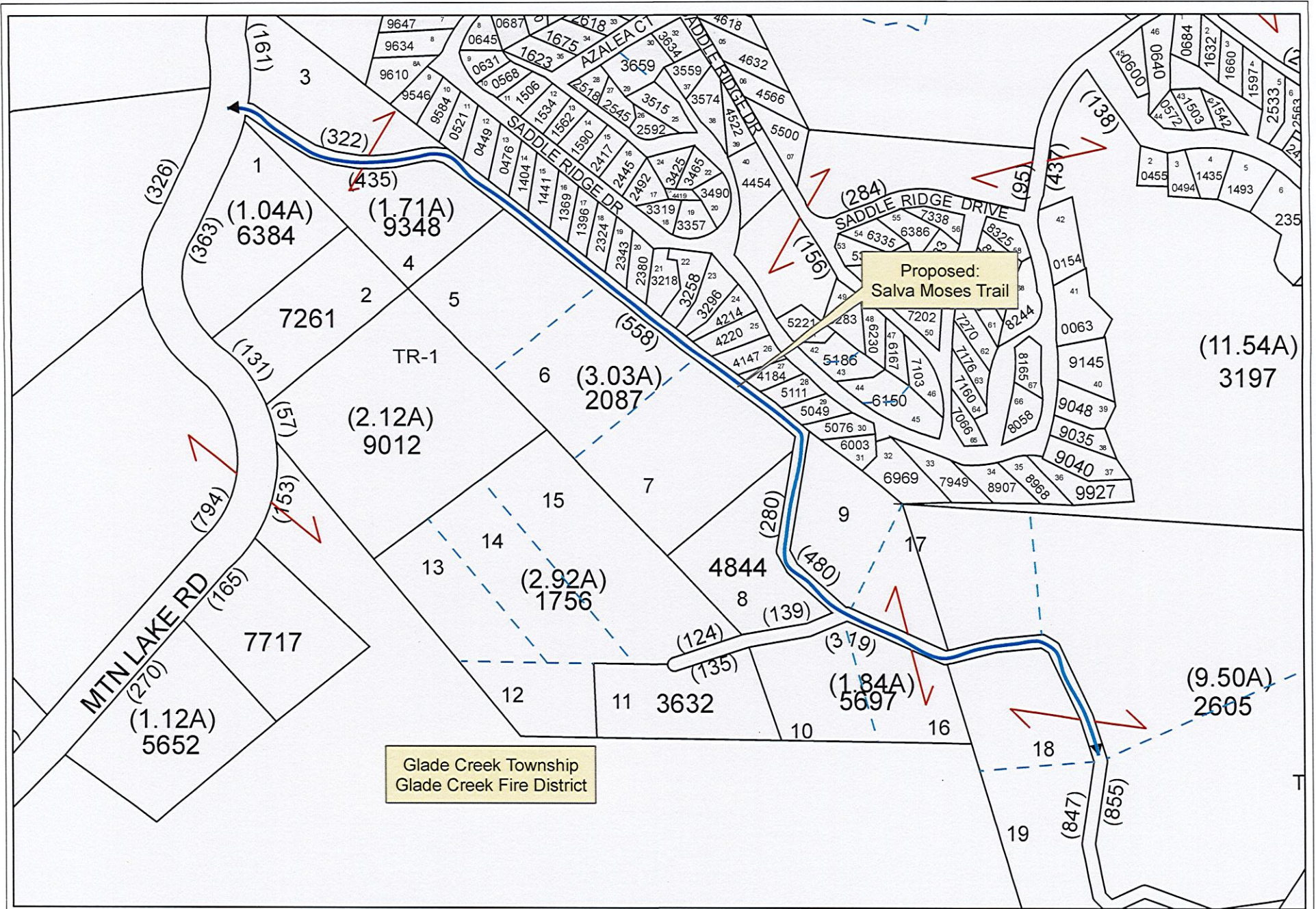
Date

Carlos Salvehen  
W/O Office  
7-16-20 CW

4020-87-2089 7-16-20  
CW

Sylvia Caddell via Telephone  
7-16-20 CW

4020-86-5697



Date: 7/17/2020  
 Allegheny County, NC

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 DISCLAIMER

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 □ parcel\_polygon

1 inch = 190.20209 feet

**Alleghany County  
Budget Amendment  
General Fund  
#1**

Be it resolved by the Alleghany County Board of Commissioners  
that the following amendment be made to the Budget Resolution  
for the fiscal year ending June 30, 2021.

Description	Debit	Credit
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Amendment explanation: To budget for donation received for foster care.

**Expenditures:**

Donations	6,188	
10-610-5600		

**Revenues:**

Donations		
10-346-0600		6,188

**Over-all Budget**

Total Appropriation in Current Budget		16,823,075
Amount of Debit/Credit of above Amendment		6,188
		16,829,263

We the Board of County Commissioners of Alleghany County hereby  
approve the changes in the Budget as indicated above, and have made entry of  
these changes on the minutes of said Board, this 1 the 3rd day of August, 2020.

\_\_\_\_\_  
Budget Officer

\_\_\_\_\_  
Chairman, Board of  
County Commissioners



# Allegheny in Motion

PO Box 1882 (336)372-8747  
 Sparta, NC 28675 (336)372-9166 fax  
 alletrans@skybest.com

August 3, 2020

## Budget Amendment Information

FY '20 funds to be transferred to FY '21 because of reduced vehicle manufacturing and reduced transportation services due to COVID-19.

### #1

<u>Line #</u>	<u>Amount</u>	<u>Description</u>
40-400-7400	\$123,850	Vans that could not be delivered in FY '20
	<b>\$123,850</b>	<b>Total Expenses</b>
40-330-0900	\$111,465	Federal and State match for FY '20 replacement vehicles
40-330-0000	\$12,385	App Fund Balance –Local Match for FY '20 replacement vehicles
	<b>\$123,850</b>	<b>Total Revenues</b>

### #2

<u>Line #</u>	<u>Amount</u>	<u>Description</u>
40-400-3100	\$7,625	Maintenance
40-400-3102	\$7,625	Fuel
	<b>\$15,251</b>	<b>Total Expenses</b>
40-330-0650	\$1,251	FY '20 Unspent Rural General Public ROAP Funds
40-330-0350	\$12,500	FY '20 Unspent Elderly and Disabled ROAP Funds
40-330-0652	\$1,500	FY '20 Unspent Employment ROAP Funds
	<b>\$15,251</b>	<b>Total Revenues</b>

### #3

<u>Line #</u>	<u>Amount</u>	<u>Description</u>
40-400-7400	\$16,458	FY '20 Totaled Van Replacement
	<b>\$16,458</b>	<b>Total Expenses</b>
40-330-0000	\$16,456	Appropriated Fund Balance- Insurance Proceeds
	<b>\$16,456</b>	<b>Total Revenues</b>



**Alleghany County  
Budget Amendment  
Transportation Fund  
#1**

Be it resolved by the Alleghany County Board of Commissioners  
that the following amendment be made to the Budget Resolution  
for the fiscal year ending June 30, 2021.

Description	Debit	Credit
Amendment Explanation: To budget for vans that didn't arrive in 2019/20		

**Expenditures:**

Capital	40-400-7400	123,850
---------	-------------	---------

**Revenues:**

DOT Capital Grant	111,465
40-300-0900	
App Fund Balance	12,385
40-399-0000	

	<b>Over-all Budget</b>
Total Appropriation in Current Budget	542,832
Amount of Debit/Credit of above Amendment	123,850
	666,682

We the Board of County Commissioners of Alleghany County hereby  
approve the changes in the Budget as indicated above, and have made entry of  
these changes on the minutes of said Board, this the 3rd day of August

\_\_\_\_\_  
Budget Officer

\_\_\_\_\_  
Chairman, Board of  
County Commissioners

Appropriated Fund Balance Since July 1

**Alleghany County  
Budget Amendment  
Transportation Fund  
#2**

Be it resolved by the Alleghany County Board of Commissioners  
that the following amendment be made to the Budget Resolution  
for the fiscal year ending June 30, 2021.

Description	Debit	Credit
Amendment Explanation: To budget for unspent ROAP Funds from 2019/20		
<b>Expenditures:</b>		
Vehicle Maint		
40-400-3100	7,626	
Fuel		
40-330-3102	7,625	
<b>Revenues:</b>		
RGP		1,251
40-330-0650		
EDTAP		12,500
40-330-0350		
EMP		
40-330-0652		1,500
		<b>Over-all Budget</b>
Total Appropriation in Current Budget		666,682
Amount of Debit/Credit of above Amendment		15,251
		681,933

We the Board of County Commissioners of Alleghany County hereby  
approve the changes in the Budget as indicated above, and have made entry of  
these changes on the minutes of said Board, this the 3rd day of August

\_\_\_\_\_  
Budget Officer

\_\_\_\_\_  
Chairman, Board of  
County Commissioners

Appropriated Fund Balance Since July 1

**Alleghany County  
Budget Amendment  
Transportation Fund  
#3**

Be it resolved by the Alleghany County Board of Commissioners  
that the following amendment be made to the Budget Resolution  
for the fiscal year ending June 30, 2021.

Description	Debit	Credit
Amendment Explanation: To budget for replacement van that was totaled		

**Expenditures:**

Capital		
40-400-7400	16,458	

**Revenues:**

App Fund Balance		16,458
40-399-0000		

		<b>Over-all Budget</b>
Total Appropriation in Current Budget		681,933
Amount of Debit/Credit of above Amendment		16,458
		698,391

We the Board of County Commissioners of Alleghany County hereby  
approve the changes in the Budget as indicated above, and have made entry of  
these changes on the minutes of said Board, this the 3rd day of August

\_\_\_\_\_  
Budget Officer

\_\_\_\_\_  
Chairman, Board of  
County Commissioners

Appropriated Fund Balance Since July 1



# AIA<sup>®</sup> Document B104<sup>™</sup> – 2017

## *Standard Abbreviated Form of Agreement Between Owner and Architect*

AGREEMENT made as of the twentieth            day of July  
in the year Two thousand twenty  
*(In words, indicate day, month and year.)*

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

Alleghany County  
348 S. Main St.  
Sparta, NC 28675

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

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

Hemphill - Randel Associates  
PO Box 77438  
Charlotte, NC 28271

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

Alleghany County Courtroom #2  
85 East Whitehead St., Sparta, NC 28675

The Owner and Architect agree as follows.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

*(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)*

See Exhibit 1

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

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

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.8:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

.2 Automobile Liability

Liability \$100,000/person, \$300,000/accident, property damage \$100,000/accident  
Uninsured / Underinsured coverage, same as above.

.3 Workers' Compensation

.4 Professional Liability

\$1,000,000 per claim / \$2,000,000 annual limit

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

### § 3.2 Design Phase Services

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

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

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

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

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

### § 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

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

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

§ 3.3.4 The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

### § 3.4 Construction Phase Services

#### § 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A104–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

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

#### § 3.4.2 Evaluations of the Work

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.2, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the

Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

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

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

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

### § 3.4.4 Submittals

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

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

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

### § 3.4.5 Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2.3, the

Init.



Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

#### § 3.4.6 Project Completion

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

### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services are not included in Basic Services but may be required for the Project. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement. *(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)*

§ 4.2 The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect shall provide services necessitated by a change in the Initial Information, changes in previous instructions or approvals given by the Owner, or a material change in the Project including size; quality; complexity; the Owner's schedule or budget for Cost of the Work; or procurement or delivery method as an Additional Service

§ 4.2.2 The Architect has included in Basic Services two ( 2 ) visits to the site by the Architect during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.3 The Architect shall, as an Additional Service, provide services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service.

§ 4.2.4 If the services covered by this Agreement have not been completed within ten ( 10 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

### ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

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

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

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.10 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

#### ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, construction procurement activities have not commenced within 90 days after the Architect submits the Construction Documents to the Owner the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other, for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A104–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

### § 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim,

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dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### § 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

**ARTICLE 11 COMPENSATION**

**§ 11.1** For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
*(Insert amount)*  
  
\$29,700
  
- .2 Percentage Basis  
*(Insert percentage value)*  
  
percent ( %) of the Owner’s budget for the Cost of the Work,  
as calculated in accordance with Section 11.6.
  
- .3 Other  
*(Describe the method of compensation)*

**§ 11.2** For Supplemental Services identified in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

See Exhibit 2

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

See Exhibit 2

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus \_\_\_\_\_ percent ( \_\_\_\_\_ %), or as follows:

See Exhibit 2

**§ 11.5** Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Design Phase	thirty	percent (	30 %)
Construction Documents Phase	fifty	percent (	50 %)
Construction Phase	twenty	percent (	20 %)

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Total Basic Compensation	one hundred	percent (	100 %)
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**§ 11.6** When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit 2

Employee or Category	Rate
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**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent ( 0 %) of the expenses incurred.

**§ 11.9 Payments to the Architect**

**§ 11.9.1 Initial Payment**

An initial payment of

(\$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 11.9.2 Progress Payments**

§ 11.9.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid

( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

%



§ 11.9.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.9.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:  
*(Include other terms and conditions applicable to this Agreement.)*

See Exhibit 1 for modifications / additions to paragraphs in this agreement.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B104™–2017, Standard Abbreviated Form of Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203–2013 incorporated into this agreement.)*

- .3 Exhibits:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.)*


Exhibits 1 and 2

- .4 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

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

\_\_\_\_\_  
OWNER *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

  
\_\_\_\_\_  
ARCHITECT *(Signature)*

Frank Randel, Owner, 10534

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*

# EXHIBIT 1

## Alleghany County Library Contract Clarifications

1.1 Add: Provide architectural, plumbing, mechanical, electrical contract documents for a new courtroom inside the existing building on the first floor located at 85 East Whitehead St. Project will include demolition of existing interior walls and providing a judge's chamber with private toilet, a holding cell, and courtroom area. The existing first floor mechanical system will be replaced in its entirety. The existing toilet rooms on the first floor will be removed and not replaced. Existing toilet rooms on the second floor will remain where they're located and be modified to meet ADA. With the exception of work on the second floor toilet rooms no additional work is planned on the second floor. Opaque bullet resistant panels will be provided on the lower half of the windows in the courtroom and judge's chamber.

4.1 Delete the words: "measured drawings of existing conditions".

4.1.1 Add: Telecommunications / data / security conduits w/ pullstrings, and boxes shall be provided in the construction documents. The owner shall be responsible for providing a complete telecommunications / data / security system, (with the exception of the above noted items), including, but not limited to, cabling, telecommunications / data outlets, racks, servers, patch panels, punch blocks, and data cabling between the existing courthouse and new courtroom building. Owner shall also provide microphones and required interface equipment.

4.1.2 Add: It is anticipated that structural engineering will not be required for this project. Architect will provide an evaluation of what the existing floor structure can support and review the layout to identify areas of concern where the floor may be overloaded. Adjustments to the layout may be made to avoid an overloaded condition. If an unusual existing condition is found that requires structural engineering, then structural engineering will be provided as an additional service to be quoted.

4.1.3 Add: The existing building is not required to be provided with a fire suppression system and is not included in the contract for engineering services. If fire suppression is desired it will be provided as an additional service.

4.2.1 Include 3 architect site visits, 2 mechanical / fire protection, 2 electrical site visits over the duration of the project during design and construction. Site visits required to address issues that arise due to the fault of the Contractor is an additional service if the contract number of site visits is exceeded at a rate of \$1,200 per visit.

8.1.1 Change the words "not more than ten years" to read "not more than three years".

11.5	Design	30%
	Construction Documents & Bidding	50%
	Construction Phase	20%

Anticipated Draw Schedule

July 2020	Design	\$8,910
August 2020	75% Construction Documents	\$11,140
September 2020	25% CD / Bidding	\$3,710
Oct. / Nov.	Construction Phase 33%	\$1,980
Dec. / Jan.	Construction Phase 33%	\$1,980
Feb. / Mar.	Construction Phase 33%	\$1,980
Total		\$29,700

11.8.1.1 Add: Mileage compensated at IRS Standard Mileage Rates for Business

13.2.2: Delete this paragraph in its entirety.

## EXHIBIT 2

### HOURLY RATE SCHEDULE ATTACHMENT

#### Architect:

- Principal	\$150
- Project Architect	\$150
- CAD Technician	\$ 85
- Administrative	\$ 60

#### Structural Engineer:

- Manager of Structural Engineering	\$150
- Structural Project Manager	\$130
- Structural Project Engineer	\$125
- Engineering Intern	\$ 85
- Construction Admin. Project Engineer	\$125
- Construction Administrator	\$100
- CAD Technician	\$ 85
- Administrative	\$ 60

#### Plumbing / Mechanical / Fire Protection:

- Principal	\$175
- Project Manager	\$150
- Senior Designer	\$ 90
- CAD Operator	\$ 60
- Clerical Staff	\$ 60

#### Electrical Engineer

- Principal	\$175
- Engineer / Designer	\$125
- Sr. Drafter / CAD Operator	\$ 85
- Administrative Assistant	\$ 60