

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

-
- 1. CALL TO ORDER - CHAIRMAN**
 - 2. APPROVAL OF WORK SESSION AGENDA - CHAIRMAN**
 - 3. DISCUSSION ITEMS - NO ACTION**
 - 3.1. Library - Presentation by Friends of the Mt. Pleasant Library Pg. 3
 - 3.2. Arena and Events Center - Contract Review Pg. 13
 - 3.3. Innovation and Technology - Innovation Report Pg. 52
 - 4. DISCUSSION ITEMS FOR ACTION**
 - 4.1. BOC - Appointments to Boards and Committees Pg. 54
 - 4.2. County Manager - Revised Joint Use Agreement Pg. 57
 - 4.3. County Manager - Road Improvements at Hickory Ridge Elementary School Pg. 65
 - 4.4. Department of Human Services - Transportation FY20 ROAP Application Pg. 68
 - 4.5. Finance - Installment Financing Contract for Various School and County Projects - Public Hearing 6:30 p.m. Pg. 78
 - 4.6. Finance - Resolution Approving Installment Contract Financing for Various Public Projects Up to \$130,000,000 Pg. 82
 - 4.7. Infrastructure and Asset Management - Cabarrus County Courthouse Expansion Construction Manager at Risk Contract Extension Pg. 91
 - 4.8. Planning and Development - 2020-2021 HOME Program - Public Hearing 6:30 p.m. Pg. 107
 - 4.9. Planning and Development - Amendments to Proposed Fee Schedule Pg. 119
 - 4.10. Planning and Development - Urgent Repair Grant Pg. 122
 - 5. APPROVAL OF REGULAR MEETING AGENDA**
 - 5.1. BOC - Approval of Regular Meeting Agenda Pg. 123
 - 6. ADJOURN**

In accordance with ADA regulations, anyone in need of an accommodation to participate in the meeting should notify the ADA coordinator at 704-920-2100 at least 48 hours prior to the meeting.

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items - No Action

SUBJECT:

Library - Presentation by Friends of the Mt. Pleasant Library

BRIEF SUMMARY:

The Friends of the Mt. Pleasant Library recently provided partial funding to explore the option of the old Mt. Pleasant Middle School as a possible new site for an expanded Mt. Pleasant Library. Another half of funding was provided by Cabarrus County, in an account dedicated for this purpose. This presentation will review the proposed design for this project.

REQUESTED ACTION:

Receive report.

EXPECTED LENGTH OF PRESENTATION:

15 Minutes

SUBMITTED BY:

Emery Ortiz, Library Director
Friends of the Mt. Pleasant Library

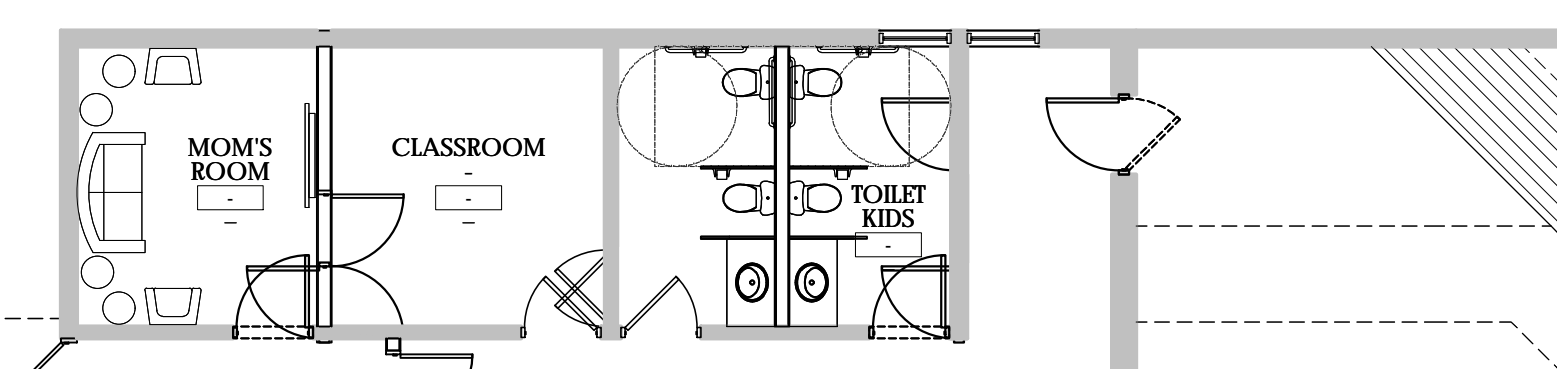
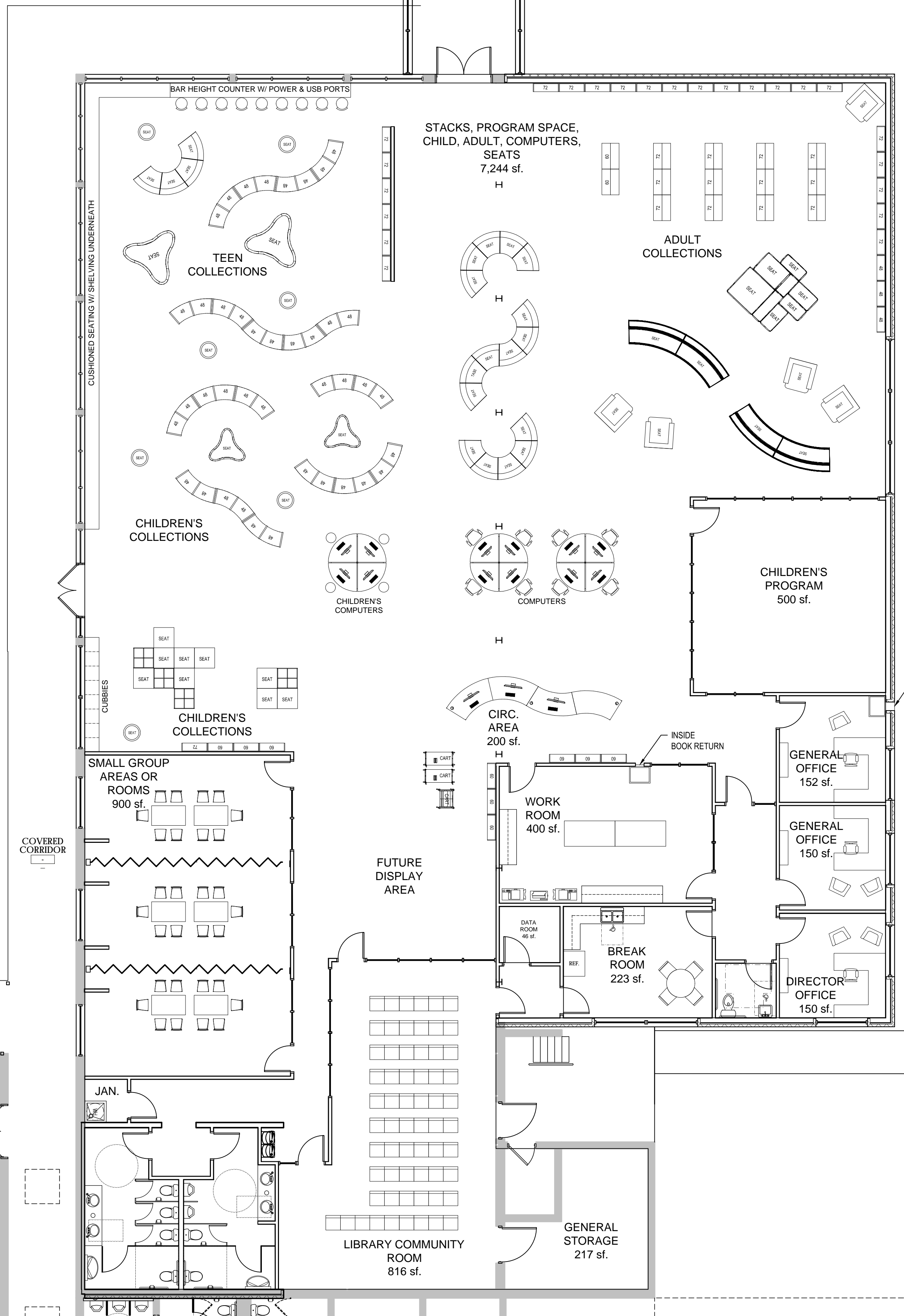
BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- ▣ Interior Design - Proposed MTP Library
- ▣ Exterior Design - Proposed MTP Library



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REVISIONS

**MOUNT PLEASANT HWY 49
 FRIENDS OF THE LIBRARY**

PROJECT NO.: P1941
 CONTACT: L. SCHAEFFER
 DRAWN BY: Nathan Morgan
 DATE: 10-16-2019

SHEET:
 FLOOR PLAN

FLOOR PLAN **01**
 SCALE: 1/8" = 1'-0"

A100



MT. PLEASANT BRANCH LIBRARY



MT. PLEASANT BRANCH LIBRARY



MT. PLEASANT BRANCH LIBRARY



Library



MT. PLEASANT BRANCH LIBRARY



MT. PLEASANT BRANCH LIBRARY



MT. PLEASANT BRANCH LIBRARY



CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items - No Action

SUBJECT:

Arena and Events Center - Contract Review

BRIEF SUMMARY:

Allow the Board an opportunity to review the county's current contract with SMG, the arena management company.

REQUESTED ACTION:

Review of current contract.

EXPECTED LENGTH OF PRESENTATION:

10 Minutes

SUBMITTED BY:

Jonathan Marshall, Deputy County Manager

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- Agreement

MANAGEMENT AGREEMENT
BETWEEN
CABARRUS COUNTY, NORTH CAROLINA
AND
SMG

Dated as of July 28, 2015

MANAGEMENT AGREEMENT

1st ~~28th~~ day of July, 2015 by and between Cabarrus County, North Carolina, a political subdivision of the State of North Carolina (the "County"), and SMG, a Pennsylvania general partnership, whose current address is 300 Conshohocken State Road, Suite 770, West Conshohocken, PA 19428 ("SMG").

BACKGROUND

The County is the owner and current operator and manager of the Cabarrus Arena and Events Center located in the County of Cabarrus, North Carolina ("Facility").

SMG is engaged, among other things, in the business of providing management services, including operations and marketing services for public assembly facilities.

The County desires to engage SMG, and SMG desires to accept such engagement, to provide management services for the Facility on the terms and conditions set forth herein.

The County intends to work in mutual accord with SMG in order to ensure provision of high quality management services, thereby enhancing the use and enjoyment of the Facility.

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

1. Definitions

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"ADA" – the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation.

"Affiliate" – a Person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, "control" means ownership of equity securities or other ownership interests that represent more than 40% of the voting power in the controlled Person.

"Approved Budget" – any budget submitted by SMG and approved by the County pursuant to Section 5 hereof.

"CERCLA" – the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act.

“Capital Equipment” – any and all furniture, fixtures, machinery or equipment, either additional or replacement, having a per item original cost of \$100,000.00 or more and an expected useful life of more than one year.

“Capital Improvements” – any and all building additions, alterations, renovations, repairs or improvements that have an initial dollar cost of not less than \$100,000.00 per project.

“County” – as defined in this first paragraph of this Agreement.

“Contract Administrator” -- the designated administrative official of the County as from time to time appointed by the County, or such individual person(s) as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement.

“Event Expenses” – any and all expenses incurred or payments made by SMG in connection with the occurrence of events at the Facility, including but not limited to costs for event staffing including ushers, ticket takers, security and other event staff, and costs relating to setup and cleanup.

“Facility” – as defined in the first paragraph of the Background section of this Agreement.

“Facility Policy Manual” – the policy manual provided by SMG to the County containing certain operating and employment policies customarily utilized by SMG in connection with the management of a public assembly facility such as the Facility.

“Fair” – as defined in Section 2.6 hereof.

“Fiscal Year” – a one year period beginning July 1 and ending June 30.

“Laws” – all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.

“Losses” – any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys’ fees and costs).

“Management Term” – as defined in Section 3.2 hereof.

“Net Operating Loss/Profit -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenues for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

“Operating Expenses” – (a) any and all expenses and expenditures of whatever kind or nature incurred by SMG in promoting, operating, maintaining and managing the Facility, provided that the same have been budgeted, are otherwise contemplated by this Agreement (e.g.

an increase over budgeted Operating Expenses due to an increase in event activity) or such expense is otherwise approved in writing by the County, including, but not limited to: employee compensation and related expenses (e.g., base salaries, bonuses, severance and car allowances), employee benefits and related costs (e.g., relocation and other related expenses pursuant to SMG's relocation policy (a copy of which is included in the Facility Policy Manual), parking and other fringe benefits), supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring, administering and maintaining the insurance referred to in Section 8 below (including, without limitation, the amount of any premium or deductible under any such policy), amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties (except where incurred due to SMG's or its employees', agents', licensees', concessionaires', promoters', performers' or contractors' negligent or intentional acts or omissions) and fees, professional fees, printing and stationery costs, Event Expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs (e.g., elevators and HVAC), security expenses, utility and telephone charges, travel and entertainment expenses in accordance with SMG's policies (a copy of which is included in the Facility Policy Manual), the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Facility, the cost of compliance with laws and regulations, costs incurred under agreements, commitments, licenses and contracts executed by SMG as provided in Section 2.3(c) hereof, and the fixed management fees payable to SMG pursuant to Section 4.1 below, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis; provided that Operating Expenses shall not include expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases or the incentive fee payable pursuant to Section 4.2 below and any expenses relating to SMG personnel based in SMG's corporate headquarters in Philadelphia, Pennsylvania or its regional field locations (including the costs of travel by such corporate or regional personnel in connection with SMG's management of the Facility).

(b) Solely for purposes of calculating Net Operating Loss/Profit and SMG's incentive fee hereunder, Operating Expenses shall exclude all interest, income tax, depreciation and amortization expenses.

“Operating Revenues” – any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Facility, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising and sponsorship sales and renewals, event sponsorship revenues, equipment rentals, utility revenues, box office revenues, ticket surcharges (if any), ticket service fees, parking revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, only the amount of such revenues paid by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, only the amount of such revenues paid by such contractors to the Facility shall be included as Operating Revenues), miscellaneous operat-

ing revenues, revenues generated from separate agreements with SMG Affiliates pertaining to the Facility, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. The parties acknowledge that revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are instead revenues of the promoter and/or performer of each such event. To the extent that SMG collects such ticket sale revenue on behalf of such promoter and/or performer, such ticket sale revenue shall be the source of funds from which SMG collects the rental charges and other event reimbursements due by such promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder.

“Operating Revenue Benchmark” – shall equal One Million Thirty-Five Thousand Dollars (\$1,035,000) for the first full Fiscal Year of the Management Term, subject to adjustment for material changes in the manner in which SMG operates food and beverage products at the Facility, if such changes are agreed upon by the parties hereto. The Operating Revenue Benchmark shall automatically adjust on the first day of each subsequent Fiscal Year to equal the amount of three (3) year average of the total Operating Revenues for the previous three Fiscal Years (and the parties agree to take into consideration any agreed upon adjustments relative to material changes in the food and beverage operations of the Facility).

“Person” – any individual, general partnership, limited partnership, limited liability partnership, partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and vice versa.

“Pre-existing Agreement” – each contract, license, agreement, option, lease and commitment existing as of the date of this Agreement that grants any Person any right (i) to license, use, occupy or rent all or any portion of the Facility, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of the Facility, and that are listed on **Exhibit “A”** hereto.

“Renewal Term” – the additional period for which this Agreement may be renewed at the option of the County in accordance with Section 3.2 hereof beyond the Management Term.

“SMG” – as defined in the first paragraph of this Agreement.

2. Engagement of SMG; Scope of Services.

2.1 Engagement.

(a) General Scope. The County hereby engages SMG to promote, operate and manage the Facility during the Management Term and the Renewal Term, if any, upon the terms and conditions hereinafter set forth, and SMG hereby accepts such engagement.

(b) Manager of the Facility. Subject to the terms of this Agreement, SMG shall be the sole and exclusive manager to manage, operate and promote the Facility during the Management Term and the Renewal Term, if any. In such capacity, SMG shall have exclusive authority over the day-to-day operation of the Facility and all activities therein; provided that SMG shall follow all policies and guidelines of the County hereafter established or modified by the County that the County notifies SMG in writing are applicable to the Facility (including without limitation any methodology pertaining to the allocation of any costs and expenses by the County to the Facility as permitted herein); provided further that to the extent that such policies or guidelines hereafter established or modified by the County adversely affect revenues or expenses at the Facility, then and in that event, the Benchmark and/or the incentive fee formula set forth in Section 4.2 below shall be appropriately adjusted so that it reflects the additional costs or reduced revenues resulting from such established or modified policies or guidelines.

(c) Approval of the County. To the extent that the approval of the County is required under the terms of this Agreement, the written approval of the Contract Administrator shall constitute the approval of the County, except to the extent the approval of another party is expressly required by the terms of this Agreement.

(d) Standards for Measurement of SMG's Performance. The County is entering into this Agreement in part based upon SMG's stated expertise and experience in managing and promoting other facilities similar in nature to the Facility and that SMG will utilize all of its good-faith commercially reasonable efforts to manage the Facility in a first-class, high-quality, fiscally responsible manner and in the County's best interest. It is the intention of the parties hereto that SMG will use its good faith commercially reasonable efforts to accomplish the following performance goals in its management of the Facility:

(i) Decreasing the yearly subsidy required by the County to the expenses of the Facility from the County's General Fund;

(ii) Increasing the number of event days in which the Facility is used;

and

(iii) Improving the quality of events occurring at the Facility.

(e) It is the express intent of the parties hereto that this Agreement be construed to the fullest extent possible in accordance with I.R.S. Revenue Procedure 97-13, relating to management contracts for facilities financed with tax-exempt bonds or Certificates of Participation, and, for purposes of determining the parties' compliance with such Revenue Ruling, all provisions hereof shall be interpreted or applied in such as manner as to provide the greatest compliance with the same. SMG acknowledges and agrees that it shall not be entitled to and does not intend to claim any compensation whatsoever or howsoever measured or denominated hereunder which does not comply with such Revenue Ruling or which could jeopardize such bonds' tax-exempt status. Under no circumstances shall SMG enter into any agreement for use of the Facility where such use exceeds thirty (30) days over such agreement's entire term (including renewal terms), without the prior written consent of the County.

2.2 Scope of Services -- Generally.

SMG shall perform and furnish such management services and systems as are appropriate or necessary to operate, manage and promote the Facility in a manner consistent with SMG's and the County's policies and procedures, and the operations of other similar first-class facilities.

2.3 Specific Services.

Without limiting the generality of the foregoing, and subject to the provisions hereof, SMG shall provide, and shall have the authority to provide without (except as otherwise expressly provided herein) any prior approval by the County, all of the following management services for the Facility in consideration for the management fees specified in Section 4 hereof:

(a) employ (subject to Section 7.2), supervise and direct all necessary or desirable employees and personnel consistent with the provisions of this Agreement;

(b) administer relationships with all subcontractors, concessionaires and all other contracting parties to the Pre-Existing Agreements, assume responsibility for any and all negotiations, renewals and extensions (to the extent SMG deems any of the foregoing to be necessary or desirable) relating to such Pre-Existing Agreements, and enforce the Pre-Existing Agreements;

(c) negotiate, execute in its own name, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Facility, provided that if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facility in the ordinary course has a term that extends beyond the remaining Management Term or Renewal Term, as the case may be, such license, agreement, commitment or contract shall be approved and executed by the County (which approval shall not be unreasonably withheld); provided, however, that in the event that SMG desires to propose additional services by SMG or any Affiliate of SMG, SMG shall present all such proposals to the County for its approval;

(d) to the extent that Operating Revenues or funds supplied by the County are made available therefor, maintain the Facility in the condition received, reasonable wear and tear excepted; provided that the County shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided in Section 5.8;

(e) to the extent that Operating Revenues or funds supplied by the County are made available therefor, rent, lease or purchase all equipment and maintenance supplies neces-

sary or appropriate for the operation and maintenance of the Facility, provided that the County shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases pursuant to Section 5.8, subject to the SMG Capital Contribution as provided in Section 5.11;

(f) establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facility to be negotiated by SMG in the course of its management, operation and promotion of the Facility. In determining such prices and rate schedules, SMG shall evaluate comparable charges for similar goods and services at similar and/or competing facilities and shall consult with the Contract Administrator about any adjustments to the rate schedules at the Facility to be made by SMG; provided, further, that SMG shall take all commercially reasonable actions to utilize its relationship with Ticketmaster to improve the financial, marketing and technological capacity of the Facility. As set forth in Section 10.2, SMG shall enter into no contract with any Affiliate of SMG unless specifically approved in writing by the County;

(g) to the extent that Operating Revenues or funds supplied by the County are made available therefor, pay, when due all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(h) after consultation with the County, institute or defend, at the reasonable expense of the County, with counsel agreed to by both parties, such legal actions or proceedings as SMG shall deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due or to cancel, terminate or sue for damages under any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

(i) maintain a master set of all booking records and schedules for the Facility;

(j) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities; internal budgeting and accounting; maintenance and property management; personnel management; record-keeping; collections and billing; and similar services; and

(k) engage in such advertising, solicitation, and promotional activities as SMG deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Facility). SMG shall work with the Cabarrus County Convention and Visitor's Bureau to market the Facility for conventions, trade shows and public entertainment shows. In connection with its activities under this Agreement, including without limitation advertising relating to the Facility, SMG shall be permitted to use the terms "Cabarrus Arena and Events Center" and logos for such names in its advertising, subject to the approval of the County.

(l) Market and secure new commercial rights sales for the Facility.

(m) In consultation with the County, evaluate and adjust the operational structure of the Facility as needed.

(n) In consultation with the County, evaluate, and attempt to adhere to contemporary community standards in respect to all events scheduled.

(o) As set forth herein, submit all financial and other reports detailing SMG's activities regarding the Facility to the County in a timely manner.

(p) Prepare and submit proposed budgets and annual plans as further provided herein.

(q) All activities of a corporate nature, including management and marketing activities regarding the Facility occurring at SMG's corporate headquarters in Pennsylvania or other locations, and all costs of travel to or from the Facility by SMG's employees or agents who are not regularly employed at the Facility.

(r) Assist with the marketing, promotion and operation of the Fair as further provided herein.

2.4 Right of Entry Reserved.

Representatives of the County designated in writing by the Contract Administrator shall have the right, upon reasonable advance notice to SMG and at appropriate times, to enter all portions of the Facility to inspect same, to observe the performance by SMG of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the premises, or to do any act or thing which the County may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the County under this Agreement. The County shall not unreasonably interfere with the activities of SMG hereunder, and the County's actions shall be conducted such that disruption of SMG's work shall be kept to a minimum. Nothing in this Section shall impose or be construed to impose upon the County any independent obligation to inspect, construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

2.5 Confidentiality/Nondisclosure.

(a) Confidentiality/Nondisclosure. In connection with the performance of SMG's services hereunder, the County acknowledges that SMG may provide the County and its employees, agents and subcontractors (including without limitation the architectural and engineering firm retained for the Facility) with Confidential Information (as defined below). In addition, in connection with the performance of the services hereunder, SMG may provide to the County and its employees, agents and subcontractors materials that are protected by copyright of SMG.

(i) The County agrees that it shall keep secret and confidential any and all Confidential Information already disclosed and/or to be disclosed to it by SMG which has been designated as confidential in writing by SMG, and the County shall not divulge any such information, in whole or in part, to any third party except as is expressly permitted below in this Section 2.5 or as may be required by state or federal law.

(ii) The County shall not use any such information, except for the express purpose of utilizing it in connection with the management of the Facility. The County shall not directly or indirectly disclose or discuss any such information with any Person, other than employees, agents and subcontractors of the County who are directly concerned with the management of the Facility, provided, however, that in the event of any such disclosure to its employees, agents and subcontractors, the County (i) shall first inform SMG of its desire to make such disclosure, (ii) if requested by SMG, shall require such employees, agents or subcontractors to execute and deliver to SMG prior to any disclosure by the County to him/her/it, an agreement acknowledging a receipt of a copy of the provisions of this Section 2.5 and agreeing to be bound by such provisions to the same extent as the County, and (iii) in any event, shall advise in writing all such Persons of the existence of the provisions of this Section 2.5 and of their responsibility to comply with such provisions.

(iii) "Confidential Information" means any and all information disclosed (orally, in writing, by inspection or otherwise) to the County by SMG pursuant to this Agreement which has been designated as confidential in writing by SMG. Such information includes, but is not limited to, plans, proposals, and lists of furniture, fixtures and equipment. The restrictions upon confidentiality and use of Confidential Information set forth in this Section 2.5 do not apply to information which the County can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to the County by SMG; however, Confidential Information shall not be deemed in the County's possession or publicly known simply because it is embraced by more general information in the County's possession.

(iv) With respect to any information or material which is protected by copyright of SMG, no part of such materials may be reproduced, stored in a data base and retrieval system or transmitted in any form or by any means - graphic, electronic, photocopying, recording, mechanical or otherwise - without the prior written permission of SMG.

(b) Specific Performance. The County agrees that the provisions of this Section 2.5 are reasonable and necessary to protect the interests of SMG and that SMG's remedies of law for a breach of any of the provisions of this Section 2.5 will be inadequate and that, in connection with any such breach, SMG will be entitled, in addition to any other remedies (whether at law or in equity), to temporary and permanent injunctive relief without the necessity of proving actual damage or immediate or irreparable harm, or of the posting of a bond. Notwithstanding the foregoing, if a court of competent jurisdiction shall determine any of the provisions of this Section 2.5 to be unreasonable, SMG agrees to a reaffirmation of such provisions by such court to any limits which such court finds to be reasonable and the County will not assert that such provisions shall be eliminated in their entirety by such court.

2.6 Cabarrus County Fair.

For purposes of this Agreement, all revenues generated by the Cabarrus County Fair (the "Fair") shall not be considered Operating Revenues hereunder. To the extent that SMG employees employed at the Facility can provide regular management services for the Fair within their normal business day, such services shall be provided without extra charges or fees. However, to the extent that SMG employees at the Facility cannot so perform or where SMG is directed by the County to hire additional staff for the Fair, then any and all new wages or overtime payments incurred by the Facility in connection with (i.e. just before, during or just after) the Fair shall be paid for by the County outside of the Facility budget. Any other incremental (i.e. would not have been incurred by the Facility but for the existence of the Fair) charges that are identifiable and quantifiable in connection with the Fair shall also be for the account of the County and not the Facility.

3. **Term and Renewal.**

3.1 Transition Period.

Intentionally omitted.

3.2 Management Term and Renewal Term.

(a) The "Management Term" of this Agreement shall commence on July 1, 2015 and end at midnight on June 30, 2020 unless earlier terminated pursuant to the provisions of this Agreement or extended pursuant to Section 3.2(b).

(b) The County may extend the term hereof on the same terms and conditions for additional five-year periods (each a "Renewal Term") commencing immediately after the Management Term or any Renewal Term, as applicable, by giving not less than one hundred fifty (150) days prior written notice of such extension to SMG; provided, however, that the parties shall mutually agree on the amount, terms and conditions of remuneration for SMG's services hereunder.

3.3 New Contract.

If (i) the County intends, upon termination or expiration of the Management Term or Renewal Term to continue to provide management at the Facility through a private provider and (ii) this Agreement has not been terminated upon a default by SMG, then the County will during the final year of the Management Term (unless the County exercises its option to renew under Section 3.2) or Renewal Term, as the case may be, negotiate and discuss in good faith a new contract or arrangement with SMG for the provision of such services following the completion of such term. The obligation to negotiate with SMG is not intended to guarantee any contract rights for a future contract with SMG or any specific terms of a new contract.

4. SMG's Compensation.

4.1 Fixed Fee.

As base compensation to SMG for providing the services herein specified during the Management Term, the County shall pay SMG during the Management Term a periodic fixed fee of \$100,312 per Fiscal Year ("Fixed Fee"), which amount shall be adjusted upward on the first day of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2015, by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) -- U.S. City Average -- All Items, during the one year period ending in June immediately preceding such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions ("CPI"). The foregoing annual fixed compensation shall be payable in equal monthly installments due on or before the last day of each month during such Fiscal Year, and SMG, provided it is not in default (as described in Section 12.1) hereunder, shall be entitled to draw such amounts from the account described in Section 5.6. In the event of a Renewal Term, the parties shall mutually agree upon the amount, terms and conditions of SMG's remuneration under this Section 4 for its performance hereunder.

4.2 Incentive Fee.

(a) Amount. SMG shall be entitled to an annual incentive fee with respect to each Fiscal Year during the Management Term which shall be equal to the amount calculated in accordance with (i) below; provided, however, that in no event shall the total incentive fees for any Fiscal Year exceed 100% of the periodic fixed fee payable pursuant to Section 4.1 for such Fiscal Year, and; provided further, that SMG will not be eligible in any Fiscal Year for the Quantitative Incentive Fee (as defined below) unless the County approved annual budget of net operating income is met or exceeded for such Fiscal Year:

(i) Quantitative Incentive Fee. SMG shall be entitled to an annual quantitative Incentive Fee ("Quantitative Incentive Fee") with respect to each Fiscal Year during the Management Term equal to fifteen percent (15%) of the excess Operating Revenue over the Operating Revenue Benchmark; provided, however, that the Quantitative Incentive Fees shall not exceed seventy-five percent (75%) of the fixed fee payable to SMG for such Fiscal Year pursuant to Section 4.1; and

(ii) Qualitative Incentive Fee. SMG may earn an annual qualitative Incentive Fee ("Qualitative Incentive Fee") with respect to each Fiscal Year during the Management Term up to an amount equal to twenty-five percent (25%) of the fixed fee payable to SMG for such Fiscal Year pursuant to Section 4.1. The amount of the Qualitative Incentive Fee shall be based upon an evaluation of SMG's performance by the County with respect to the following qualitative criteria:

(a) Professional Management. SMG shall demonstrate professional management of staff by above average ratings on mutually approved service de-

livery surveys (a copy of which is attached hereto as Exhibit 4.2(a)(ii)(a)) and a review by the County (up to 40 points).

(b) Maintenance and Operation. SMG shall demonstrate quality maintenance and operation of the Facility based upon a review by the County on a quarterly basis of the condition of the Facility and the equipment therein (up to 20 points).

(c) Customer Service. SMG shall demonstrate quality service to clients of the Project by above average ratings on mutually approved service delivery surveys (a copy of which is attached hereto as Exhibit 4.2(a)(ii)(c)) (up to 40 points).

The amount of the points assigned for such Fiscal Year will be used to calculate the Qualitative Incentive Fee payable to SMG for such year as described below. The Qualitative Incentive Fee for any Fiscal Year shall be an amount equal to the product of (A) 25% of the fixed fee payable under Section 4.1 for such Fiscal Year, and (B) a ratio whose denominator is 100 points and whose numerator equals the number of points earned by SMG for such year in the County's discretion as provided above. The parties will meet periodically, as the County determines to be reasonably necessary, during the course of each Fiscal Year to provide performance updates and to discuss performance issues.

(b) Payment. The incentive fees determined pursuant to Section 4.2(a) above shall be payable to SMG within forty-five (45) days after the County's receipt of an invoice from SMG accompanied by an annual statement certified by one of its officers setting forth the Operating Revenues and Operating Expenses for the previous Fiscal Year and showing the calculation of the incentive fee payable with respect to such Fiscal Year. Provided that the County approves or does not object in writing to SMG's invoice within forty-five (45) days of its receipt of the same, SMG will thereafter be entitled to deduct the amount of such fee from the account described in Section 5.6 below, provided that to the extent that SMG projects that such a deduction would leave insufficient funds in such account to cover Operating Expenses for the remainder of the then-current fiscal quarter, SMG shall be entitled not to deduct all or a portion of such fee from such account, and, upon notice thereof from SMG, the County shall promptly pay SMG the amount of the fee that has not been deducted from such account. Promptly following the availability of the audited annual financial statements described in Section 6.1 hereof for a Fiscal Year, SMG shall recalculate the incentive fee payable for that Fiscal Year; in the event that the amount of the incentive fee which was paid based on SMG's invoice differs from such recalculated amount, SMG shall promptly remit to the County any excess amount which was paid, or the County shall within forty-five (45) days pay (or SMG shall be entitled to deduct from any account specified in Section 5.6 after the lapse of forty-five (45) days without objection by the County) the shortfall, as the case may be.

(c) Revenues and Fees. All revenues generated by, payable in connection with or in any way related to the Facility shall be the sole property and revenue of the County.

SMG's sole remuneration for its performance under this Agreement shall be the Fixed Fee and, if applicable, the Quantitative Incentive Fee and/or the Qualitative Incentive Fee. SMG shall have no claim to any revenues generated by, payable in connection with or in any way related to the Facility except through said fees.

5. Funding; Budgets; Bank Accounts.

5.1 Operating Funds.

Except as otherwise set forth herein and subject to Section 5.2, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), the County shall make available to SMG all funds necessary to pay all approved expenses pursuant to the approved, budgeted Operating Expenses incurred or accrued in such Fiscal Year, to the extent Operating Revenues do not equal or exceed Operating Expenses. To the extent that Operating Revenues during a calendar quarter period are insufficient, or are reasonably expected to be insufficient, to cover Operating Expenses plus, with respect to the first quarter of a Fiscal Year, the amount of the projected incentive fee payable pursuant to Section 4.3(b) for the prior Fiscal Year ("Cash Flow Shortfall") for such period, the County shall deposit funds into the operating account as follows. Thirty (30) days prior to the beginning of each calendar quarter during the Management Term and any Renewal Term, SMG will submit to the County an invoice for the projected Cash Flow Shortfall for such quarter and the County will transfer such funds to the operating account within five (5) days after the start of such calendar quarter. Such funds shall be used to pay Operating Expenses. Should it thereafter be determined that Operating Revenues for the quarter in question were in fact sufficient to cover Operating Expenses for such quarter and that the deposit by the County was not in fact needed, then such deposit shall, at the County's option, be either refunded to the County within ten (10) days of its written request therefor, or shall be deposited into an interest-bearing account to be used only to cover any future Cash Flow Shortfalls. Any cash infusions by the County pursuant to a Cash Flow Shortfall shall not constitute Operating Revenues.

5.2 Non-Funding.

(a) The County shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date SMG receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated, or are anticipated to be insufficient or unavailable in the future, for the Facility.

(b) If the Appropriation Deficiency Notice is of insufficient funds, the County shall pay all Operating Expenses incurred or committed for after such date that are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The County shall pay all Operating Expenses incurred or irrevocably committed for prior to the date SMG receives the Appropriation Deficiency Notice. Any failure by the County to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after SMG receives an Appropriations Deficiency Notice shall not be a

breach of or default under this Agreement by the County. Any failure by SMG to perform its obligations under this Agreement after SMG's receipt of a Appropriation Deficiency Notice shall not be a breach of or default under this Agreement if such breach or default directly results from such appropriation deficiency, provided that the County has been first given reasonable prior written notice by SMG that such specific breach or default by SMG was likely to result from such appropriation deficiency.

(c) If the County appropriates funds at (or reduces appropriated funds to) a level that, in SMG's reasonable, good faith judgment, renders the management of the Facility by SMG unsafe as a public assembly facility, SMG may provide its concerns in writing to the County and (i) SMG and the County shall, as soon as practicable and in no event later than the next event that SMG has identified as being unsafe to hold (the date of which shall have been included in SMG's notice referenced immediately above), agree on the manner in which the Facility shall be operated or on the increased amount of funding necessary to render the operation of the Facility safe or (ii) SMG may terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3). In the event of a termination under this Subsection 5.2(c) and if SMG's concerns are addressed within the twelve (12) month period following such termination, then SMG shall have the right to resume management of the Facility by giving written to notice within thirty (30) days of the date such concerns are addressed, provided that this right to resume management shall expire if not exercised in writing within such thirty (30) day period.

5.3 Annual Budget; Cash Flow Budget.

(a) As part of the annual plan described in Section 6.2 herein, on or before one hundred twenty (120) days prior to the end of each Fiscal Year, SMG will prepare a proposed annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses and the projected net operating deficit or surplus.

(b) SMG shall prepare and submit to the Contract Administrator on or before one hundred twenty (120) days prior to the end of each Fiscal Year a proposed annual cash flow budget for the succeeding Fiscal Year.

(c) The annual budgets referred to in subparagraphs (a) and (b) above shall be reviewed and are subject to approval by the County. On or before the date of the Cabarrus County Commissioners' last regularly-scheduled meeting prior to the end of each Fiscal Year, the County shall notify SMG of any changes to the annual operating budget and the cash flow funding budget for the succeeding Fiscal Year proposed by SMG and with such changes, if any, as are made by the County. In the event that SMG agrees to such changes, which agreement shall not be unreasonably withheld, conditioned or delayed, such budgets shall be the Approved Budgets for the upcoming Fiscal Year and, if the parties cannot agree on Approved Budgets for the upcoming Fiscal Year, then the previous Fiscal Year's Approved Budgets shall be the Approved Budgets for such upcoming Fiscal Year until a new budget is agreed upon by the parties.

5.4 Budget Modifications Initiated by SMG.

SMG may submit to the Contract Administrator at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the County of such supplemental or revised budget, the Approved Budgets for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in Section 5.5 below or in the two preceding sentences except that SMG shall have the right to propose amendments to the Approved Budgets for approval by the County as may be necessary or appropriate as the result of the scheduling by SMG of additional events or activities at the Facility (and the incurrance of additional Operating Expenses arising from the scheduling of additional events or activities at the Facility) as long as prior to the scheduling of such events or activities, SMG had a reasonable good faith belief that the projected Net Operating Loss for the Fiscal Year as set forth in the Approved Budgets would not be increased as a result of such additional events or activities.

5.5 Budget Modifications Initiated by the County.

In the event that it appears reasonably likely, in any year during the term hereof, that the actual Net Operating Loss/Profit for such Fiscal Year will be larger or smaller as the case may be than projected in the annual operating budget for such Fiscal Year, the County may request from SMG a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amount. SMG shall forthwith comply with any such expense reduction requested by the County, whether such reduction was included in SMG's proposed plan for reduction or not, and the approved budgets for such Fiscal Year shall be modified accordingly, provided that if the County's requested reductions, in SMG's reasonable good faith judgment, could materially interfere, impede or impair the ability of SMG to manage, operate or promote the Facility, SMG shall have the right to terminate this Agreement pursuant to Section 12.2 (with the effect set forth in Section 12.3) and provided further that SMG shall not be construed to have breached its obligations under this Agreement if such alleged breach has been directly caused by the reductions requested by the County, provided that the County has been first given reasonable prior written notice by SMG that such specific breach or default by SMG was likely to result from such reduction.

5.6 Receipts and Disbursements.

SMG shall establish and maintain in one or more depositories designated by the County one or more operating, payroll and other bank accounts for the promotion, operation and management of the Facility, in the name of the County, with SMG having signature authority in such employees of SMG as SMG shall reasonably determine, provided such employees are properly bonded as specified herein. All revenues collected by SMG from the operation of or in any way related to the Facility shall be deposited into such accounts and Operating Expenses shall be paid by SMG from such accounts. All revenues collected by SMG arising from, related to or payable in connection with the Facility, including but not limited to revenues from box office sales, facility or equipment rentals, utility rental agreements, food and beverage concessions,

naming or pouring rights, licensing agreements, sales, marketing, leasing or other commissions, or any other source, are the sole property of the County, held in trust by SMG for the County for application as provided herein. Any amounts remaining in such accounts upon termination or expiration of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be the sole property of the County and shall be promptly paid by SMG to the County.

5.7 Ticket Sales Revenues.

SMG shall hold in a separate interest-bearing account in a banking institution depository designated by the County any ticket sale revenues which it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the County and SMG, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, SMG shall make a deposit into the operating account(s) established pursuant to Section 5.6 above of the amount in such account and shall pay from the operating account Event Expenses and provide the County with a full event settlement report along with, upon request of the County, copies of paid receipts from all vendors, promoters, performers and other payees of any portion of the ticket sale revenues, and/or other details of such payments. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the ticket account referred to above shall be considered Operating Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

5.8 Capital Improvements: Capital Equipment.

The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the County, except as otherwise provided in Section 5.12, and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 shall include SMG's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the Fiscal Year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the County budget funds therefor. The County shall retain the sole discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facility, except as otherwise provided in Section 5.12.

5.9 Funding of Facility.

The parties agree that SMG shall not be considered to have a general community funding obligation (e.g. to fund the operation of the Facility in the event that the County cannot appropriate funds for its operation); provided, however, that this agreement does not in any manner negate any payment obligations of SMG set forth in this Agreement.

5.10 Funds for Emergency Repairs.

SMG shall have the right to act, with the consent of the County, in situations which SMG determines to be an emergency with respect to the safety, welfare and protection of the general public, including spending and committing funds held in the operating account(s) of the Facility, even if such expenses are not budgeted, provided that such funds are reasonably related to addressing the immediate emergency condition only; provided, however, SMG shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. If feasible, SMG shall use reasonable attempts to contact the Contract Administrator or other responsible party at the County prior to taking such actions, and in any event, immediately following such action, SMG shall inform the County of the situation and the action(s) taken, and the County shall pay into such account(s) the amount of funds, if any, reasonably spent or committed by SMG pursuant to this Section 5.10 in excess of budgeted amounts.

5.11 Event Fund.

On or before July 1, 2005, SMG made a Fifty Thousand Dollar (\$50,000) contribution to a segregated interest bearing account established in accordance with Section 5.6 for the purposes of promoting and developing new event activity at the Facility (“**At Risk Event Fund**”). The County made a contemporaneous contribution to the At Risk Event Fund of Fifty Thousand Dollars (\$50,000). SMG shall, subject to periodic consultation with the County, manage and control the At Risk Event Fund. Each party may make requests/recommendations in respect of potential events, or concepts for potential events, which may be funded, in whole or in part, through the At Risk Event Fund. The At Risk Event Fund will be replenished up to a maximum of the original principal amount of \$100,000 from profits, if any, from events in which funds of the At Risk Event Funds are utilized. Any remaining profits from such events will be placed in the Operating Account. Losses, if any, shall be deducted from said Fund without recourse to SMG or the County. Any events developed with any contributions from said Fund shall pay rent (and reimburse expenses) to the Facility consistent with that paid by third party users of the Facility on a “most favored client” basis for similar types of shows. Upon termination or expiration of this Agreement and provided such termination is not due to breach of this Agreement by SMG, SMG shall be entitled to withdraw half of the funds then in the account up to SMG’s \$50,000 (plus a prorated share of any accrued interest) from the At Risk Event Fund.

5.11 SMG Capital Contributions.

(a) Within thirty days after the signing of this agreement, SMG shall provide to the Facility the sum of One Hundred Fifty Thousand Dollars (\$150,000) for Capital Improvements and Capital Equipment purchases relating to the Facility (the “First Capital Contribution”). In addition, in the event that the parties exercise their option to renew this Agreement for the term of 2020-2025, then within thirty days after the exercise of such option, SMG shall provide to the Facility an additional sum of Seventy-Five Thousand Dollars (\$75,000) for Capital Improvements and Capital Equipment purchases relating to the Facility (the “Second Capital Contribution”)

(b) Amortization of the SMG Capital Contribution. The amount of the First Capital Contribution shall be amortized over a period of one hundred twenty (120) months during the Management Term and the Renewal Term, if any, on a straight-line, non-interest bearing basis. The amount of the Second Capital Contribution shall be amortized over a period of sixty (60) months during the Management Term and the Renewal Term, if any, on a straight-line, non-interest bearing basis. In the event of the expiration or termination of this Agreement for any reason, the County shall pay, or cause any successor management company to pay, to SMG unconditionally and without set-off the unamortized amount of the First Contribution and Second Capital Contribution existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to SMG no later than thirty (30) days following the effective date of such expiration or termination.

6. Records, Audits and Reports.

6.1 Records and Audits.

(a) SMG shall keep full and accurate accounting records relating to its activities at the Facility in accordance with generally accepted United States accounting principles. SMG shall maintain a system of bookkeeping adequate for its operations hereunder and sufficient to allow the County to determine SMG's compliance with this Agreement and the Facility's complete financial status and performance at any time. SMG shall adjust its accounting procedures upon request by the County to conform with any applicable requirements of state or federal law or to the reasonable recommendations of the County's Finance Director, financial advisors or bond underwriters. SMG shall give the County's authorized representatives access to such books and records at any reasonable time. SMG shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase order, sales books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before ninety (90) days following each Fiscal Year for which SMG is managing the Facility hereunder, SMG shall furnish to the County a balance sheet, a statement of profit or loss and a statement of cash flows for the Facility for the preceding Fiscal Year, prepared in accordance with generally accepted United States accounting principles. The accounting records maintained by SMG hereunder for the Facility shall be audited annually by the County's independent auditor as part of the County's overall audit process. The County may, from time to time, audit the accounting records maintained by SMG hereunder for the Facility, at any reasonable time. The cost of any such audit shall be deemed an Operating Expenses hereunder.

(b) The County shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of SMG relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the County in conducting such audit shall be considered an Operating Expense. If any such audit demonstrates that the Operating Revenues or Operating Expenditures reflected in any financial statements prepared by SMG and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by

more than five percent (5%), or that there were material inaccuracies or omissions of any other nature which were intentional or grossly negligent by SMG, SMG shall pay to the County the reasonable cost of such audit and shall promptly refund to the County any portion of the incentive fee paid for such Fiscal Year which is attributable to the overstatement or understatement, as the case may be. The County's right to have such an audit made with respect to any Fiscal Year and SMG's obligation to retain the above records shall expire three (3) years after SMG's statement for such Fiscal Year has been delivered to the County.

6.2 Annual Plan.

(a) SMG shall provide to the County on or before one hundred twenty (120) days prior to the end of each Fiscal Year, an annual management plan, which shall include the annual operating budget described in Section 5.3 for the next Fiscal Year. The annual plan shall include information regarding SMG's anticipated operations for such Fiscal Year, including planned operating maintenance activities by SMG, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated events at the Facility, anticipated advertising and promotional activities, any planned uses of the At-Risk Event Fund, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision and approval by the County. Following review and revision by the County, SMG shall have thirty (30) days to incorporate the County's revisions into its plan and resubmit the revised plan for approval. Upon approval by the County, such annual plan shall constitute the operating program for SMG for the following Fiscal Year.

6.3 Monthly Reports.

Prior to the Cabarrus County's Commissioners' regularly monthly meeting of each month during the term of this Agreement, SMG shall provide to the County a written monthly report in a form approved by the County and similar to that used in other SMG-managed facilities setting out the Facility's anticipated activities for the upcoming month and reporting on the prior month's activities and finances; provided, however that it shall not be a breach of this agreement if such regular meeting is scheduled on a date too early in a month for SMG to deliver such report. SMG shall include in such report a balance sheet, income statement, and other financial reports (such as a departmental expense report and event accounting).

7. **Employees.**

7.1 SMG Employees.

(a) Subject to Section 7.2, SMG shall select, train and employ at the Facility such number of employees as SMG deems necessary or appropriate to satisfy its responsibilities hereunder; SMG shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons, and, subject to Section 7.2, SMG shall have authority to hire, terminate and discipline any and all personnel working at the Facility. All employee shall be informed of the standards set forth in Section 2.1(d) hereof.

(b) After the parties' agreement regarding the selection process, and the County's opportunity to interview general manager candidates and upon consultation with the County, SMG shall assign to the Facility a competent, full-time general manager. From time to time the general manager may provide assistance in connection with the consulting and/or management services provided by SMG or any of its Affiliates at other facilities managed, owned or leased by SMG or any of its Affiliates, provided that (i) such assistance does not affect in any material respect the responsibilities and duties of the general manager to the Facility and (ii) the cost of the salary and benefits of the general manager for the time spent in connection with providing such assistance shall be reimbursed by SMG to the operating account of the Facility. Prior to SMG's appointment of such general manager, SMG shall consult with the Contract Administrator with respect to the qualifications of the general manager proposed by SMG.

(c) SMG employees at the Facility shall not for any purpose be considered to be employees or agents of the County, and SMG shall be solely responsible for their supervision and daily direction and control and for setting, and paying as an Operating Expense, their compensation (and federal income tax withholding) and any employee benefits, and all costs related to their employment shall be an Operating Expense.

7.2 County Employees.

(a) Intentionally Omitted

(b) The County agrees that in the event that SMG is at any time required to make contributions to multiemployer plans (as that term is defined in Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended), on behalf of or for the benefit of SMG's union employees during the term of this Agreement, the parties will mutually agree in a separate agreement to the effect that County shall hold harmless SMG from any Losses in respect of any withdrawal liability if there are any unfunded vested benefits under any such multiemployer plans in connection with the hiring and firing of such employees by SMG during the term of this Agreement or the termination of this Agreement.

7.3 No Solicitation or Employment by County.

During the period commencing on the date hereof and ending one (1) year after the termination or expiration of this Agreement, except with SMG's prior written consent, the County will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by SMG at the Facility, including, without limitation, the general manager, director-level employees and department heads. In addition to any other remedies which SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision.

7.4 Termination Effect on Contracts. All contracts relating to the Facility (including all contracts approved by the County and all license, lease or rental contracts pertaining to the Facility) which SMG executed in its own name shall be automatically assigned to, and deemed to be assumed by, the County (without further action by any party) upon termination or

expiration of this Agreement and the County shall indemnify, defend and hold harmless SMG from and against any Losses in respect of any liability under such contracts arising from any act or omission by any party to such contracts (other than due to the gross negligence or intentional acts or omissions of SMG) occurring on or after the effective date of termination or expiration of this Agreement.

8. Indemnification and Insurance.

8.1 Indemnification.

(a) SMG shall indemnify, defend and hold harmless the County, its elected and appointed officials, officers, agents and employees from and against any and all Losses arising from any material default or breach by SMG of its obligations specified herein or other Losses incurred by or threatened against County arising from or in connection with a third party law suit alleging wrongdoing by SMG in connection with SMG's management of the Facility; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses (i) arise from any breach or default by the County of its obligations under Section 8.1(b) below, (ii) arise out of a failure by the County to maintain reasonable commercial insurance covering (A) the Facility and its premises for physical damage or other Loss and (B) business interruption, (iii) are caused by or arise out of the services provided by the architects, engineers and other agents (other than SMG) retained by the County in connection with Capital Improvements or Capital Equipment purchases at the Facility, or (iv) where SMG is not found to have committed the wrongdoing alleged in a third party law suit and the County was not named as a party in the litigation or was found liable for the wrong doing (and such Losses would become Operating Expenses (as defined above and reimbursable to SMG)).

(b) The County shall indemnify, defend and hold harmless SMG, its partners, officers, agents and employees from and against any and all Losses arising from (i) any material default or breach by the County of its obligations specified herein, (ii) the fact that at any time prior to the commencement of the Management Term hereunder the Facility has not been operated, or the Facility and its premises are not or have not been, in compliance with all Laws, including, but not limited to, the ADA, (iii) the fact that prior to, as of, or after the commencement of the Management Term hereunder there is any condition on, above, beneath or arising from the premises occupied by the Facility which might, under any Law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms are defined under CERCLA), (iv) any structural defect with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the Management Term hereunder, or (v) any obligation or liability under or in respect of any contract, agreement or other instrument executed by SMG in conformity with the provisions of this Agreement and where SMG has not breached the terms thereof (vi) any non-compliance with any Pre-Existing Agreement on or prior to the commencement of the Management Term, or (vi) any act or omission carried out by SMG at the specific written direction or written instruction of the County and where SMG follows such written direction, its agents or employees; provided, however, that the foregoing indemnification under clauses (i) and (ii) above shall not extend to Losses to the extent such Losses arise from any default or breach by SMG of its obligations specified herein.

(c) The parties acknowledge and agree that SMG has managed the Facility for the past ten years and that SMG has used the Facility and is familiar with its condition and the above indemnification of SMG by the County is limited to the extent that SMG created any condition in the Facility that might give rise to liability on the part of SMG or the County. The provisions set forth in subparagraphs (a) and (b) above shall survive termination of this Agreement; provided, however, that a claim for indemnification pursuant to Section 8.1 shall be valid only if the party entitled to such indemnification provides written notice thereof to the other party prior to three (3) years following the date of termination or expiration of this Agreement.

The terms of all insurance policies referred to in Section 8, including without limitation (i) the property insurance policies of the County, and (ii) the policies of any independent contractors retained by the County or hired by SMG (such as, the food and beverage concessionaire retained by the County and emergency medical technicians who are not employed by SMG), shall preclude subrogation claims against SMG, its partners, the County and their respective officers, directors, employees and agents. SMG and the County hereby release each other from and against any and all loss of or damage to property arising out of or incident to any peril required to be insured against herein. The effect of such release is not limited to the amount of insurance actually carried or required to be carried, to the actual proceeds received after a loss or to any deductibles applicable thereto. Each party shall have the insurance company that issues its property coverage waive any rights of subrogation and shall have the insurance company include an endorsement acknowledging this waiver, if necessary. Either party's failure to carry the required insurance shall not invalidate this waiver.

8.2 Liability Insurance.

(a) SMG shall secure and deliver to the Contract Administrator prior to the commencement of the Management Term hereunder and shall keep in force at all times during any period in which SMG has operations at the Facility, a commercial liability occurrence insurance policy, including public liability and property damage, covering the premises and the operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and One Million Dollars (\$1,000,000.00) for property damage, including products and completed operations and independent contractors.

(b) SMG shall also maintain Comprehensive Automotive Bodily Injury and Property Damage Insurance for business use covering all vehicles operated by SMG officers, agents and employees in connection with the Facility, whether owned by SMG, the County, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (including an extension of hired and non-owned coverage).

(c) SMG shall also maintain Umbrella liability insurance from the these limits up to no less than a limit of Five Million Dollars (\$5,000,000). SMG shall be the named insured under all such policies. The County shall be an additional insured under the foregoing insurance policies, as its interests may appear, and said policies shall contain a provision covering the parties' indemnification liabilities to each other.

(d) Required of SMG hereunder along with copies of the paid receipts therefor shall be delivered to the Contract Administrator prior to the commencement of this Agreement. Notwithstanding the provisions of this Section 8.2, the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to the County of Cabarrus, North Carolina, Attention: County Manager, 65 Church Street SE, P.O. Box 707, Concord, NC 28026-0707, sent by certified mail, return receipt requested."

(e) With respect to policies procured by it, SMG shall deliver to the Contract Administrator satisfactory evidence of such renewal of such policies prior to a policy's expiration date except for any policy expiring on the termination or expiration date of this Agreement or thereafter.

(f) Except as provided in Sections 8.5(b) and 8.6, all insurance procured by SMG in accordance with the requirements of this Agreement shall be primary over any insurance carried by the County and shall not require contribution by the County.

8.3 Workers Compensation Insurance.

SMG shall at all times maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the North Carolina State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of North Carolina insuring its employees at the Facility in amounts equal to or greater than required under law.

8.4 Fidelity Insurance.

SMG shall maintain during the term of this Agreement Fidelity Insurance covering all of SMG's personnel under this Agreement in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the County for losses experienced due to the dishonest acts of SMG's employees.

8.5 Property Insurance.

SMG shall maintain sufficient property damage or loss insurance to cover personal property owned by SMG at the Facility and shall maintain such insurance beginning as of the date hereof and continuing throughout all periods in which SMG has any operations at the Facility. The County shall maintain its current property insurance covering the premises of the Facility. Certificates evidencing the existence of the policies shall be delivered to SMG prior to the commencement of the Management Term. Notwithstanding the provisions of this Section 8.5(b), the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. With respect to policies procured by it, the Contract Administrator on behalf of the County shall deliver to SMG satisfactory

evidence of such renewal of such policies at least twenty (20) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

8.6 Certain Other Insurance.

(a) If any of the Pre-Existing Agreements consist of agreements with independent contractors to provide services in respect of the Facility, the County shall use its best efforts to cause such contractors to name SMG as an additional insured under any insurance maintained by such contractors pursuant to the terms of such Pre-Existing Agreements and in such event to deliver to SMG promptly after request therefor a certified copy of such policy and a certificate evidencing the existence thereof. In addition, if SMG enters into any agreements during the Management Term and any Renewal Term with any independent contractors for the provision of services hereunder, SMG shall have the right to require such contractors to name SMG as an additional insured under any insurance required by SMG thereunder and to deliver to SMG prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 8.5(c).

(b) SMG shall, within ninety (90) days of the date of this Agreement and at least yearly thereafter, review the insurance carried by the County and SMG covering the Facility or any of SMG's or the County's operations at the Facility, or required of third parties using the Facility, with regard to SMG's experiences at other similar facilities, and shall within fifteen (15) days of such review advise the County in writing of the results of its review and of any changes, additions or increases to the insurance requirements hereunder or applicable to third parties which are advisable under best facility management practices.

(c) The parties hereto shall each immediately notify the other, along with any applicable insurance carrier(s), in writing of any occurrence or discovery which could result in an insurance claim hereunder.

(d) SMG shall require reasonable liability insurance from all third-party users of the Facility and shall enforce the provisions contained in all third party contracts entered into in connection with the Facility, including the insurance requirement contained in all County approved event license, concessionaire, subcontractor and other similar agreements.

9. Ownership of Assets.

9.1 Ownership.

The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility shall remain with the County. Ownership of and title to all intellectual property rights of whatsoever value, related to the Facility in any way shall remain the sole property of the County, with the exception of any proprietary software developed by SMG prior to the date of this Agreement. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or County funds shall remain with the County, but such

assets may be utilized and consumed by SMG in the performance of services under this Agreement. The ownership of data processing programs and software owned by the County shall remain with the County, and the ownership of data processing programs and Software owned by SMG shall remain with SMG. SMG shall not take or use, for its own purposes, or for those of third parties, customer or exhibitor lists or similar materials developed by the County for the use of the Facility, unless written consent is granted by the County. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by SMG with County funds for use at and for the Facility shall vest in the County automatically and immediately upon purchase or acquisition. The assets of the County as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned other than in the ordinary course of business of the Facility without the prior approval of the County.

9.2 County Obligations.

Except as herein otherwise set forth, throughout the term of this Agreement, the County will maintain full beneficial use and ownership of the Facility and will pay, keep, observe and perform all payments, terms, covenants, conditions and obligations under any bonds, debentures or other security agreements or contracts relating to the Facility to which the County may be bound, and SMG shall reasonably cooperate with the County in this regard.

10. Assignment; Affiliates.

10.1 Assignment.

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld, conditioned or delayed. The parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive its management and incentive fees hereunder to its lender(s) as collateral security for SMG's obligations under any credit facilities provided to it by such lender(s), provided that such collateral assignment shall not in any event cover SMG's rights to manage, promote or operate the Facility hereunder.

10.2 SMG Affiliates.

(a) Transactions with Affiliates. In connection with its management responsibilities hereunder relating to the purchase and/or procurement of equipment, materials, supplies, inventories, and services for the Facility, SMG may purchase and/or procure from, or otherwise transact business with, an Affiliate of SMG, subject to review and written approval by the County. In the event SMG purchases and/or procures from, or otherwise transacts business with, an Affiliate of SMG as contemplated by the foregoing sentence, the prices charged and services rendered shall be competitive with those obtainable from others rendering comparable goods and/or services of like kind. To ensure compliance in this respect, SMG agrees to obtain at least two (2) other competitive proposals from Persons other than SMG's Affiliates whenever SMG proposes to transact business with an Affiliate for the provision of such goods or services here-

under, and to provide correct copies of all such proposals to the County prior to entering into the relationship with the Affiliate. In addition, SMG may license the use of the Facility or any part thereof to itself in connection with any event in the promotion of which SMG is involved, so long as the license fee charged is on prevailing rates and terms or such other rates and terms as the County approves.

(b) Conflicts of Interest. The County acknowledges that SMG manages other public assembly facilities which may, from time to time, be in competition with the Facility. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of SMG's duties hereunder; provided, however, in all instances in which the Facility is in competition with other public assembly facilities managed by SMG for the solicitation of certain events, SMG shall not involve its principal office (currently in Philadelphia, Pennsylvania) on behalf of any such other facility in an attempt to influence the decision-making process regarding the selection of a site by such events.

11. Laws and Permits.

11.1 Permits, Licenses, Taxes and Liens.

SMG shall procure any permits and licenses required for the business to be conducted by it hereunder. The County shall cooperate with SMG in applying for such permits and licenses, but the County itself shall not necessarily be a licensee or permittee unless required by the applicable license or permit or unless required by the County for other reasons. SMG shall deliver copies of all such permits and licenses to the Contract Administrator. SMG shall pay promptly, out of the accounts specified in Section 5.6, all taxes, excises, license fees and permit fees of whatever nature arising from its operation, promotion and management of the Facility. SMG shall use reasonable efforts to prevent mechanic's or materialman's or any other lien from becoming attached to the premises or improvements at the Facility, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman, so long as the work, labor or material was provided at SMG's direction and the County has supplied funds for the payment of charges therefor in accordance with this Agreement.

11.2 Governmental Compliance.

SMG, its officers, agents and employees shall comply with all Laws applicable to SMG's management of the Facility hereunder. With respect to the ADA, SMG will comply with Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA. Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require SMG to undertake any of the foregoing compliance activity, nor shall SMG have any liability under this Agreement therefor, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the County provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof, or (b) any Pre-Existing Agreement fails to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities. Fur-

thermore, SMG shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Facility to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facility.

11.3 No Discrimination in Employment.

In connection with the performance of work under this Agreement, SMG shall not refuse to hire, discharge, refuse to promote or demote, or discriminate in matters of compensation against, any Person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

12. Termination.

12.1 Termination Upon Default.

Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party shall not be considered in default if it shall within such thirty (30) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default. SMG acknowledges and agrees that neither it nor any concessionaire, vendor, promoter, licensee or other party with whom SMG may deal in connection with the Facility is a tenant of the Facility or has any leasehold or other similar interest in the land of or in the Facility itself, and summary ejectment procedures shall not be applicable to any termination of SMG's rights to manage the Facility hereunder unless SMG refuses to vacate the Facility after termination of this agreement by the County.

12.2 Termination Other than Upon Default.

(a) SMG shall have the right to terminate this Agreement upon sixty (60) days written notice to the County (i) under the circumstances described in Sections 5.2(c) or 5.5 hereof, or (ii) as otherwise set forth herein.

(b) Either party shall have the right to terminate this Agreement under the circumstances specified in Section 13.6(d).

12.3 Effect of Termination.

In the event this Agreement expires or is terminated, (i) all Operating Expenses incurred or irrevocably committed for prior to the effective date of expiration or termination, except any such expenses which are incurred due to a default by SMG which resulted in such ter-

mination, shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the County shall pay all such Operating Expenses and shall indemnify and hold SMG harmless therefrom, (ii) the County shall promptly pay SMG all fees earned to the effective date of expiration or termination (the fixed and incentive fees described in Section 4 hereof being subject to proration), provided that the County shall be entitled to offset against such unpaid fees any damages directly incurred by the County in remedying any default by SMG hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facility), and (iii) with the cooperation of SMG, the County shall, or shall cause another management company retained by it to, accept the assignment of SMG's rights, and assume and perform all of SMG's obligations, arising after the date of expiration or termination of this Agreement, under any licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, and any other contracts relating to the Facility which have been executed by SMG hereunder, except (A) to the extent that any such license, agreement, commitment or contract was executed by SMG in violation of any of the restrictions applicable to SMG's right to execute such licenses, agreements, commitments or contracts contained in this Agreement, and (B) for any such license, agreement, commitment or contract to which the consent of the other party thereto is required for such assignment and assumption unless such consent is obtained (in the case of any such consent, SMG will use commercially reasonable efforts to obtain such consent and the County will cooperate in any reasonable manner with SMG to obtain such consent). Upon the expiration of this Agreement or a termination pursuant to Section 12.1 or 12.2, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 12.3 and in Sections 7.2(c), 7.3, 7.4, 8.1 and 12.4; provided, however, that if such termination is the result of an intentional or grossly negligent default, the nondefaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default. Except with respect to a breach of the confidentiality provisions of Section 2.5 above and losses arising from personal or bodily injury, in no event shall either party be liable or responsible for any consequential, indirect, incidental, punitive, or special damages (including, without limitation, lost profits), whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by or threatened against the other party.

12.4 Surrender of Premises.

Upon termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), SMG shall surrender and vacate the Facility upon the effective date of such termination. The Facility and all equipment and furnishings shall be returned to the County in good repair, reasonable wear and tear excepted, to the extent funds were made available therefor by the County. All reports, records, including financial records, and documents maintained by SMG at the Facility relating to this Agreement other than materials containing SMG's proprietary information shall be immediately surrendered to the County by SMG upon termination.

13. Miscellaneous.

13.1 Use of Facility at Direction of County.

(a) At the direction of the Contract Administrator, upon reasonable advance notice and subject to any preexisting commitments, SMG shall provide use of the Facility or any part thereof to civic and nonprofit organizations located in the locale of the Facility at reduced rates. All event-related expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Facility by such organizations, if not reimbursed to the Facility operating account by the organization using the Facility, shall be reimbursed by the County to the operating accounts specified in Section 5.6. Within thirty (30) days of the execution of this Agreement, and thereafter yearly as part of the annual plan to be provided pursuant to Section 6.2 hereof, SMG shall supply to the County a schedule listing SMG's standard charges for all regular event-related expenses, and such charges shall be the agreed charges, to the extent applicable, for use of the Facility in the circumstances described in this Section.

(b) The County shall have the right to use the Facility or any part thereof, upon reasonable advance notice and subject to any preexisting commitments, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the County.

(c) Except for the Fair, the County shall not schedule use of the Facility pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by SMG and shall in all instances be subordinate thereto in terms of priority of use of the Facility. Except for the Fair, in all instances when the Facility, or part thereof, is to be used at the County's request or by the County pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Operating Revenues for the purpose of calculating SMG's incentive fee pursuant to Section 4.3 above.

13.2 Cooperation/Mediation.

(a) The parties desire to cooperate with each other in the management and operation of the Facility pursuant to the terms hereof. In keeping with this cooperative spirit and intent, any dispute arising hereunder will first be referred in writing to the parties' respective agents or representatives prior to either party initiating a legal suit, who will endeavor in good faith to resolve any such disputes within the limits of their authority and within forty-five (45) days after the commencement of such discussions. If and only if any dispute remains unresolved after the parties have followed the dispute resolution procedure set forth above, the matter will be resolved pursuant to Section 13.2(b) and (c) below.

(b) If any dispute between the parties has not been resolved pursuant to Section 13.2(a) above, the parties will endeavor to settle the dispute by mediation under the American Arbitration Association or other agreed mediator in the Cabarrus County metropolitan area. Within ten (10) business days from the date that the parties cease direct negotiations pursuant to Section 13.2(a) above, the County shall select a neutral third party mediator, who shall be subject to the reasonable approval of SMG. Each party will bear its own cost of mediation; provided, however, the cost charged by any independent third party mediator will be borne equally by the parties.

(c) The parties agree that any mediation proceeding (as well as any discussion pursuant to Section 13.2(a) above) will constitute settlement negotiations for purposes of the federal and state rules of evidence and will be treated as non-discoverable, confidential and privileged communication by the parties and the mediator. No stenographic, visual or audio record will be made of any mediation proceedings or such discussions. All conduct, statements, promises, offers and opinions made in the course of the mediation or such discussion by any party, its agents, employees, representatives or other invitees and by the mediator will not be discoverable nor admissible for any purposes in any litigation or other proceeding involving the parties and will not be disclosed to any third party.

(d) The parties agree that this mediation procedure will be obligatory and participation therein (but not the mediator's decision, if any, unless agreed to by the parties pursuant to subsection (e) below) legally binding upon each of them. In the event that either party refuses to adhere to the mediation procedure set forth in this Section 13.2, the other party may bring an action to seek enforcement of such obligation in any court of competent jurisdiction.

(e) The parties' efforts to reach a settlement of any dispute will continue until the conclusion of the mediation proceeding. The mediation proceeding will be concluded when: (i) a written settlement agreement is executed by the parties, or (ii) the mediator concludes and informs the parties in writing that further efforts to mediate the dispute would not be useful, or (iii) the parties agree in writing that an impasse has been reached. Notwithstanding the foregoing, either party may withdraw from the mediation proceeding without liability therefor in the event such proceeding continues for more than forty-five (45) days from the commencement of such proceeding. For purposes of the preceding sentence, the proceeding will be deemed to have commenced following the completion of the selection of a mediator as provided in Section 13.2(b).

(f) If any dispute has not been resolved pursuant to the foregoing, either party may terminate this Agreement as provided in Section 12 hereof and/or may file suit in the North Carolina state courts sitting in Cabarrus County to enforce its rights hereunder.

(g) The procedure specified in this Section 13.2 shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party, without prejudice to the above procedures, may file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole discretion such action is necessary to avoid irreparable damage or to preserve the status quo ("**Equi-**

table Litigation”). Despite such action, the parties will continue to participate in good faith in the procedures specified in this Section 13.2.

(h) Any interim or appellate relief granted in such Equitable Litigation shall remain in effect until the alternative dispute resolution procedures described in this Section 13.2 concerning the dispute that is the subject of such Equitable Litigation result in a settlement. Such written settlement agreement shall be the final, binding determination on the merits of such dispute, shall supersede and nullify any decision in the Equitable Litigation, and shall preclude any subsequent litigation on such merits (except to enforce the settlement agreement), notwithstanding any determination to the contrary in connection with any Equitable Litigation granting or denying interim relief or any appeal therefrom.

(i) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section 13.2 are pending. The parties will take such action, if any, required to effectuate such tolling.

13.3 No Agency, Partnership or Joint Venture.

SMG is an independent contractor hereunder, and is not intended to be or to act as the agent of the County for purposes of the law of agency. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the County and SMG. None of the officers, agents or employees of SMG shall be or be deemed to be employees or agents of the County for any purpose whatsoever.

13.4 Entire Agreement.

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof, unless in writing executed by the parties after the date hereof and referring to this Agreement.

13.5 Written Amendments.

This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

13.6 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by “Force Majeure” if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of “Force Majeure” that such party is unable to perform. The term “Force Majeure” as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, inability to obtain materials or supplies due to a Force Majeure, epidemics, landslides, earthquakes, civil disturbances, breakage or accident to machinery or lines of equip-

ment, temporary failure of equipment, freezing of equipment, terrorist acts, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefor shall be specifically prohibited or rationed by any Law.

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to SMG shall be claimed by the County or charged against SMG, nor shall SMG be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by Force Majeure.

(d) In the event of damage to or destruction of the Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render the Facility materially unusable, notwithstanding the County's reasonable efforts to remedy such situation, for a period estimated by an Architect selected by the County at the request of SMG of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement upon written notice to the other. In the event that the Facility becomes either wholly or partially unusable as a result of any of the foregoing, appropriate pro rata adjustments to the Benchmark shall be made.

(e) SMG may suspend performance required under this Agreement, without any further liability, in the event of any Force Majeure, which act or occurrence is of such effect and duration as to effectively curtail the use of the Facility so as effect a substantial reduction in the need for the services provided by SMG for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, SMG shall have the right to suspend performance retroactively effective as of the date of the use of the Facility was effectively curtailed. "Substantial reduction in the need for these services provided by SMG" shall mean such a reduction as shall make the provision of any services by SMG economically impractical. No payments of the management fees otherwise due and payable to SMG shall be made by the County during the period of suspension. In lieu thereof, the County and SMG may agree to a reduced management fee payment for the period of reduction in services required.

(f) In the event of a substantial increase in any Operating Expense or a substantial decrease in the Operating Revenues not reasonably within the control of either party, the parties shall mutually negotiate in good faith an adjustment to the Benchmark and/or incentive fee formula set forth in Section 4.3 above to take into account such increased cost or decreased Operating Revenues, as the case may be.

13.7 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any Person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of the parties hereto and their successors and permitted assigns and for the benefit of no other Person.

13.8 Notices.

Any notice, consent or other communication given pursuant to this Agreement must be in writing and will be effective either (a) when delivered personally to the party for whom intended, provided a delivery receipt is secured by the deliverer, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefor as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the County:

Cabarrus County
Attention: County Manager
65 Church Street South
P.O. Box 707
Concord, North Carolina 28026-0707

With a copy (which shall not constitute notice) to the then-County Attorney.

To SMG:

SMG
300 Conshohocken State Rd., Suite 770
West Conshohocken, PA 19428
Attention: President
Telecopy: (215) 592-6699

With a copy (which shall not constitute notice) to:

Stradley, Ronon, Stevens & Young
2600 One Commerce Square
Philadelphia, PA 19103
Attention: Steven A. Scolari, Esq.
Telecopy: (215) 564-8120

13.9 Section Headings and Defined Terms.

The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

13.10 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

13.11 Severability.

The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

13.12 Non-Waiver.

A failure by either party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

13.13 Consent. Wherever the consent or approval of a party is required under the terms of this Agreement, the party whose consent or approval is required shall not unreasonably withhold, condition or delay such consent or approval.

13.14 Certain Representations and Warranties.

(a) The County represents and warrants to SMG the following: (i) all required approvals have been obtained, and the County has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by the County and constitutes a valid and binding obligation of the County, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

(b) SMG represents and warrants to the County the following: (i) all required approvals have been obtained, and SMG has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by SMG and constitutes a valid and binding obligation of SMG, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

13.15 No Representation as to Operations Results. The County recognizes that Operating Revenues for the Facility are incapable of being estimated with reasonable certainty given that the entertainment industry as a whole fluctuates based upon general economic conditions, current trends in entertainment, available income of patrons, competitive facilities, and a variety of rapidly changing factors beyond the control of SMG. SMG has made no and disclaims any purported or actual representation or warranty as to the results which can be expected from the ownership and operation of the Facility including, without limitation, the Operating Revenues, or Operating Expenses or the accuracy of its projections and estimates thereof. The County recognizes and accepts that all budgets and projections represent SMG's estimate of the expected expenditures and revenues and that SMG is in no way responsible or liable if the actual expenditures and revenues are more or less than that projected (unless and only to the extent such situation is the result of a breach of this Agreement by SMG).

13.16 Governing Law; Consent to Venue and Jurisdiction.

This Agreement will be governed by and construed in accordance with the internal laws of the State of North Carolina, without giving effect to otherwise applicable principles of conflicts of law. The parties hereby expressly agree that this Agreement is made and is to be performed solely in Cabarrus County, North Carolina, and hereby consent to the subject matter and personal jurisdiction of the North Carolina state courts sitting in Cabarrus County, North Carolina and to venue in Cabarrus County, North Carolina.

SIGNATURES ARE ON THE FOLLOWING PAGE.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

COUNTY OF CABARRUS, NORTH CAROLINA

By: *Samuel S. Stubbs*
Senior Deputy County Manager

ATTEST:

J. E. Anit
Clerk to the Board
of Commissioners

SMG

By: *John F. Burns*
Name: John Burns
Title: Executive VP and CFO

This instrument has been pre-audited in the manner
Required by the Local Government Budget and
Fiscal Control Act. Subject to approval of
Fiscal Year 2017- budget funding.
2020

By: *Austin B. Grant*
Finance Director / Asst. Finance Director

8-5-15
Date

EXHIBIT "A"

PRE-EXISTING AGREEMENTS

(1)

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items - No Action

SUBJECT:

Innovation and Technology - Innovation Report

BRIEF SUMMARY:

Cabarrus County GIS



Cabarrus County has a long standing partnership with Esri, our mapping and analytics software vendor. We were the 197th customer of Esri which now has over 300,000 customers. Esri software was first installed on an IBM mainframe to convert paper parcel maps to digital maps in the late 1980's. Today, GIS plays an integral part in analysis, decisions and operations countywide.



In 1998 Cabarrus County was one of the first counties in the nation to make parcel maps available to the public using the internet. In 2019 our public facing GIS web mapping application averaged over 1500 page views per day <https://gis.cabarruscounty.us/mycabarrusgis/>



Cabarrus County and ESRI collaborated on the development of a GIS road map to provide services that help us achieve the goals of the County's new strategic plan. A presentation from ESRI is planned for the February work session.



As part of the GIS road map several issues were identified with our current public facing GIS; server hardware approaching end of life, antiquated code lacking modern web standards, reliability issues and processing speed. The new mapping application we are demoing today is built on the newest release of Esri's ArcGIS Enterprise and Portal for

ArcGIS. The design is focused on simplicity, performance, usability and to work efficiently across all major desktop and mobile platforms.

REQUESTED ACTION:

Receive report.

EXPECTED LENGTH OF PRESENTATION:

30 Minutes

SUBMITTED BY:

Debbie Brannan, Area Manager of Technology & Innovation

Todd Shanley, CIO

Joe Battinelli, Business & Location Innovative Services Supervisor

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

BOC - Appointments to Boards and Committees

BRIEF SUMMARY:

The following appointments to Boards and Committees are recommended for January:

Appointments - Firemen's Relief Fund Trustees

The Cabarrus County Volunteer Fire Departments have submitted the following individuals for appointment/reappointment as Firemen's Relief Fund Trustees*:

<u>Volunteer</u>	<u>Department</u>
Jerry Helms	Allen
David R. Blackwelder	Cold Water
Joey Houston	Flowes Store
Kelly Whitley	Georgeville
Lee Conner	Harrisburg
Joe Eudy	Midland
Chris Lewis	Mount Mitchell
Del Eudy	Mount Pleasant Rural
Dylan Daquila	North East
Danny Brown	Odell
Rebecca Shue	Rimer

* These appointments are exempt from the County Appointment Policy. Recommendations are submitted by each of the respective volunteer fire departments.

Representative recommendation is for the aforementioned list.

Appointments and Removals - Home and Community Care Block Grant Advisory Committee

The Home and Community Care Block Grant Advisory Committee has five members whose terms expired on December 31, 2019. They are at-large members Anita Helms, James Polk, Scott Barringer, Evelyn Miller and Centralina Area Agency on Aging member Katie Kutcher.

Mr. Polk, Mr. Barringer, Ms. Miller, and Ms. Kutcher have all agreed to serve another three-year term. Ms. Helms has declined to serve another term on the committee. Helen McInnis has submitted an application for appointment to the committee. Based on a vote by the committee, she is recommended to fill the vacancy. Mr. Polk also served on the Transportation Advisory Board and Mr. McInnis serves on the Adult Care Home Advisory Committee and the Board of Equalization and Review. An exception to the "service on multiple boards" provision of the Appointment Policy will be needed for them. Additionally, Ms. Kutcher resides in Mecklenburg County. An exception to the "residency" provision of the Appointment Policy will be needed for her.

Representative recommendations are James Polk, Scott Barringer, Evelyn Miller, Katie Kutcher and Helen McInnis.

Appointments and Removals - Mental Health Advisory Board

Several terms on the Mental Health Advisory Board ended December 31, 2019. Dr. William Pilkington has recently retired from the Cabarrus Health Alliance. Erin Shoe, Interim Health Director, is recommended to fill his vacant position.

The following members on the Mental Health Advisory Board are willing to serve another term: Ashlie Shanley, Jay White, Sr., Mitzi Quinn, Bill Dusch, Del Eudy, Rebecca True, Dr. Roderick Lilly, Jon McKinsey, and Alan Thompson. Ms. True and Dr. Lilly do not reside in Cabarrus County. An exception to the "residency" provision of the Appointment Policy will be needed for them. Mr. White also serves on the Tourism Authority of Cabarrus County. An exception to the "service on multiple boards" provision of the Appointment Policy will be needed for him.

Representative recommendations are Ashlie Shanley, Jay White, Sr., Mitzi Quinn, Bill Dusch, Del Eudy, Rebecca True, Dr. Roderick Lilly, Jon McKinsey, and Alan Thompson.

REQUESTED ACTION:

Provide information.

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Lauren Linker, Clerk to the Board

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

County Manager - Revised Joint Use Agreement

BRIEF SUMMARY:

The Joint Use Agreement between Cabarrus County and Cabarrus County Schools (CCS) needs to be revised as part of the synthetic turf project. The purpose of these revisions is to include the Convention and Visitors Bureau (CVB) and the new sites/facilities where the synthetic turf improvements are being installed. Staff from the County, CCS and the CVB discussed the revisions and Rich Koch has completed a first draft for review.

REQUESTED ACTION:

Motion to approve the Revised Joint Use Agreement.

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Jonathan B. Marshall, Deputy County Manager

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

▢ Revised Joint Use Agreement Draft

This REVISED MEMORANDUM OF UNDERSTANDING REGARDING JOINT USE OF FACILITIES (“MOU”) is entered into effective with the last signature of the parties, by and between CABARRUS COUNTY (“County”), the CABARRUS COUNTY BOARD OF EDUCATION (“BOE”) and the CABARRUS COUNTY CONVENTION & VISITORS BUREAU (“CVB”).

RECITALS

1. The County owns, leases, or otherwise has access to certain properties, facilities, and related equipment, such as community parks and event centers (“County Facilities”).
2. The BOE owns, leases, or otherwise has access to certain properties, facilities, and related equipment, such as athletic fields, gymnasiums, and auditoriums (“BOE Facilities”).
3. The CVB has contributed funds to help construct or to improve certain of the County Facilities and the BOE Facilities, in return for the ability to have use of such facilities for economic development purposes within the County.
4. The parties enter into this MOU, as an interlocal cooperation agreement authorized by N.C. Gen. Stat. § 160A-461, for the purpose of managing the use of facilities and establishing a coordinated facilities planning process.

In consideration of the foregoing Recitals and the Terms contained below, which the parties believe constitute sufficient legal consideration to make this MOU binding, the parties agree as follows.

TERMS

1. PURPOSE OF MOU. This MOU seeks to provide a framework and administrative support for collaboration and decision making among school building staff, BOE personnel, the County and the CVB. The parties shall work cooperatively and in good faith to establish a Joint Use Schedule for each facility which shall be designed to avoid conflicts of use, maximize the use of public resources, and reflect the priorities set forth herein. The mutual goal of the BOE, the County and the CVB will be to maintain program continuity, giving adequate notification of scheduling changes or facility use to allow completion of a program cycle and, where necessary, to relocate programming.
2. PRIORITY OF USE. The County and the BOE will make their facilities available for use by the other on a first priority basis and at no cost to the user after the scheduling requirements for the owner’s own programs have been met. The CVB will have a second priority, after the BOE, on the following facilities:

- a) existing synthetic turf field at Central Cabarrus High School
- b) synthetic turf football field at West Cabarrus High School
- c) synthetic turf fields at Cox Mill High School and J.M. Robinson High School (1 each)
- d) synthetic turf fields (2) installed on the practice fields at West Cabarrus High School (including the bathroom facilities and lighting)

The CVB will pay the going rate that either the County or the BOE charges for these fields and any other facilities that the CVB uses. The CVB's use of all such facilities will be for the purposes of economic development and to promote tournaments. The CVB will fill out the BOE's application for community use of school facilities form in advance of each use of such facilities.

3. ANNUAL PRE-PLANNING MEETING. The parties agree to meet during July of each year to review schedules for the upcoming school year and all joint use activities, specifically including but not limited to use of athletic fields, gymnasiums and auditoriums ("Pre-Planning Meeting"). The Pre-Planning Meeting will include, at a minimum, the primary contacts for each agency.

4. ANNUAL PLANNING PROCESS. Following the Pre-Planning Meeting, joint use planning and decision making will occur each Summer for the upcoming school year. The County will initiate the process assuming that all joint use programming scheduled the preceding year will be included in the schedule for the upcoming year unless otherwise negotiated. No later than the second week of July the County will deliver a Proposed Joint Use Schedule to the principal of each affected school and the CVB. Upon receiving the Proposed Joint Use Schedule, each principal will identify which school activities will continue in the upcoming year and which dates are available for the facilities to be used by the CVB. The County and CVB representatives may either approve the school's proposed schedule of use or contact the school principal to discuss changes. Once the school principal, the County representative and the CVB have approved the Joint Use Schedule, the County representative will send a copy of the agreement to the school principal and the CVB and file it with the central scheduling office of both agencies no later than the third week of August.

5. CENTRALIZED COORDINATION OF OUTDOOR ELEMENTARY SCHOOL FACILITIES. The parties agree that the County will serve as the centralized coordinator for all activities that take place at outdoor elementary school facilities on weekdays after 6pm and on the weekends. The County will collect any applicable fees from outside third party users pursuant to the BOE's normal fee schedule. Fees collected by the County from outside third party-users of outdoor elementary school facilities will be remitted to the BOE within thirty (30) days of collection.

6. BOE COORDINATION OF INDOOR SCHOOL FACILITIES AND ALL SECONDARY FACILITIES. The parties agree that the school principal will remain the contact and coordinator for all activities that take place inside elementary school facilities and for all activities that take place at all middle school and high school facilities (both indoor and outdoor), except for the facilities to be used by the CVB. To the extent the County requires the use of indoor school facilities for the Active Living and Parks Department volunteer youth athletic leagues (the "Youth Leagues"), this request will be made to each school consistent with the Annual Planning Process described above. Upon agreement and approval of the Joint Use Schedule, the County will be responsible for coordinating and scheduling specific times and locations with each Youth League and for ensuring performance in accordance with the Memorandum of Agreement regarding Gym Supervisors.

7. PERSONNEL AND SUPERVISION. Each user shall provide adequate personnel to supervise the activities that take place at the host facility. Each user shall follow all rules, regulations, and policies set forth by the owner, which shall be available for review at the user's request.

8. RESOLVING CONFLICTS. Efforts at resolution of space availability issues are first encouraged directly between facility based representatives. When the conflict involves more than one BOE, County or CVB program, all parties will be informed and involved in resolving the conflict. The central offices of parties will, whenever possible, identify options or ways to accommodate the interests of the agencies. If agreement cannot be reached on a scheduling request, the issue will be referred to the Superintendent and the County Manager for resolution.

9. SINGLE USE REQUESTS. Written requests to use BOE or County facilities, outside the annual scheduling confirmation process and the Joint Use Schedule, should be submitted to each party. The requesting party will verify in advance with the affected school principal or County facility manager that the facility is available at the date and time requested. Please note that the request will be granted only if the allotted time and space is available.

10. MAINTENANCE. Each owner shall maintain its facilities in a safe and attractive condition. Each user shall be responsible for restoring the owner's facility back to its original condition after its use and will cooperate in expediting repair of damage which may occur as a result of scheduled programs.

11. RESTITUTION AND REPAIRS. It shall be the responsibility of the user agency to make restitution for the repair of damage to a space, area or facility and its equipment or owner property missing from the premises which may occur as a result of scheduled programs for which a permit has been issued.

- a. Inspection of Facilities - The owner agency shall, through its designated representative, inspect all buildings and grounds area after each joint use. Inspection shall be directed toward identification of damage to the facilities, fields, and equipment or missing property that may have been caused by the user agency through conduct of its program.
- b. Reporting Method - The owner agency shall notify the user agency of damage or loss no later than three (3) working days after the inspection. Such notification shall consist of sending a facsimile or email to the user agency's designated representative identifying the facility, permit number, date of detection, name of inspector, area or areas involved, description of damage and estimated and/or fixed costs of repairs or property replacement.
- c. Repairs - Except as otherwise mutually agreed, the user agency shall not cause repairs to be made to any building or item of equipment for which the owner agency has responsibility. The owner agency agrees to make such repairs within the estimated and/or fixed costs agreed upon. If it is mutually determined or if it is the result of problem-resolution under this Section that the user agency is responsible for the damage, then the user agency agrees to reimburse the owner agency at the estimated and/or fixed costs agreed upon.
- d. Reimbursement Procedure - The owner agency shall invoice the user agency within seven (7) days of completion of repairs or replacement of missing property. The invoice shall itemize all work hours, equipment and materials with cost rates as applied

to the repair work. If the repair is contracted, a copy of the contractor's itemized statement must be attached. Actual costs shall be invoiced if less than estimated and/or fixed costs. Reimbursement shall be made within 30 days from receipt of such invoice.

- e. Disagreements - The user agency shall retain the right to disagree with any and all items of damage to buildings or equipment or missing property as identified by the owner agency provided this challenge is made within ten (10) working days after a first notification. Disagreements shall be made in writing to the owner agency and shall clearly identify the reasons for refusing responsibility for damages to the building or equipment. Failure to do so within the prescribed time period shall be considered as acceptance of responsibility by the user agency. Settlement of disagreements, after proper notification, shall be made by an on-site investigation involving both the owner and user agencies or their designated representatives. In the event agreement cannot be reached, the matter shall be referred to the Superintendent and County Manager for review and consideration. The owner agency shall have the right to make immediate emergency repairs or replace missing property without voiding the user agency's right to disagree.

12. DESIGNEES. Any request, notification, or communication required or permitted by this MOU may be made or received by the party's respective designee(s); provided, however, that the identification and contact information of such designee(s) is previously communicated to the other party in writing. Without limiting the foregoing, the Director of the Active Living and Parks Department (the "Director") and the Superintendent's Designee of Cabarrus County Schools (the "Superintendent") are hereby appointed as the designees of the County and the BOE, respectively, for purposes of this MOU. The designee for the CBV is its Vice President of Sales and Destination Services.

13. TERM. This MOU shall commence as stated above and continue for a period of ten (10) years after.

14. TERMINATION. Any party may terminate this MOU at any time, with or without cause, after providing the others with at least three hundred and sixty-five (365) days' prior written notice. Notwithstanding the foregoing, termination shall not impact County or Board Facilities that, at the time notice of termination is given, have been approved for a scheduled use by the non-terminating party.

15. INSURANCE AND INDEMNIFICATION. All three parties are self-insured for liability. Each user shall be responsible for any respective claims or suits arising out of its use of the other's facility. To the fullest extent permitted by applicable law, each party shall indemnify, defend, and hold the other, including its directors, officers, employees, agents, and representatives harmless from and against any and all damages, costs, liabilities, losses, injuries, and expenses (including without limitation, attorneys' fees) arising out of or in any way attributable to any accident or other occurrence on or about the County or BOE Facilities. However, this Section shall not apply to the intentional misconduct or gross negligence of any party.

16. NOTICES. All notices, demands, and other communications made pursuant to this MOU shall be in writing and given one of the following methods: (i) hand delivery; (ii) first-class registered or certified U.S. Mail, with postage prepaid and return receipt requested; (iii) nationally recognized overnight courier, with all fees prepaid; or (iv) transmitted by facsimile. Notice shall be deemed to have been duly given pursuant to this Section: (a) on the day of delivery, if delivered by hand or transmitted by facsimile; (b) three (3) business days after the day sent by first-class registered or certified U.S. Mail; or (c) the next business day after the day sent by nationally

recognized overnight carrier. Notices must be addressed to the parties at the address listed below. Notices are only effective if giving pursuant to this Section.

To the County:
Cabarrus County
c/o County Manager
PO Box 707
Concord, NC 28026
Fax: 704-920-2820

To the BOE:
Cabarrus County Schools
c/o Superintendent
4401 Old Airport Rd.
Concord, NC 28025
Fax: 704-786-6141

To the CVB:
Cabarrus County Convention & Visitors Bureau
c/o Executive Director
10099 Weddington Road Ext., Suite 102
Concord, NC 28027

17. MISCELLANEOUS.

a. Materials. The County, the BOE and the CVB shall furnish and supply all expendable materials necessary for carrying out their respective activities and events.

b. Signage. The County shall install signs near the BOE Facilities as reasonably necessary to inform the public of the location of the BOE Facilities and the rules governing their use. The placement of such signs shall not interfere with the Board's use of any BOE Facility and the location thereof shall previously approved by the BOE in writing. All signage installed by the County pursuant to this Section shall be paid for by the County. Any signage to be installed by the CVB shall be paid for by the CVB.

c. Disputes. In the event that a dispute arises during or in connection with the activities or events being conducted at the County or BOE Facilities, the dispute shall be submitted to the Parks Director or the Superintendent, depending on the location of the dispute, and then to the County or the BOE, if needed.

d. Amendments. This MOU may only be amended by the mutual written consent of the parties.

e. Severability. If any provision of this MOU is held invalid or unenforceable for any reason, such invalidity or non-enforcement shall not affect the other provisions of this MOU, and all other provisions shall, to the fullest extent permitted by applicable law, continue in full force and effect.

f. Waiver. No term or condition of this MOU shall be deemed to have been waived, except by written instrument of the party charged with such waiver. No such waiver shall be deemed a continue waiver unless specifically stated therein, and each such waiver shall operate only as to the specific term and condition waived.

g. Entire Agreement. This MOU constitutes the final and complete agreement between the parties with respect to the joint use of the County and BOE Facilities. All prior and contemporaneous negotiations and agreements between the parties regarding the same are expressly merged into and superseded by this MOU.

h. Governing Terms. This MOU shall be superseded by any applicable laws governing the joint use of North Carolina joint use facilities. If a conflict occurs between this MOU and such laws, the terms and conditions of such laws shall govern.

i. Survival. The following Sections shall survive the termination of this MOU: Section 15 (Insurance and Indemnification).

IN WITNESS, and pursuant to the authority granted by duly recorded resolutions, the parties executed this MOU as indicated below.

DATE:

COUNTY OF CABARRUS,
NORTH CAROLINA

By: _____
Chair, Cabarrus County Board of Commissioners

By: _____
Cabarrus County Manager

CABARRUS COUNTY
BOARD OF EDUCATION

DATE:

By: _____
Chair, Cabarrus County Board Of Education

By: _____
Superintendent of Cabarrus County Schools

CABARRUS COUNTY CONVENTION &
VISITORS BUREAU

DATE:

By: _____
Executive Director

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

County Manager - Road Improvements at Hickory Ridge Elementary School

BRIEF SUMMARY:

A letter from Cabarrus County Schools (CCS) is attached with details about the on-going discussions concerning the required road improvements at the new Hickory Ridge Elementary School. CCS is requesting that funds within the construction budget be reallocated to complete engineering and testing for the final approved design. Once that design is complete they will need to obtain new pricing for the project.

REQUESTED ACTION:

Motion to approve the budget amendments within the Hickory Ridge Elementary Project Ordinance.

EXPECTED LENGTH OF PRESENTATION:

1 Minute

SUBMITTED BY:

Jonathan B. Marshall, Deputy County Manager

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- CCS Letter



December 17, 2019

The Honorable
 Mr. Steve Morris, Chair
 Ms. Diane Honeycutt, Vice Chair
 Ms. Liz Poole
 Mr. Lynn Shue
 Mr. Blake Kiger
 Cabarrus County Board of Commissioners
 65 Church Street, SE
 Concord, NC 28026

Re: Request to move funds for Hickory Ridge Elementary project

Dear Board of Commissioners:

Cabarrus County Schools is requesting to move funds from the construction account into the engineering account for the Hickory Ridge Elementary School project.

Due to the extensive amount of rock quantification that had to be performed, additional site testing was also required. The cost associated is \$35,000.

In addition, we have received direction from the Town of Harrisburg, NCDOT, Municipal School Transportation Assistance department and Congestion Management on the improvements required for Hickory Ridge Road. As a part of this approval, we will be required to modify the current design from what was originally proposed to take place. We will be working directly with Chambers Engineering, our Civil Engineer of Record for the re-design. It is anticipated that it will take approximately four weeks to complete. We will need additional engineering money to help cover the re-design expense associated with approved changes.

Requested funds were originally in the contingency account. Upon approval, those funds were moved from contingency to construction. Funds were requested due to rock and site work challenges. We believe we have moved past those issues now and would like to move \$95,000 of the remaining contingency funds into engineering.

Account Title	Increase	Decrease
Engineering – Additional Site Testing due to Rock	\$35,000	
Engineering – Redesign	\$60,000	
Construction		\$95,000

Sincerely,

Rob Walter, Chair
 Cabarrus County Board of Education

Cc: Barry Shoemaker, Cindy Fertenbaugh, Carolyn Carpenter, David Harrison, Laura Blackwell, Holly Grimsley

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

Department of Human Services - Transportation FY20 ROAP Application

BRIEF SUMMARY:

The Rural Operating Assistance Program (ROAP) is a state-funded public transportation administered by the North Carolina Department of Transportation Public Transportation Division (PTD). County Governments or regional public transportation authorities created pursuant to Article 25 or Article 26 of Chapter 160A of the General Statutes (upon written agreement with municipalities or counties served) are the only eligible applicants for ROAP funds. ROAP includes the following funding project categories: Elderly and Handicapped, Employment, and Rural General Public. There is no public hearing required for the ROAP grant.

Elderly and Disabled (EDTAP) - \$115,233.67

Employment (EMPL) - 47,986.00

Rural General Public (RGP) - \$80,219.14

REQUESTED ACTION:

Motion to accept the grant and certified statement.

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Bob Bushey, Transportation Manager

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- ▣ Certified Statement
- ▣ Allocation
- ▣ Application

CERTIFIED STATEMENT
FY2020
RURAL OPERATING ASSISTANCE PROGRAM
County of Cabarrus

WHEREAS, the state-funded, formula-based Rural Operating Assistance Program (ROAP) administered by the North Carolina Department of Transportation, Integrated Mobility Division provides funding for the operating cost of passenger trips for counties within the state;

WHEREAS, the county uses the most recent transportation plans (i.e. CCP, CTIP, LCP) available and other public involvement strategies to learn about the transportation needs of agencies and individuals in the county before determining the sub-allocation of these ROAP funds;

WHEREAS, the county government or regional public transportation authorities created pursuant to Article 25 or Article 26 of Chapter 160A of the General Statutes (upon written agreement with the municipalities or counties served) are the only eligible recipients of Rural Operating Assistance Program funds which are allocated to the counties based on a formula as described in the Program Guidelines included in the ROAP State Management Plan. NCDOT will disburse the ROAP funds only to counties and eligible transportation authorities and not to any sub-recipients selected by the county;

WHEREAS, the county finance officer will be considered the county official accountable for the administration of the Rural Operating Assistance Program in the county, unless otherwise designated by the Board of County Commissioners;

WHEREAS, the passenger trips provided with ROAP funds must be accessible to individuals with disabilities and be provided without discrimination on the basis of national origin, creed, age, race or gender (FTA C 4702.1B, FTA C 4704.1A, Americans with Disabilities Act 1990); and

WHEREAS, the period of performance for these funds will be July 1, 2019 to June 30, 2020 regardless of the date on which ROAP funds are disbursed to the county.

NOW, THEREFORE, by signing below, the duly authorized representatives of the County of Cabarrus North Carolina certify that the following statements are true and accurate:

- The county employed a documented methodology for sub-allocating ROAP funds that involved the participation of eligible agencies and citizens. Outreach efforts to include the participation of the elderly and individuals with disabilities, persons with limited English proficiency, minorities and low income persons in the county's sub-allocation decision have been documented.
- The county will advise any sub-recipients about the source of the ROAP funds, specific program requirements and restrictions, eligible program expenses and reporting requirements. The county will be responsible for invoicing any sub-recipients for unexpended ROAP funds as needed.
- The county will monitor ROAP funded services routinely to verify that ROAP funds are being spent on allowable activities and that the eligibility of service recipients is being properly documented. The county will maintain records of trips for at least five years that prove that an eligible citizen was provided an eligible transportation service on the billed date, by whatever conveyance at the specified cost.
- The county will be responsible for monitoring the safety, quality and cost of ROAP funded services and assures that any procurements by subrecipients for contracted services will follow state and federal guidelines.
- The county will conduct regular evaluations of ROAP funded passenger trips provided throughout the period of performance.

Revised 12-6-19

- The county will only use the ROAP funds to provide trips when other funding sources are not available for the same purpose or the other funding sources for the same purpose have been completely exhausted.
- The county assures that the required matching funds for the FY2020 ROAP can be generated from fares and/or provided from local funds.
- The county will notify the Mobility Development Specialist assigned to the county if any ROAP funded services are discontinued before the end of the period of performance due to the lack of funding. No additional ROAP funds will be available.
- The county will provide an accounting of trips and expenditures in bi-annual milestone reports to NCDOT – Integrated Mobility Division or its designee. **Back-up documentation is required to support the bi-annual and annual reports, failure to provide documentation will affect future disbursements.**
- Any interest earned on the ROAP funds will be expended for eligible program uses as specified in the ROAP application. The County will include ROAP funds received and expended in its annual independent audit on the schedule of federal and state financial assistance. Funds passed through to other agencies will be identified as such.
- The county is applying for the following amount of FY2020 Rural Operating Assistance Program funds:

State-Funded Rural Operating Assistance Program	Allocated	Requested
Rural General Public Program (RGP)	<u>\$243,438.82</u>	<u>\$243,438.82</u>
TOTAL	<u>\$243,438.82</u>	<u>\$243,438.82</u>

WITNESS my hand and county seal, this ____ day of ____, 20__.

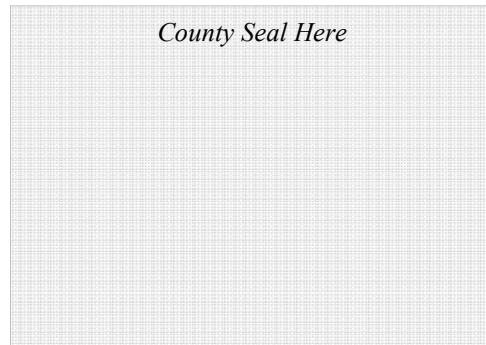
 Signature of County Manager/Administrator
 Michael Downs

 Printed Name of County Manager/Administrator

 Signature of County Finance Officer
 Susan Ferrington

 Printed Name of County Finance Officer

State of North Carolina County of Cabarrus



2020	FY2020 Total Allocation			
COUNTIES	EDTAP	EMPL	RGP	Total
Alamance	\$ 122,776.71	\$ 40,837.67	\$ 89,255.42	\$ 252,869.80
Alexander	\$ 72,123.73	\$ 11,581.36	\$ 78,141.07	\$ 161,846.16
Alleghany	\$ 59,468.28	\$ 5,519.12	\$ 56,010.37	\$ 120,997.77
Anson	\$ 66,546.47	\$ 9,395.28	\$ 72,415.89	\$ 148,357.64
Ashe	\$ 67,688.67	\$ 9,759.31	\$ 72,761.90	\$ 150,209.88
Avery	\$ 61,467.37	\$ 7,169.19	\$ 62,909.59	\$ 131,546.16
Beaufort	\$ 81,868.12	\$ 14,786.53	\$ 94,032.58	\$ 190,687.23
Bertie	\$ 64,399.42	\$ 8,632.28	\$ 66,529.71	\$ 139,561.41
Bladen	\$ 74,437.72	\$ 12,680.48	\$ 80,977.16	\$ 168,095.36
Brunswick	\$ 122,230.34	\$ 33,665.53	\$ 114,555.23	\$ 270,451.10
Buncombe	\$ 174,032.99	\$ 60,048.39	\$ 104,032.89	\$ 338,114.26
Burke	\$ 105,402.78	\$ 24,776.93	\$ 84,702.28	\$ 214,881.99
Cabarrus	\$ 115,233.67	\$ 47,986.00	\$ 80,219.14	\$ 243,438.82
Caldwell	\$ 98,206.60	\$ 23,132.87	\$ 74,115.94	\$ 195,455.42
Camden	\$ 57,017.16	\$ 5,299.11	\$ 54,790.32	\$ 117,106.60
Carteret	\$ 93,950.66	\$ 20,548.83	\$ 113,468.20	\$ 227,967.69
Caswell	\$ 66,484.49	\$ 8,618.26	\$ 69,061.79	\$ 144,164.54
Catawba	\$ 120,431.77	\$ 41,351.68	\$ 99,743.76	\$ 261,527.21
Chatham	\$ 82,990.63	\$ 18,179.65	\$ 103,623.88	\$ 204,794.15
Cherokee	\$ 70,671.77	\$ 9,726.31	\$ 72,669.90	\$ 153,067.98
Chowan	\$ 61,489.34	\$ 6,612.18	\$ 59,789.49	\$ 127,891.02
Clay	\$ 58,691.31	\$ 5,347.11	\$ 55,420.35	\$ 119,458.77
Cleveland	\$ 106,998.84	\$ 28,606.19	\$ 134,697.86	\$ 270,302.89
Columbus	\$ 88,398.09	\$ 18,244.72	\$ 104,772.92	\$ 211,415.73
Craven	\$ 105,747.84	\$ 27,494.02	\$ 99,478.75	\$ 232,720.61
Cumberland	\$ 184,334.19	\$ 85,198.71	\$ 88,780.41	\$ 358,313.31
Currituck	\$ 62,487.42	\$ 9,946.37	\$ 68,882.78	\$ 141,316.57
Dare	\$ 70,025.75	\$ 17,715.95	\$ 79,658.11	\$ 167,399.82
Davidson	\$ 134,605.97	\$ 43,344.76	\$ 124,592.55	\$ 302,543.28
Davie	\$ 71,641.85	\$ 12,577.40	\$ 79,926.13	\$ 164,145.38
Duplin	\$ 82,083.08	\$ 17,758.67	\$ 105,194.93	\$ 205,036.68
Durham	\$ 151,682.80	\$ 72,808.19	\$ 60,065.49	\$ 284,556.48
Eastern Band of the Cherokee	\$ -	\$ -	\$ 52,829.27	\$ 52,829.27
Edgecombe	\$ 84,871.06	\$ 19,968.90	\$ 85,145.30	\$ 189,985.25
Forsyth	\$ 189,770.87	\$ 92,047.96	\$ -	\$ 281,818.83
Franklin	\$ 82,621.08	\$ 18,213.68	\$ 102,374.85	\$ 203,209.61
Gaston	\$ 156,529.52	\$ 56,544.45	\$ 93,410.55	\$ 306,484.52
Gates	\$ 58,452.23	\$ 5,627.11	\$ 57,093.41	\$ 121,172.75
Graham	\$ 56,319.21	\$ 5,816.17	\$ 53,131.28	\$ 115,266.66
Granville	\$ 88,679.98	\$ 16,989.58	\$ 105,660.95	\$ 211,330.51
Greene	\$ 62,344.34	\$ 7,913.21	\$ 66,612.71	\$ 136,870.26
Guilford	\$ 239,637.95	\$ 132,729.03	\$ 108,826.04	\$ 481,193.02

Halifax	\$ 89,470.08	\$ 18,463.78	\$ 101,233.80	\$ 209,167.66
Harnett	\$ 101,014.66	\$ 32,441.34	\$ 150,774.38	\$ 284,230.39
Haywood	\$ 86,272.48	\$ 17,404.64	\$ 78,422.09	\$ 182,099.21
Henderson	\$ 112,204.82	\$ 28,009.03	\$ 81,312.17	\$ 221,526.02
Hertford	\$ 67,769.47	\$ 9,026.28	\$ 70,047.82	\$ 146,843.57
Hoke	\$ 70,575.52	\$ 15,347.59	\$ 65,468.66	\$ 151,391.78
Hyde	\$ 55,321.20	\$ 4,930.13	\$ 50,458.20	\$ 110,709.53
Iredell	\$ 118,699.71	\$ 43,686.84	\$ 107,210.99	\$ 269,597.53
Jackson	\$ 73,302.78	\$ 13,407.49	\$ 82,889.23	\$ 169,599.50
Johnston	\$ 120,617.51	\$ 45,581.89	\$ 180,944.34	\$ 347,143.75
Jones	\$ 59,276.23	\$ 5,249.11	\$ 54,970.34	\$ 119,495.68
Lee	\$ 79,208.99	\$ 18,404.74	\$ 104,531.90	\$ 202,145.64
Lenoir	\$ 89,263.16	\$ 18,139.69	\$ 106,223.96	\$ 213,626.81
Lincoln	\$ 91,985.43	\$ 23,021.92	\$ 114,505.23	\$ 229,512.58
Macon	\$ 74,116.95	\$ 11,708.41	\$ 79,660.11	\$ 165,485.47
Madison	\$ 64,755.49	\$ 7,948.22	\$ 63,968.62	\$ 136,672.33
Martin	\$ 67,187.54	\$ 9,345.31	\$ 69,877.80	\$ 146,410.66
McDowell	\$ 81,631.93	\$ 13,924.48	\$ 91,162.48	\$ 186,718.89
Mecklenburg	\$ 342,264.92	\$ 254,769.98	\$ 54,601.32	\$ 651,636.22
Mitchell	\$ 62,580.37	\$ 6,895.19	\$ 60,606.51	\$ 130,082.07
Montgomery	\$ 67,494.55	\$ 9,450.28	\$ 73,298.92	\$ 150,243.75
Moore	\$ 101,990.36	\$ 24,630.94	\$ 136,089.92	\$ 262,711.22
Nash	\$ 100,932.76	\$ 29,308.28	\$ 91,773.51	\$ 222,014.55
New Hanover	\$ 141,340.77	\$ 57,387.56	\$ 49,086.11	\$ 247,814.44
Northampton	\$ 68,913.49	\$ 8,503.26	\$ 67,378.73	\$ 144,795.48
Onslow	\$ 116,635.87	\$ 44,035.65	\$ 119,579.38	\$ 280,250.90
Orange	\$ 97,596.96	\$ 35,729.41	\$ 84,078.25	\$ 217,404.62
Pamlico	\$ 60,967.36	\$ 5,967.13	\$ 58,076.44	\$ 125,010.93
Pasquotank	\$ 71,545.64	\$ 14,178.56	\$ 86,660.34	\$ 172,384.54
Pender	\$ 81,455.06	\$ 16,818.66	\$ 96,437.65	\$ 194,711.37
Perquimans	\$ 61,377.36	\$ 6,225.16	\$ 58,397.44	\$ 125,999.95
Person	\$ 73,675.77	\$ 13,057.47	\$ 85,416.30	\$ 172,149.53
Pitt	\$ 118,026.30	\$ 47,910.12	\$ 96,724.66	\$ 262,661.08
Polk	\$ 64,345.59	\$ 7,530.19	\$ 65,727.68	\$ 137,603.45
Randolph	\$ 117,206.53	\$ 38,025.52	\$ 169,558.98	\$ 324,791.03
Richmond	\$ 82,585.83	\$ 15,062.57	\$ 92,869.54	\$ 190,517.94
Robeson	\$ 122,579.02	\$ 39,414.75	\$ 183,265.41	\$ 345,259.18
Rockingham	\$ 107,571.86	\$ 26,830.08	\$ 141,695.09	\$ 276,097.02
Rowan	\$ 121,324.45	\$ 37,924.56	\$ 100,246.78	\$ 259,495.78
Rutherford	\$ 94,733.42	\$ 20,410.81	\$ 114,861.24	\$ 230,005.47
Sampson	\$ 85,298.14	\$ 19,275.75	\$ 110,312.09	\$ 214,885.98
Scotland	\$ 75,594.65	\$ 13,049.50	\$ 81,981.20	\$ 170,625.35
Stanly	\$ 83,350.16	\$ 17,483.63	\$ 107,356.00	\$ 208,189.79
Stokes	\$ 77,402.93	\$ 14,295.49	\$ 81,695.18	\$ 173,393.61
Surry	\$ 92,980.47	\$ 20,641.75	\$ 120,951.43	\$ 234,573.64
Swain	\$ 59,450.29	\$ 7,639.28	\$ 54,663.32	\$ 121,752.90
Transylvania	\$ 73,561.98	\$ 10,599.32	\$ 78,551.09	\$ 162,712.39

Tyrrell	\$ 54,680.08	\$ 4,122.07	\$ 49,001.00	\$ 107,803.15
Union	\$ 116,800.80	\$ 53,164.20	\$ 101,482.82	\$ 271,447.82
Vance	\$ 89,344.82	\$ 15,068.58	\$ 91,605.49	\$ 196,018.89
Wake	\$ 320,869.67	\$ 233,502.30	\$ 114,855.24	\$ 669,227.22
Warren	\$ 71,208.47	\$ 8,048.24	\$ 66,207.69	\$ 145,464.40
Washington	\$ 61,336.29	\$ 6,585.19	\$ 58,164.44	\$ 126,085.92
Watauga	\$ 71,416.85	\$ 15,562.56	\$ 97,481.69	\$ 184,461.10
Wayne	\$ 110,325.05	\$ 34,106.40	\$ 108,378.03	\$ 252,809.48
Wilkes	\$ 93,610.47	\$ 19,372.69	\$ 116,450.28	\$ 229,433.45
Wilson	\$ 92,888.47	\$ 27,493.29	\$ 128,142.66	\$ 248,524.42
Yadkin	\$ 70,720.73	\$ 11,670.36	\$ 84,317.27	\$ 166,708.36
Yancey	\$ 64,123.44	\$ 7,127.19	\$ 62,931.59	\$ 134,182.22
TOTALS	\$ 9,519,624.00	\$ 2,750,114.00	\$ 8,884,982.00	\$ 21,154,720.00

*Note: All unspent ROAP funds must be repaid to NC DOT before FY2020 funds will be disbursed.

Application for Transportation Operating Assistance

FY2020 Rural Operating Assistance Program (ROAP) Funds

Name of Applicant (County)	Cabarrus County
County Manager	Michael Downs
County Manager's Email Address	mkdowns@CabarrusCounty.us
County Finance Officer	Susan Fearington
CFO's Email Address	sbfearrington@cabarruscounty.us
CFO's Phone Number	704-920-2984
Person Completing this Application	Robert Bushey
Person's Job Title	Transportation Manager
Person's Email Address	rwbushey@cabarruscounty.us
Person's Phone Number	704-920-2932
Community Transportation System	Cabarrus County Transportation
Name of Transit Contact Person	Robert Bushey
Transit Contact Person's Email Address	rwbushey@cabarruscounty.us

Application Completed by: _____ Date: _____
Signature

I certify that the content of this application is complete and accurately describes the county's administration of the ROAP Program, and the use of the ROAP funds in accordance with applicable state guidelines. I certify and understand that if the bi-annual and annual milestone reports and any other status reports required by the Integrated Mobility Division (IMD) are not submitted on or before the due dates, the next scheduled disbursement will be held until all reports are submitted.

I certify and understand that the county will be invoiced by NC DOT for any unspent funds at the end of the period of performance and that funds for the next fiscal year will not be disbursed until re-payment has been made.

County Manager: _____ Date: _____
Signature

County Finance Officer: _____ Date: _____
Signature

Application Instructions

County officials should read the **ROAP Program Administration Guide** which contains guidance on the administration of the ROAP Program and information about the preparation of grant applications.

- The application must be completed by an official of the county or his/her designee.
- Click on the **gray rectangle** and type each answer. If necessary, the text will automatically wrap to the next row. The answer may wrap to the next page if necessary.
- If the county wishes to explain their response to any questions or provide more information, the county may include additional pages with this application form. All the pages of the application and any pages added by the applicant should be scanned into the same file.
- If there are questions regarding this application, contact the NCDOT-IMD Mobility Development Specialist assigned to the area served by the transit system.

FY2020 ROAP Program Schedule

Application Deadline **January 17, 2020**

Partial Funds Disbursement **January 3, 2020**
March 6, 2020

***All outstanding unspent funds must be repaid to NCDOT before disbursement of FY2020 funds can be made.**

Milestone Reports

Milestone Report #1 February 28, 2020
Milestone Report #2 July 31, 2020 (Annual)

County's Management of ROAP Funds

County governments or regional public transportation authorities created pursuant to Article 25 or Article 26 of Chapter 160A of the General Statutes (upon written agreement with municipalities or counties served) are the only eligible applicants for ROAP funds. As a recipient of ROAP funds, the county must implement administrative processes that will ensure the following:

- ROAP funds are expended on needs identified through a public involvement and/or planning process
- **ROAP funds are expended only on eligible activities as described in Appendix A of the ROAP Guidance.**
- **Supporting documentation of expenditures by all sub-recipients is required.**
- Service recipients meet eligibility requirements and their eligibility is documented
- Trips funded with ROAP funding are monitored and evaluated throughout the period of performance
- An accounting of trips and expenditures is provided in bi-annual reports to NCDOT with supporting documents
- ROAP funds received and expended are included in the local annual audit

ROAP funds will be disbursed to counties in two lump-sum payments in the Rural General Public program. Counties have the flexibility to determine how the funding will be used to meet the needs of the citizens and how to sub-allocate the funding to meet the transportation needs, but the guidelines for each program used must be followed and trips accounted for by program used.

Transportation Needs and Public Involvement in Funding Decisions	Yes	No
A. Did the county ask the Community Transportation Advisory Board (TAB), which is affiliated with the Community Transportation System, to recommend how the ROAP funds should be sub-allocated?	x	
B. Were outreach efforts conducted to inform agencies about the availability of ROAP funds and to discuss transportation needs BEFORE the county decided how to sub-allocate the ROAP funds?	x	
C. Is the method used to sub-allocate the ROAP funds fair and equitable? Open and transparent?	x	
Financial Management of ROAP Funds	Yes	No
D. Does the county pass through any ROAP funds to agencies or organizations that are not county governmental departments or agencies?		x
E. If yes, does the county have a written agreement with these agencies that addresses the proper use, return and accountability of these funds? <i>(Include a sample agreement with application)</i>		
F. Do any of the organizations or departments receiving ROAP funds plan to use private transit contractors to provide the ROAP funded trips? <i>(Their procurement practices will need to meet all federal and state requirements for procurement of professional services.)</i>	x	
G. Are ROAP funds deposited in an interest-bearing account?	x	
H. Does the county provide local funds for transportation operating assistance to any of the ROAP sub-recipients in addition to the state ROAP funds?	x	
Monitoring and Oversight Responsibilities	Yes	No
I. Subrecipients of ROAP funds are required to provide sufficiently detailed progress reports and statistical data about trips provided and rider eligibility with ROAP funds. How frequently are these provided to the county? In what format? The County must be prepared to provide documentation that an eligible citizen was provided an eligible service or trip on the billed date, by whatever conveyance, at a specific cost. What form of documentation is collected? Routematch	x	
J. Does the county require the subrecipients of ROAP funds to use the coordinated transportation services of the federally funded Community Transportation System operating in the county?	x	
K. Will any of the subrecipients use their ROAP sub-allocation as matching funds for any of the following programs? <i>(Matching funds for operating assistance or purchase of service only.)</i> 5310 – Elderly Individuals and Individuals with Disabilities Program x 5311 - Non-urbanized Area Formula Program 5316 – Job Access and Reverse Commute Program (JARC) 5317 – New Freedom Program		
L. Will any of the subrecipients charge a fare for a ROAP funded trip? Yes. \$3.00		
M. Describe the eligibility criteria to be used in this county to determine who will be provided ROAP funded trips. What documents are used to determine eligibility? State ROAP Management Plan		
N. Since the subrecipient can only use RGP funds to pay for 90% of the cost of a trip, will the Community Transportation System use fare revenue to generate the local 10% match requirement for RGP funds?		yes

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

Finance - Installment Financing Contract for Various School and County Projects - Public Hearing 6:30 p.m.

BRIEF SUMMARY:

Cabarrus County plans to enter into one or more short and/or long-term installment financing contracts with the Cabarrus County Development Corporation or one or more third parties, for an amount not to exceed \$130,000,000 to finance all or a portion of the cost of constructing and equipping public school and county facilities and various real and personal property improvements.

N.C.G.S. 160A-20 requires a public hearing on the described installment financing contracts for the projects described above. No further action is required at this time.

REQUESTED ACTION:

Hold a public hearing

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Susan Farrington, Finance Director

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- LOBS Public Hearing Minutes

The Chairman announced that this was the date, place and hour fixed by the Board of Commissioners for a public hearing concerning a proposed plan of financing in an aggregate principal amount of up to \$130,000,000, which plan would involve the entry by the County into (a) one or more long-term installment financing contract(s) with the Cabarrus County Development Corporation (the "Corporation") or one or more other third parties pursuant to North Carolina General Statutes §160A-20, as amended, the proceeds of which would be used to pay all or a portion of the costs of (i) the acquisition, construction, installation and equipping of one or more new buildings to be used as new court house facilities for the County, (ii) various site improvements related thereto, (iii) the acquisition, construction, installation and equipping of a new public middle school, (iv) the acquisition of land for a new public senior high school facility, (v) the construction, installation and equipping of turf fields at various public school sites, (vi) the renovation/replacement of the Governmental Center's existing skylight and roof, (vii) the design of various types of large mechanical, plumbing, fire protection and electrical equipment to be associated with the new Courthouse facility including, without limitation, elevators, chillers and generators, (viii) site development and stabilization of the site of a new Courthouse facility including, without limitation, (A) demolition of the existing Courthouse Annex, (B) any and all related utilities relocation, (C) excavation of the existing Courthouse Annex parking lot, (D) utility and road shoring for the new Courthouse facility, (ix) the acquisition of any necessary rights-of-way and easements related to each of the foregoing (i) through (viii) and (x) various real and personal property improvements related to each of the foregoing (i) through (viii) (collectively, the "Projects"), and under said one or more long-term installment financing contract(s) the County would secure the repayment by the County of the moneys advanced pursuant to such one or more long-term installment financing contract(s) by granting a security interest in and lien on all or some portion of the Projects and/or all or some portion of the real property upon which the Projects are located and/or (b) into one or more short-term installment financing contract(s), which may utilize a draw-down loan structure, with one or more third parties pursuant to North Carolina General Statutes 160A-20, as amended, the proceeds of which, and the related Limited Obligation Bonds and/or Certificates of Participation, if any, would be used to provide interim financing for all or some portion of the Projects pending execution and delivery of said one or more long-term financing contract(s) and the related Limited Obligation Bonds and/or Certificates of Participation, if any, and under said one or more short-term installment financing contract(s) the County would

secure the repayment by the County of the moneys advanced pursuant to such short-term installment financing contract(s) by granting a security interest in and lien on all or some portion of the Projects and/or all or some portion of the real property upon which the Projects are located, which plan of financing and Projects were described in the notice of public hearing published in The Independent Tribune on [January ___, 2020] (the “Notice”).

The Board of Commissioners first ratified and approved the designation of the meeting as a public hearing on the proposed plan of financing, the call of the public hearing and publication of the Notice.

It was then announced that the Board of Commissioners would immediately hear anyone who might wish to be heard on such matter.

No one appeared, either in person or by attorney, to be heard on such matter or the advisability of the plan of financing and the Clerk to the Board of Commissioners announced that no written statement relating to said matters had been received by the Clerk or the Finance Director.

It was then announced that the public hearing was closed.

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

Finance - Resolution Approving Installment Contract Financing for Various Public Projects Up to \$130,000,000

BRIEF SUMMARY:

The Board of County Commissioners has preliminarily approved the issuance of Limited Obligation Bonds (LOBS) for the funding of various school and public projects on December 16, 2019 and held a public hearing on the issue tonight, January 21, 2020.

The next required step in the financing is the final approval by adoption of the attached Resolution approving the installment contract financing in an amount not-to-exceed \$130,000,000. The LOBS are scheduled for issuance in February 2020, subject to approval by the Local Government Commission, including the use of a drawdown loan structure.

REQUESTED ACTION:

Motion to adopt the Resolution Approving Installment Contract Financing for Various School and Public Projects in an Aggregate Principal Amount up to \$130,000,000 and Execution and Delivery by the Cabarrus County Development Corporation of Limited Obligation Bonds Related thereto, Authorizing the Execution and Delivery of Related Documents in Connection therewith, and Providing for Certain other Related Matters.

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Susan Farrington, Finance Director

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- ▣ Resolution

**EXTRACT FROM MINUTES OF BOARD OF COMMISSIONERS OF
THE COUNTY OF CABARRUS, NORTH CAROLINA**

The Board of Commissioners for the County of Cabarrus, North Carolina, met in regular session in the Commissioners' Meeting Room in the Cabarrus County Governmental Center in Concord, North Carolina, the regular place of meeting, at 6:30 p.m., on January 21, 2020, with Stephen M. Morris, Chairman, presiding. The following Commissioners were:

PRESENT: Chairman Stephen M. Morris, Vice Chairman Diane R. Honeycutt and Commissioners F. Blake Kiger, Elizabeth F. Poole and Lynn W. Shue.

ABSENT: None.

ALSO PRESENT: Michael K. Downs, County Manager; Susan B. Fearrington, Finance Director; Richard M. Koch, Esq., County Attorney; and Lauren Linker, Clerk to the Board.

* * * * *

RESOLUTION APPROVING LONG-TERM INSTALLMENT CONTRACT FINANCINGS OF VARIOUS PUBLIC PROJECTS IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$130,000,000; AUTHORIZING INTERIM INSTALLMENT CONTRACT FINANCINGS FOR SUCH PROJECTS IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$130,000,000; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CABARRUS COUNTY DEVELOPMENT CORPORATION OF ONE OR MORE SERIES OF LIMITED OBLIGATION BONDS AND/OR CERTIFICATES OF PARTICIPATION RELATED THERETO, AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS

WHEREAS, the Board of Commissioners desires to undertake a proposed plan of financing in an aggregate principal amount of up to \$130,000,000, which plan would involve the entry by the County into one or more long-term installment financing contract(s) with the Cabarrus County Development Corporation (the "Corporation") or one or more other third parties pursuant to North Carolina General Statutes §160A-20, as amended, the proceeds of which would be used to pay all or a portion of the costs of (i) the acquisition, construction, installation and equipping of one or more new buildings to be used as new court house facilities for the County, (ii) various site improvements related thereto, (iii) the acquisition, construction, installation and equipping of a new public middle school, (iv) the acquisition of land for a new public senior high school facility, (v) the construction, installation and equipping of turf fields at various public school sites, (vi) the renovation/replacement of the Governmental Center's existing skylight and roof, (vii) the design

of various types of large mechanical, plumbing, fire protection and electrical equipment to be associated with the new Courthouse facility including, without limitation, elevators, chillers and generators, (viii) site development and stabilization of the site of a new Courthouse facility including, without limitation, (A) demolition of the existing Courthouse Annex, (B) any and all related utilities relocation, (C) excavation of the existing Courthouse Annex parking lot, (D) utility and road shoring for the new Courthouse facility, (ix) the acquisition of any necessary rights-of-way and easements related to each of the foregoing (i) through (viii) and (x) various real and personal property improvements related to each of the foregoing (i) through (viii) (collectively, the “Projects”), and under said one or more long-term installment financing contract(s) the County would secure the repayment by the County of the moneys advanced pursuant to such one or more long-term installment financing contract(s) by granting a security interest in and lien on all or some portion of the Projects and/or all or some portion of the real property upon which the Projects are located;

WHEREAS, as part of said proposed plan of financing, the Corporation may also execute and deliver one or more series of Limited Obligation Bonds and/or Certificates of Participation in said one or more long-term installment financing contract(s) in an aggregate principal amount not exceeding \$130,000,000 to finance the advancement of moneys to the County pursuant to said one or more long-term installment financing contract(s) between the County and the Corporation or one or more other third parties;

WHEREAS, as part of the proposed plan of financing for the Projects, the Board of Commissioners further desires to authorize interim financing, which may utilize a draw-down loan structure, for all or some portion of the Projects in an aggregate principal amount of up to \$130,000,000, which would involve the entry by the County into one or more short-term installment financing contract(s) with one or more third parties pursuant to North Carolina General Statutes §160A-20, as amended, the proceeds of which would be used to provide interim financing for all or some portion of the Projects pending execution and delivery of said one or more long-term financing contract(s) and the related Limited Obligation Bonds and/or Certificates of Participation, if any, and under said one or more short-term installment financing contract(s) the County would secure the repayment by the County of the moneys advanced pursuant to such short-term installment financing contract(s) by granting a security interest in and lien on all or some

portion of the Projects and/or all or some portion of the real property upon which the Projects are located; and

WHEREAS, as part of said proposed plan of financing, the Corporation may also execute and deliver one or more series of Limited Obligation Bonds and/or Certificates of Participation in said one or more short-term installment financing contract(s) in an aggregate principal amount not exceeding \$130,000,000 to finance the advancement of moneys to the County pursuant to said one or more short-term installment financing contract(s) between the County and the Corporation or one or more other third parties;

WHEREAS, there have been submitted to this meeting draft forms of the following documents (the “Financing Documents”) with respect to the financing for the 2020A Projects:

(1) an Installment Financing Contract, proposed to be dated on or about February 1, 2020 (or such other date(s) as may be selected by the County), between the County and the Corporation (or one or more third parties) as counterparty (the “Contract(s)”), pursuant to which the Corporation (or such one or more third parties) will advance moneys to the County for the costs of the 2020A Projects and the County agrees to make periodic installment payments (the “Installment Payments”) to repay the moneys so advanced, with or without interest, as applicable;

(2) a Deed of Trust, Security Agreement and Fixture Filing (the “Deed of Trust”), proposed to be dated on or about February 1, 2020, among the County as Grantor, the Corporation (or such one or more third parties) as Beneficiary and the trustee named therein, by which the County would secure its obligations to the Corporation (or such one or more third parties) under the Contract(s);

(3) an Indenture of Trust, proposed to be dated on or about February 1, 2020 (the “Trust Indenture”), between the Corporation and the trustee named therein, as trustee (the “Trustee”), pursuant to which there may be executed and delivered from time to time Certificates of Participation and/or Limited Obligation Bonds, including, without limitation, the Limited Obligation Bonds (County of Cabarrus, North Carolina Installment Financing Contract), Series 2020A (collectively, the “Certificates and/or Bonds”), the proceeds of which will be used to advance the moneys to the County under the Contract(s); and

(4) a Contract of Purchase to be dated on or about February 1, 2020 (the “Contract of Purchase”), pursuant to which the 2020A Limited Obligation Bonds would be purchased from time to time by the purchaser(s) of the 2020A Limited Obligation Bonds;

WHEREAS, the obligations of the County to make Installment Payments and other payments pursuant to the Contract(s) shall constitute limited obligations of the County payable solely from currently budgeted appropriations of the County and shall not constitute a pledge of the faith and credit of the County within the meaning of any constitutional debt limitation;

WHEREAS, no deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under the Contract(s), and the taxing power of the County is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract(s); and

WHEREAS, the Board of Commissioners desires to approve the Financing Documents and to authorize other actions in connection therewith;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, as follows:

Section 1. All actions taken by or on behalf of the County to date to effectuate the proposed financing, including the selection of Piper Jaffray & Co., as Underwriter and/or Placement Agent and Nexsen Pruet, PLLC, as special counsel, are hereby ratified, approved and authorized pursuant to and in accordance with the transactions contemplated by the Financing Documents.

Section 2. The Board of Commissioners hereby finds and confirms that (i) the 2020A Projects and the financing thereof by one or more installment financing contracts is necessary and expedient for the County; (ii) financing of the 2020A Projects by one or more installment financing contracts, under the circumstances, is preferable to a bond issue by the County; (iii) the sums to fall due under said one or more installment financing contracts are adequate and not excessive for their proposed purpose; (iv) the County’s debt management procedures and policies are good and its debt will continue to be managed in strict compliance with law; (v) the increase in taxes, if any, necessary to meet the sums to fall due under said one or more installment financing contracts will not be excessive; and (vi) the County is not in default regarding any of its debt service obligations.

Section 3. The acquisition, construction and equipping of the 2020A Projects, the financing thereof and the granting of security interests therein, all as provided in the Financing Documents referenced in this Resolution, are hereby ratified and approved.

Section 4. Each of the Contract(s), the Contract of Purchase and the Deed of Trust is hereby approved in substantially the form submitted to this meeting, and each of the Chairman of the Board of Commissioners or the County Manager is hereby authorized to execute and deliver each of those documents in the name and on behalf of the County, with such changes, insertions or omissions as the persons executing such documents may approve, including but not limited to changes, insertions or omissions related to obtaining a policy of municipal bond insurance with respect to all or a portion of any Certificates and/or Bonds, their execution and delivery thereof to constitute conclusive evidence of such approval. The County Clerk is hereby authorized to affix the seal of the County to each of said documents as may be appropriate and to attest to the same.

Section 5. The Trust Indenture (including the form of Certificate and/or Bond) is hereby approved in substantially the form submitted to this meeting, with such changes, insertions or omissions as appropriate, including but not limited to changes, insertions or omissions related to obtaining a policy of municipal bond insurance with respect to all or a portion of any Certificates and/or Bonds, as the representative(s) of the County executing the Contract(s) may approve, the execution and delivery of the Contract(s) to constitute conclusive evidence of such approval. The Board of Commissioners hereby approves the sale of Certificates and/or Bonds by the Corporation in an aggregate principal amount not in excess of the amount of moneys to be advanced to the County pursuant to the Contract(s).

Section 6. Each of the Chairman of the Board of Commissioners, the County Manager and the Director of Finance are authorized to approve all details of the financing of the 2020A Projects, including, without limitation, the amount advanced under the Contract(s) and the aggregate principal amount of any Certificates and/or Bonds (which shall not exceed \$130,000,000), the maturities, the principal amounts and the interest amounts (if any) of the Installment Payments and any Certificates and/or Bonds, which interest amounts may be either fixed or variable rates and, if fixed rates, (calculated with respect to any Certificates and/or Bonds) shall not exceed [6.5%] per annum on an effective interest cost basis, the prepayment terms and prices (which shall not exceed 103% of the principal amount being prepaid) and the Underwriters' discount (exclusive of any

original issue discount) or Placement Agents' compensation (which shall not exceed 2.0% of the principal amount of any Certificates and/or Bonds). Execution of the Contract(s) by the Chairman of the Board of Commissioners or the County Manager shall conclusively evidence such approval of all such details of said financing.

Section 7. The Chairman of the Board of Commissioners, the County Manager, the Director of Finance and the County Attorney are hereby authorized to take any and all such further action, including approval of modifications to the Financing Documents, and to execute and deliver for and on behalf of the County such other documents and certificates (including, without limitation, agreements with securities depositories, financing statements, one or more contracts of purchase or purchase agreements, one or more placement agreements, one or more private placement agreements or other offering documents or memoranda, tax certificates and agreements and other documents and agreements (including repurchase agreements) relating to the investment of the proceeds from the execution and delivery of the Contract(s)) as they may deem necessary or advisable to carry out the intent of this resolution and to effect the financing pursuant to the Contract(s) and the other Financing Documents. The County Clerk is hereby authorized to affix the seal of the County to such documents and certificates as may be appropriate and to attest to the same and to execute and deliver the same as may be needed. In addition, said officers are hereby authorized to cooperate with the Underwriters in preparing and filing such filings under state securities or "blue sky" laws (including special consents to service of process) as the Underwriters may request and as the Chairman of the Board of Commissioners, the County Manager or the Director of Finance shall determine.

Section 8. The Finance Director shall prepare and file a sworn statement of debt with the LGC and the Clerk to the Board in accordance with North Carolina General Statutes Section 159-150.

Section 9. The County covenants that, to the extent permitted by the Constitution and laws of the State of North Carolina, it will do and perform all acts and things to comply with the requirements of the Internal Revenue Code of 1986, as amended (the "Code"), in order to assure that interest paid with respect to the 2020A Limited Obligation Bonds will not be includable in the gross income of the owners thereof for purposes of federal income taxation, except to the extent that the County obtains an opinion of bond counsel to the effect that noncompliance would not

result in interest with respect to the 2020A Limited Obligation Bonds being includable in the gross income of the owners of the 2020A Limited Obligation Bonds for purposes of federal income taxation.

Section 10. This Resolution shall become effective immediately upon its adoption.

Thereupon, upon motion of Commissioner _____, seconded by Commissioner _____, the foregoing resolution entitled "RESOLUTION APPROVING LONG-TERM INSTALLMENT CONTRACT FINANCINGS OF VARIOUS PUBLIC PROJECTS IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$130,000,000; AUTHORIZING INTERIM INSTALLMENT CONTRACT FINANCINGS FOR SUCH PROJECTS IN AN AGGREGATE PRINCIPAL AMOUNT UP TO \$130,000,000; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CABARRUS COUNTY DEVELOPMENT CORPORATION OF ONE OR MORE SERIES OF LIMITED OBLIGATION BONDS AND/OR CERTIFICATES OF PARTICIPATION RELATED THERETO, AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS" was adopted and passed by the following vote:

AYES: _____

NOES: _____

* * * * *

I, Lauren Linker, Clerk to the Board of Commissioners for the County of Cabarrus, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board of Commissioners at a regular meeting held on January 21, 2020, as relates in any way to the passage of the resolutions hereinabove referenced and that said proceedings are recorded in Minute Book No. ___ of the minutes of said Board of Commissioners, beginning at page ___ and ending at page ___.

I DO HEREBY FURTHER CERTIFY that the schedule of regular meetings of said Board of Commissioners has been on file in my office pursuant to North Carolina General Statutes §143-318.12 as of a date not less than seven (7) days before said meeting.

WITNESS my hand and the corporate seal of said County, this 21st day of January, 2020.

Clerk to the Board of Commissioners
for the County of Cabarrus, North Carolina

[SEAL]

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

Infrastructure and Asset Management - Cabarrus County Courthouse Expansion
Construction Manager at Risk Contract Extension

BRIEF SUMMARY:

Currently Cabarrus County has a preconstruction contract with Messer Construction for Courthouse expansion Construction Manager at Risk services. On December 13, 2019, Messer Construction bid out the scope of work for the site enabling portion of the project. This will be referred to as GMP (Guaranteed Maximum Price) #1 and is considered an extension to their original contract. Messer has now received an official GMP #1 bid.

REQUESTED ACTION:

Motion to approve the GMP #1 bid award and authorize the County Manager to execute the contract extension between Cabarrus County and Messer Construction, subject to revision by the County Attorney, and authorize the Finance Director to prepare the related budget amendment and project ordinance(s).

EXPECTED LENGTH OF PRESENTATION:

15 Minutes

SUBMITTED BY:

Kyle Bilafer, Area Manager of Operations
Susan Farrington, Finance Director

BUDGET AMENDMENT REQUIRED:

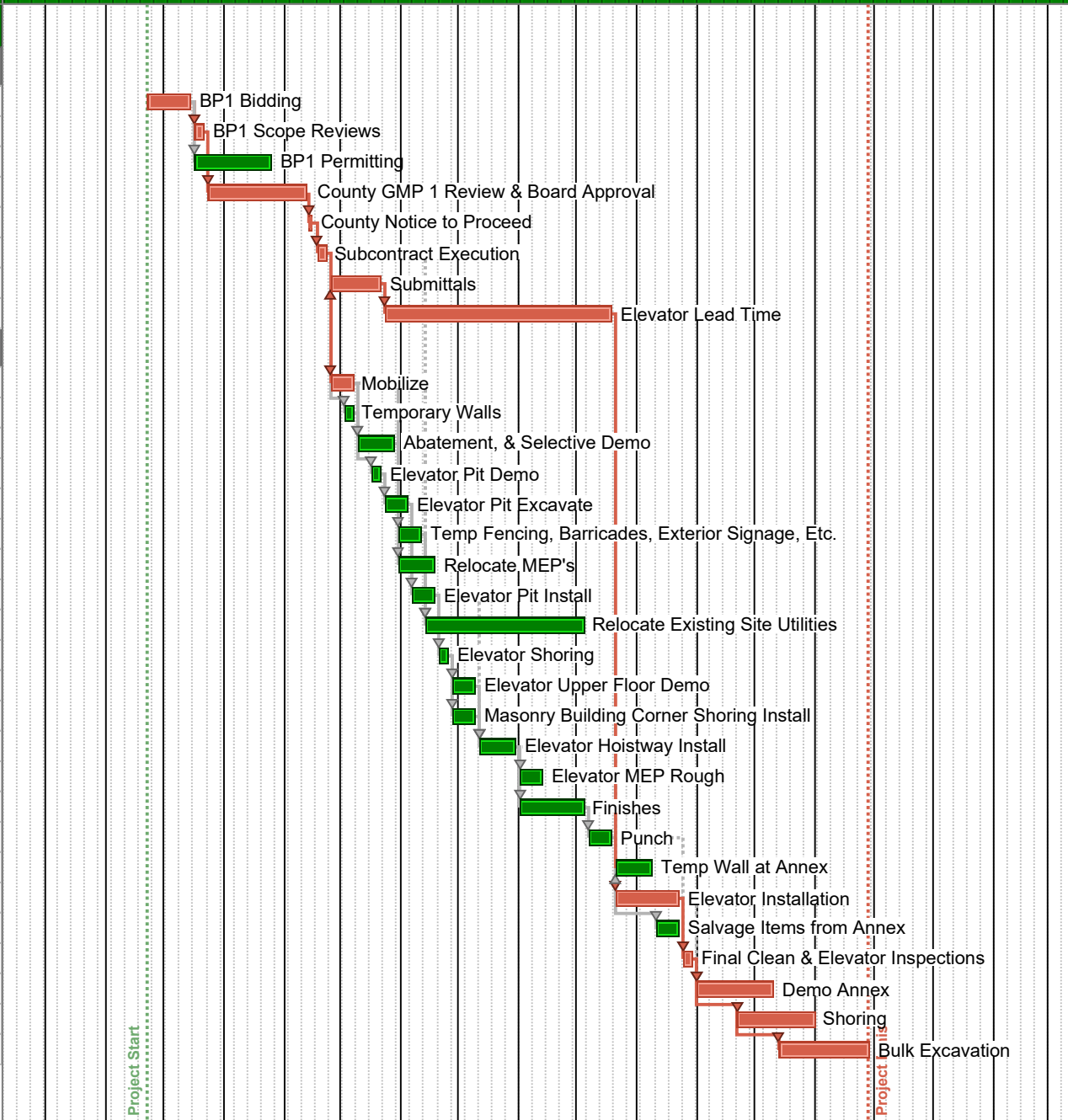
Yes

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- ▣ GMP Schedule
- ▣ GMP 1

CCCH - Phase 1 Enabling				
Preconstruction				
19	BP1 Bidding	16	11/22/19	12/13/19
25	BP1 Scope Reviews	5	12/16/19	12/20/19
41	BP1 Permitting	30	12/16/19	01/24/20
28	County GMP 1 Review & Board Approval	38	12/23/19	02/12/20
38	County Notice to Proceed	2	02/13/20	02/14/20
43	Subcontract Execution	5	02/17/20	02/21/20
85	Submittals	20	02/24/20	03/20/20
87	Elevator Lead Time	85	03/23/20	07/17/20
Construction				
80	Mobilize	10	02/24/20	03/06/20
81	Temporary Walls	5	03/02/20	03/06/20
86	Abatement, & Selective Demo	15	03/09/20	03/27/20
91	Elevator Pit Demo	5	03/16/20	03/20/20
96	Elevator Pit Excavate	10	03/23/20	04/03/20
82	Temp Fencing, Barricades, Exterior Signage, Etc.	10	03/30/20	04/10/20
93	Relocate MEP's	15	03/30/20	04/17/20
98	Elevator Pit Install	10	04/06/20	04/17/20
90	Relocate Existing Site Utilities	60	04/13/20	07/03/20
88	Elevator Shoring	5	04/20/20	04/24/20
94	Elevator Upper Floor Demo	10	04/27/20	05/08/20
101	Masonry Building Corner Shoring Install	10	04/27/20	05/08/20
99	Elevator Hoistway Install	15	05/11/20	05/29/20
105	Elevator MEP Rough	10	06/01/20	06/12/20
102	Finishes	25	06/01/20	07/03/20
103	Punch	10	07/06/20	07/17/20
97	Temp Wall at Annex	15	07/20/20	08/07/20
89	Elevator Installation	25	07/20/20	08/21/20
95	Salvage Items from Annex	10	08/10/20	08/21/20
92	Final Clean & Elevator Inspections	5	08/24/20	08/28/20
100	Demo Annex	30	08/31/20	10/09/20
110	Shoring	30	09/21/20	10/30/20
115	Bulk Excavation	35	10/12/20	11/27/20



Start Date: 11/22/19
 Finish Date: 11/27/20
 Data Date: 04/01/19
 Run Date: 12/23/19

Cabarrus County Courthouse
 Phase 1 - Enabling Bid Schedule



AIA[®] Document A133[™] – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:

(Name and address or location)

Cabarrus County Courthouse GMP/ Site Enabling Construction
77 Union Street S
Concord, NC 28025

THE OWNER:

(Name, legal status and address)

Cabarrus County P.O. Box 707
242 General Services Dr.
Concord, NC 28025
Telephone: (704) 920-3201

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

Messer Construction Co. 4201 Stuart Andrew Blvd., Suite B
Charlotte, NC 28217
NC License #70194
Telephone: (704) 679-6000

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Six Million Six Hundred Twenty Two Thousand Eight Hundred Twenty One Dollars (\$ 6,622,821.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide below or reference an attachment.)

See Attached Exhibit 1 – GMP Cost Breakdown

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

ADDITIONS AND DELETIONS:

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

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

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

None

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
Allowance #01 – Rock Removal	\$40,500
Allowance #02 – Unsuitable Soils	\$70,000

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Attached Exhibit 2 - Qualifications and Clarifications

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)
See Attached Exhibit 3 – Specifications List

Section	Title	Date	Pages
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§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)
See Attached Exhibit 4 – Drawing List

Number	Title	Date
--------	-------	------

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

Addendum 1 dated December 9, 2019

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

278 calendar days from Notice to Proceed

CABARRUS COUNTY

MESSER CONSTRUCTION CO.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

Michael Downs County Manager

Stephen Keckeis Vice President

(Printed name and title)

(Printed name and title)

Init.

PROJECT: Cabarrus County Courthouse GMP1 Site Enabling Construction
December 23, 2019

Exhibit 1 - GMP Cost Breakdown
Overall Project Recap

PKG#	Description	Value	Subcontractor	MBE %	Local Contractor
01A	Continuous Clean-Up	\$ 11,200	Green's Commercial Cleaning	100.0%	-
01B	Final Clean Up	\$ 9,000	Mr. Clean Maintenance Company	100.0%	-
01C	Temp Construction Fencing	\$ 82,973	Sonco Event and Construction	0.0%	-
02A	Building Demo & Abatement	\$ 387,320	Trifecta	100.0%	-
03A	Concrete	\$ 130,000	TBD	0.0%	-
04A	Masonry	\$ 155,000	Old North State Masonry	2.7%	-
05A	Steel	\$ 22,210	Mazz Welding and Fabrication	0.0%	Yes
07A	Waterproofing	\$ 4,000	Mecklenburg Restoration LLC	0.0%	-
07B	Temp Roofing	\$ 33,800	Davco Roofing & Sheetmetal	0.0%	-
08A	Doors, Frames, Hardware	\$ 28,270	Schiller Hardware	0.0%	-
09A	Drywall & Ceilings	\$ 134,450	United Painting	100.0%	-
09B	Painting	\$ 13,392	Baxter Protective Coatings	0.0%	Yes
09C	Carpet & Flooring	\$ 19,840	Shields Inc.	12.2%	-
14A	Elevators	\$ 98,800	Schindler Elevator Corp.	0.0%	-
21A	Plumbing	\$ 282,300	Ben Hendley, Inc.	0.0%	Yes
23A	HVAC	\$ 178,000	Superior Mechanical	100.0%	-
26A	Electrical	\$ 353,911	TR Curlee	0.0%	Yes
31A	Mass Ex. & Site Utilities	\$ 1,943,446	Wayne Brothers Inc.	14.8%	Yes
31B	Earth Retention and Underpinning	\$ 1,249,827	Axiom Foundations	0.0%	-
	Allowance #01 - Rock Allowance	\$ 40,500			
	Allowance #02 - Unsuitable Soils	\$ 70,000			
	Alternates	none			
	General Conditions	\$ 589,044			
	General Requirements/Hoisting/Safety	\$ 164,236			
	Subtotal	\$ 6,001,519		16.9%	43.6%
	SDI - 1.15%	\$ 60,355			
	CMAr Contingency - 3%	\$ 180,046			
	Escalation	\$ -			
	Building Permit and Plan Review	\$ 29,477			
	Tap Fees (By Cabarrus County)	\$ -			
	BR - DIC - 0.07%	\$ 4,320			
	CM Bond - 0.70%	\$ 47,191			
	CCIP - 2.23%	\$ 100,780			
	Fee - 3.10%	\$ 199,134			
	GMP Total	\$ 6,622,821			
				\$ 1,014,825	\$ 2,615,259
				MBE Spend	Local Spend

**Exhibit 1 - GMP Cost Breakdown
General Conditions and General Requirements**

General Conditions - Staffing

Name	Hours	Rate	Cost
Chris Malinowski - Operations VP	263	\$ 173.04	\$ 45,509.52
Jason Harris - Project Executive	1,054	\$ 129.27	\$ 136,250.58
Steve Wise - Liles support	133	\$ 129.27	\$ 17,192.91
Steve Steffens - Superintendent	1,317	\$ 110.73	\$ 145,831.41
Night Shift Assist. Superintendent	520	\$ 85.49	\$ 44,454.80
Gilberto Diaz - Doc Control	1,317	\$ 69.01	\$ 90,886.17
Gautham Prasad - BIM	53	\$ 85.49	\$ 4,530.97
Mitch Griffith - Project Accountant	263	\$ 65.92	\$ 17,336.96
Operations Associate	1,317	\$ 47.38	\$ 62,399.46
Paul Garbon - Safety Manager	263	\$ 93.73	\$ 24,650.99
Total:			\$589,043.77

General conditions are based on a total of 7.6 months (2/15/20 - 9/30/20)

**Exhibit 1 - GMP Cost Breakdown
General Conditions and General Requirements**

General Requirements

Description	Unit	Unit Type	Unit cost	Total
Field office w/ Security Leased	8	mo	\$ 3,850	\$ 30,800
Field office w/ Security mobile	8	mo	\$ 1,292	\$ 10,336
Office equipment & supplies	8	mo	\$ 900	\$ 7,200
Office equipment & supplies	8	mo	\$ 100	\$ 800
Printer/Copy/Fax/Scanner	8	mo	\$ 500	\$ 4,000
Office Furniture both locations	8	mo	\$ 500	\$ 4,000
Network Setup	1	ls	\$ 3,000	\$ 3,000
Network Equipment & Service Charges	8	mo	\$ 850	\$ 6,800
Project Management, Pay App, and QA/QC Software	8	mo	\$ 1,500	\$ 12,000
iSqFt software service	1	ls	\$ 450	\$ 450
GC Pay	8	mo	\$ 150	\$ 1,200
Project Webcam	8	mo	\$ 800	\$ 6,400
BIM - Kit	8	mo	\$ 700	\$ 5,600
Plan & specification reproduction	20	set	\$ 150	\$ 3,000
Project photos	8	mo	\$ 150	\$ 1,200
Professional surveyor	200	hr	\$ 100	\$ 20,000
Temporary electric for construction office mobile only	6	mo	\$ 150	\$ 900
Maintenace of Traffic Control Measures	8	mo	\$ 1,000	\$ 8,000
Safety/First Aid	8	mo	\$ 400	\$ 3,200
Toilet service per month	8	mo	\$ 400	\$ 3,200
Dumpsters	18	ea	\$ 500	\$ 9,000
Temporary stair tower - rental	5	mo	\$ 2,000	\$ 10,000
Temporary stair tower - erect/dismantle/deliver	1	ls	\$ 3,000	\$ 3,000
Temporary fire extinguishers	6	mo	\$ 25	\$ 150
Signage at street/sidewalks	1	ls	\$ 10,000	\$ 10,000
Total:				\$ 164,236

EXHIBIT 2

Qualifications and Clarifications

1. GMP1 includes \$1,014,825 in Minority Spend which equals 16.9% of the total contract.
2. GMP1 includes an estimated \$2,615,259 in spend with local Cabarrus County Companies which equals 43.6% of the total contract.
3. Messer construction is providing a Contractor Controlled Insurance Program (CCIP) for the work associated with GMP1. CCIP shall be in lieu of insurance as identified in Addendum C of the previously executed AIA A133-2009. Details of the program are included under specification section 00 73 16 – Insurance Requirements as found in Messer’s Bidder’s Manual. Excluded contractors will provide insurance and workers compensation as outlined in Messer’s standard Subcontract. Contractors excluded from the CCIP program include:
 - a. Wayne Brothers, Inc.
 - b. Schindler Elevator
 - c. Other Subcontractors as identified in the CCIP Program Manual (demolition, abatement, temporary work, etc.)
4. Sales tax is included.
5. Messer Construction has not included an owner contingency.
6. BC-03A value is an estimate. BC-03A will be re-advertised and rebid, all savings associated with rebid will be credited to Cabarrus County via a deduct change order.
7. General conditions are based on a time period starting February 15, 2020 and ending September 30, 2020. Messer’s staff starting October 1, 2020 will be funded via GMP2.
8. Inclusions:
 - a. Lead Paint and Asbestos abatement is included for the areas being demolished as part of the GMP1 work, the balance of the abatement work associated with the existing courthouse will be included in the future GMP3.
 - b. Excess soils will be disposed of at the County landfill (4441 Irish Potato Road), no dump fees are included. Excess soils will be spread at dump site.
 - c. GMP assumes working hours of: Exterior work is 7 a.m. to 5 p.m. and Interior work is 7 p.m. to 5 a.m.
 - d. Basement shoring system is based upon a fully cantilever system without tie-backs along Corban Ave SE and Church St. S. A tie-back system is included along Means Avenue.
 - e. Basement shoring system shall remain in place below grade following the completion of construction.
 - f. Air clearance testing is included following completion of asbestos abatement.
 - g. Messer Construction has verified with Schindler Elevator that as part of the closeout process, the following information/materials will be turned over to the County:
 - i. Owner’s Manual with technical data with source codes, etc.
 - ii. Inspectors Guide.

- iii. Key for the panel at the top floor door jamb.
- iv. Various Fire Service and other keys.
- v. Wiring diagrams for the unit.
- vi. (2) Special connectors with diodes in them that are used to conduct the various code required brake and uncontrolled motion tests.
- vii. Removable SIM Card located in the controller.

9. Exclusions:

- a. Unforeseen Conditions are excluded.
- b. GMP Excludes third party testing, inspections, special inspections, and consultants including, but not limited to soil borings and analysis, geotechnical testing, 3rd party commissioning, envelope testing/commissioning, acoustical testing, vibration testing/monitoring, hazardous material testing or consulting, and material testing.
- c. Tap fee associated with new 6" water line is excluded. Messer will coordinate work and procure quote for tap fees and Cabarrus County will pay tap fees direct.
- d. Utility connection fees or utility assessments are excluded.
- e. All electrical medium voltage/high voltage work (manholes, vaults, conduit/encasement, ductbanks, etc.) as identified on the bid documents is excluded.
- f. All data/fiber/phone lines (manholes, vaults, conduit/encasement, ductbanks, etc.) as identified on the bid documents is excluded.
- g. Relocation of voice/data within the Annex as needed due to installation of GMP1 work is excluded (work to be completed by Cabarrus County).
- h. Generator exhaust muffler is excluded.
- i. Salvaging of existing items not indicated in building demolition specifications is excluded.
- j. All traffic signals and pedestrian signal work is excluded.
- k. GMP excludes design or engineering costs with the exception of the engineering required for the shoring systems.
- l. Asphalt Pavement Milling and 2" overlay is excluded from GMP1, work will be bid as part of GMP2 package.
- m. Steel angle in detail 5/1.A4.1 is excluded (Messer has verified with Silling Architects that this work is not required).

10. The following Unit rates are included within this GMP:

- a. UP1 - Cleaning labor per man hour - \$16.00/Hr.
- b. UP 2 - Temporary fencing per linear foot - \$5.68/LF
- c. UP 4 - Removal of ACM floor tile and associated mastic - \$5.50/SF
- d. UP 5 - Removal of ACM Caulking - \$6.85/LF
- e. UP 6 - Removal of ACM Joint Compound Wall Material - \$13.75/SF
- f. UP 7 - Undercut and waste unsuitable soils Off-site - \$33.77/CY
- g. UP 8 - Replacement ABC stone, including placement and compaction - \$52.81/CY
- h. UP 9 - Replacement suitable soil from off-site - \$32.17/CY
- i. UP 10 - Geotextile Fabric (\$/SY) - \$2.61/SY
- j. UP 11 - Trench excavation rock removal to be wasted off-site - \$155.54/CY

- k. UP 12 - Mass excavation rock removal to be wasted off-site - \$78.69/CY
- l. UP 13 - Utility Trench Undercut of Unsuitable Soils to be wasted off-site and replaced with compacted ABC stone - \$214.24

Exhibit 3 - Specification List

Specification No.	Specification Description/Title	Revision #	Release Date
	Geotechnical Report dated April 12, 2019 by CESI		
	Geotechnical Report Addendum 1 dated August 16, 2019 by CESI		
	Geotechnical Report Addendum 2 dated August 16, 2019 by CESI		
	Lead Based Paint Survey Report dated May 31, 2018 by Allied Consulting & Eng.48		
	Asbestos Containing Material Report		
	CMAR BIDDER'S MANUAL		
00 21 13	Instructions To Bidders		10.31.2019
00 24 13	Bid Category Descriptions	Add. 1	12.09.2019
00 26 00	Procurement Substitution Procedures		10.31.2019
00 30 10	MBE Provisions and Forms		10.31.2019
00 31 13	Preliminary Schedules and Project Phasing		10.31.2019
00 41 00	Bid Forms	Add. 1	12.09.2019
00 43 13	Bid Security Bond		10.31.2019
00 52 00	Agreement Forms		10.31.2019
00 61 13	Performance & Payment Bond Forms		10.31.2019
00 62 76.13	Sales Tax Form		10.31.2019
00 73 16	Insurance Requirements		10.31.2019
00 73 19	Health and Safety Requirements		10.31.2019
01 21 00	Allowances		10.31.2019
01 22 00	Unit Prices	Add. 1	12.09.2019
01 23 00	Alternates		10.31.2019
01 25 00	Substitution Procedures		10.31.2019
01 26 00	Contract Modification Procedures		10.31.2019
01 29 00	Payment Procedures		10.31.2019
01 31 19	Project Meetings		10.31.2019
01 32 16	Construction Progress Scheduling		10.31.2019
01 32 26	Construction Progress Reporting		10.31.2019
01 33 00	Submittal Procedures		10.31.2019
01 35 43	Environmental Procedures – 5S Program		10.31.2019
01 40 01	Quality Program		10.31.2019
01 41 00	Special Inspection Services		10.31.2019
01 41 10	Statement and Schedule of Special Inspections		10.31.2019
01 50 00	Temporary Facilities and Controls		10.31.2019
01 60 00	Product Requirements		10.31.2019
01 71 23	Field Engineering		10.31.2019
01 74 13	Progress and Final Cleaning		10.31.2019
01 74 19	Construction Waste Management and Disposal		10.31.2019
01 77 00	Closeout Procedures		10.31.2019

01 78 36	Warranties		10.31.2019
01 80 00	Storm Water Pollution Prevention Plan Template		10.31.2019
EXHIBIT A.1	Site Phase Plan Part 1		10.31.2019
EXHIBIT A.2	Site Phase Plan Part 2		10.31.2019
EXHIBIT B	Cleaning Requirements		10.31.2019
EXHIBIT C	Flooring Removal Extents		10.31.2019
EXHIBIT D	Background Check Form		10.31.2019
EXHIBIT E	Elevator Deck & Protection Details		10.31.2019
EXHIBIT F	Existing Finishes		10.31.2019
	SELLING TECHNICAL SPECIFICATIONS		
01 14 100	Special Inspection Services		10.31.2019
01 14 110	Statement and Schedule of Special Inspections		10.31.2019
02 41 16	Building Demolition		10.31.2019
02 41 19	Selective Demolition		10.31.2019
02 41 21	Cutting and Patching		10.31.2019
03 30 00	Cast in place Concrete for Buildings		10.31.2019
03 54 16	Hydraulic Cement Underlayment		10.31.2019
04 20 00	Unit Masonry		10.31.2019
05 12 00	Structural Steel Framing		10.31.2019
05 31 00	Steel Decking		10.31.2019
05 40 00	Cold-Formed Metal Framing		10.31.2019
05 50 00	Metal Fabrications	Add. 1	12.09.2019
06 10 00	Rough Carpentry		10.31.2019
06 16 00	Sheathing		10.31.2019
07 13 26	Self-Adhering Sheet Waterproofing		10.31.2019
07 21 00	Thermal Insulation		10.31.2019
07 50 00	EPDM Roofing		10.31.2019
07 84 13	Penetration Firestopping		10.31.2019
07 92 00	Joint Sealants		10.31.2019
08 11 13	Hollow Metal Doors and Frames		10.31.2019
08 14 16	Flush Wood Doors		10.31.2019
08 71 00	Door Hardware		10.31.2019
09 22 16	Non-Structural Metal Framing		10.31.2019
09 29 00	Gypsum Board		10.31.2019
09 51 13	Acoustical Panel Ceilings		10.31.2019
09 65 19	Resilient Floor Tile, Cove Base, & Accessories		10.31.2019
09 66 23	Resinous Flooring		10.31.2019
09 68 13	Tile Carpeting		10.31.2019
09 91 00	Painting		10.31.2019
14 21 23	Traction Elevators	Add. 1	12.09.2019
22 05 00	Common Work Results for Plumbing		10.31.2019

22 05 13	Electric Requirements for Plumbing Equipment		10.31.2019
22 05 19	Piping and Equipment Specialties		10.31.2019
22 05 23	General Duty Valves and Strainers		10.31.2019
22 05 29	Hangers Supports and Anchors		10.31.2019
22 05 53	Identification for Plumbing Piping and Equipment		10.31.2019
22 07 19	Pipe Insulation		10.31.2019
22 11 20	Plumbing Piping		10.31.2019
22 13 20	Plumbing Pumps		10.31.2019
23 05 00	Common Work Results for HVAC		10.31.2019
23 05 01	Basic Mechanical Materials and Methods for HVAC		10.31.2019
23 05 29	Hangers and Supports for HVAC Piping and Equipment		10.31.2019
23 05 93	Testing, Adjusting & Balancing for HVAC		10.31.2019
23 07 13	Duct Insulation		10.31.2019
23 31 13	Metal Ducts		10.31.2019
23 33 00	Air Duct Accessories		10.31.2019
26 05 00	Common Work Results for Electrical		10.31.2019
26 05 19	Low-Voltage Electrical Power Conductors and Cables		10.31.2019
26 05 26	Grounding and Bonding for Electrical Systems		10.31.2019
26 0529	Hangers and Supports for Electrical Systems		10.31.2019
26 05 33	Raceways and Boxes for Electrical Systems		10.31.2019
26 05 43	Underground Ducts and Raceways for Electrical Systems		10.31.2019
26 05 44	Sleeves and Sleeve Seals for Electrical Raceways and Cabling		10.31.2019
26 05 53	Identification for Electrical Systems		10.31.2019
26 24 13	Switchboards		10.31.2019
26 27 26	Wiring Devices		10.31.2019
26 28 13	Fuses		10.31.2019
26 28 16	Enclosed Switches		10.31.2019
26 51 19	LED Interior Lighting		10.31.2019
31 10 00	Site Clearing		10.31.2019
31 23 19	Earthwork Dewatering		10.31.2019
31 50 00	Excavation Support and Protection	Add. 1	12.09.2019
33 10 00	Water Distribution		10.31.2019
33 30 00	Sanitary Sewage		10.31.2019
33 39 13	Manholes and Covers		10.31.2019
33 40 00	Storm Drainage		10.31.2019
33 50 00	Gas Distribution		10.31.2019

Exhibit 4 - Drawing List

Sheet Number	Sheet Description/Drawing Title	Revision #	Sheet Date
C0-0	COVER SHEET		10/31/2019
C1-0	EXISTING CONDITIONS		10/31/2019
C1-1	SURVEY		10/31/2019
C1-2	GENERAL NOTES		10/31/2019
C1-3	DEMOLITION PLAN		10/31/2019
C2-0	EROSION CONTROL PHASE I		10/31/2019
C2-1	EROSION CONTROL PHASE II	#1 - Addendum 1	12/9/2019
C2-2	EROSION CONTROL DETAILS		10/31/2019
C2-3	EROSION CONTROL DETAILS		10/31/2019
C3-1	SITE PLAN	#1 - Addendum 1	12/9/2019
C3-2	SITE DETAILS		10/31/2019
C4-1	GRADING AND DRAINAGE PLAN	#1 - Addendum 1	12/9/2019
C4-2	STORM SEWER PROFILES		10/31/2019
C4-3	STORM DETAILS		10/31/2019
C5-1	UTILITY PLAN	#1 - Addendum 1	12/9/2019
C5-2	SANITARY SEWER PROFILE		10/31/2019
C5-3	UTILITY DETAILS A		10/31/2019
C5-4	UTILITY DETAILS B		10/31/2019
R1-0	TRAFFIC CONTROL NOTES		10/31/2019
R1-1	TRAFFIC CONTROL PHASE I		10/31/2019
R1-2	PAVEMENT MARKING AND SIGNING		10/31/2019
1.A2.0	BASEMENT FLOOR PLAN - DEMOLITION - GMP 1		10/31/2019
1.A2.1	FIRST FLOOR PLAN - DEMOLITION - GMP 1		10/31/2019
1.A2.2	SECOND FLOOR PLAN - DEMOLITION - GMP 1		10/31/2019
1.A2.3	THIRD FLOOR PLAN - DEMOLITION - GMP 1		10/31/2019
1.A3.0	BASEMENT FLOOR PLAN - NEW WORK - GMP 1		10/31/2019
1.A3.1	FIRST FLOOR PLAN - NEW WORK - GMP 1		10/31/2019
1.A3.2	SECOND FLOOR PLAN - NEW WORK - GMP 1		10/31/2019
1.A3.3	THIRD FLOOR PLAN - NEW WORK - GMP 1		10/31/2019
1.A4.0	WALL SECTIONS		10/31/2019
1.A4.1	DETAILS		10/31/2019
1.S0.1	GENERAL NOTES		10/31/2019
1.S1.0C	BASEMENT FOUNDATION PLAN - SOUTH		10/31/2019
1.S1.1C	FIRST FLOOR FRAMING PLAN - SOUTH		10/31/2019
1.S1.2C	SECOND FLOOR FRAMING PLAN - SOUTH		10/31/2019
1.S1.3C	THIRD FLOOR FRAMING PLAN - SOUTH		10/31/2019
1.S1.4C	ROOF FRAMING PLAN - SOUTH		10/31/2019

1.S3.1	SECTIONS		10/31/2019
1.S5.1	TYPICAL DETAILS		10/31/2019
1.M1.0	GENERAL NOTES, SYMBOL LEGEND - HVAC		10/31/2019
1.M2.0	GENERAL NOTES, SYMBOL LEGEND - HVAC		10/31/2019
1.M2.1	DEMOLITION - FIRST FLOOR PLAN - HVAC		10/31/2019
1.M2.2	DEMOLITION - SECOND FLOOR PLAN - HVAC		10/31/2019
1.M2.3	DEMOLITION - THIRD FLOOR/ROOF PLAN - HVAC		10/31/2019
1.M3.1	NEW WORK - FIRST FLOOR PLAN - HVAC		10/31/2019
1.M3.2	NEW WORK - SECOND FLOOR PLAN - HVAC		10/31/2019
1.M3.3	NEW WORK - THIRD FLOOR PLAN - HVAC		10/31/2019
1.P1.0	PLUMBING GENERAL NOTES, SYMBOL LEGEND		10/31/2019
1.P2.0	DEMOLITION - BASEMENT FLOOR PLAN - PLUMBING		10/31/2019
1.P2.1	DEMOLITION - FIRST FLOOR PLAN - PLUMBING		10/31/2019
1.P2.2	DEMOLITION - SECOND FLOOR PLAN - PLUMBING		10/31/2019
1.P2.3	DEMOLITION - THIRD FLOOR PLAN - PLUMBING		10/31/2019
1.P3.0	NEW WORK - BASEMENT FLOOR PLAN - PLUMBING		10/31/2019
1.P3.1	NEW WORK - FIRST FLOOR PLAN - PLUMBING		10/31/2019
1.P3.2	NEW WORK - SECOND FLOOR PLAN - PLUMBING		10/31/2019
1.P3.3	NEW WORK - THIRD FLOOR PLAN - PLUMBING		10/31/2019
1.E1.0	GENERAL NOTES & SYMBOL LEGEND - ELECTRICAL		10/31/2019
1.E2.0	DEMOLITION - BASEMENT FLOOR PLAN - ELECTRICAL		10/31/2019
1.E2.1	DEMOLITION - FIRST FLOOR PLAN - ELECTRICAL		10/31/2019
1.E2.2	DEMOLITION - SECOND FLOOR PLAN - ELECTRICAL		10/31/2019
1.E2.3	DEMOLITION - THIRD FLOOR PLAN - ELECTRICAL		10/31/2019
1.E3.0	NEW WORK - BASEMENT FLOOR PLAN - ELECTRICAL		10/31/2019
1.E3.1	NEW WORK - FIRST FLOOR PLAN - ELECTRICAL		10/31/2019
1.E3.2	NEW WORK - SECOND FLOOR PLAN - ELECTRICAL		10/31/2019
1.E3.3	NEW WORK - THIRD FLOOR PLAN - ELECTRICAL		10/31/2019
1.E4.0	DEMOLITION - POWER RISER DIAGRAM - ELECTRICAL		10/31/2019
1.E4.1	NEW WORK - POWER RISER DIAGRAM - ELECTRICAL		10/31/2019
1.E5.0	ELECTRICAL DETAILS		10/31/2019

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

Planning and Development - 2020-2021 HOME Program - Public Hearing 6:30 p.m.

BRIEF SUMMARY:

Request action to hold a public hearing to participate in the 2020-2021 HOME program. The HOME program provides funding through the Cabarrus/Iredell/Rowan HOME Consortium. The program is designed to support affordable housing efforts. Staff previously presented to the Board an opportunity to participate with the City of Concord on a downtown revitalization project that included affordable housing units as part of the plan. Staff is proposing using Cabarrus County's annual allocation and the required local match towards the construction of this project. In return, the project will produce 17 affordable housing units for a 10 year period. These units are accounted for with Concord and Cabarrus County's HOME fund allocations. The exact number of units attributed to each agency will be further defined in the recording documents but will likely be 1 to 2 units for Cabarrus County and the rest for Concord's allocation.

REQUESTED ACTION:

Motion to hold a public hearing.

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Kelly Sifford, AICP
Planning and Development Director

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- ▣ Powerpoint of Downtown project



30 Market Street Downtown Catalyst Project

Project Summary

- Multi-Family Residential – 166 Units
- Parking Garage – 168 Spaces
- Ground Floor Retail – 2,600 SF
- Estimated Assessed Value \$50 Million

Primary Terms

- 30 Market St sold for appraised value \$579,000
- Mixed-use structure
 - 166 multifamily units, 168 space parking garage, & 2,600 SF of ground floor retail space
- \$1,250,000 of federal HOME funds over 10 years → 17 affordable units for 20 years
- 50% / 10 Year Tax Based Performance Incentive

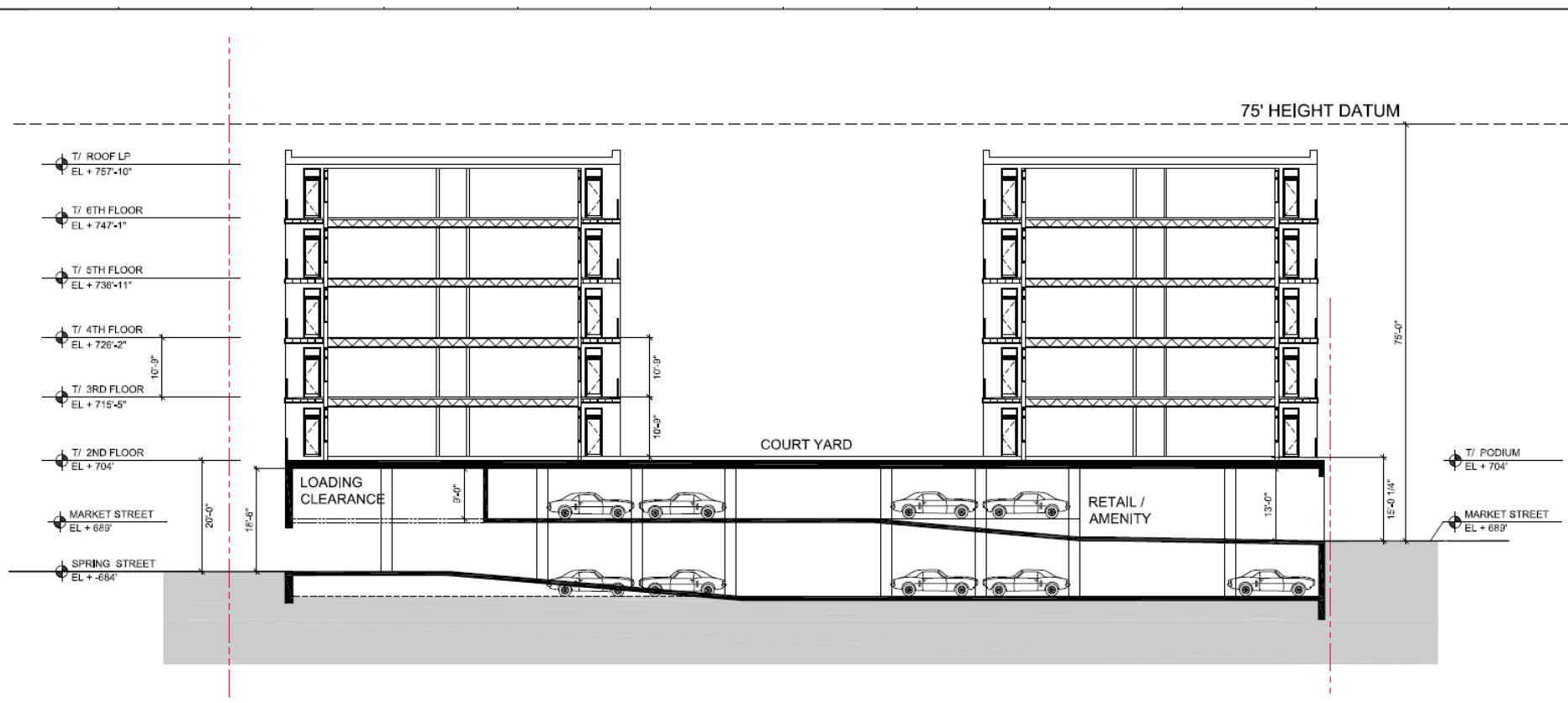
Affordable Housing

- \$1,250,000 payable over a 10 year period
- 17 units affordable for 20 years
 - 4 units available at 50% of median income or lower (1 Person \$27,650)
 - 13 units available at 80% of median income or lower (1 Person \$44,250)
 - Max Rents = Studio \$777.00, 1 Bedroom \$838, 2 Bedroom \$967
 - Comparison Rent would be +/- \$1,200 for 1 Bedroom

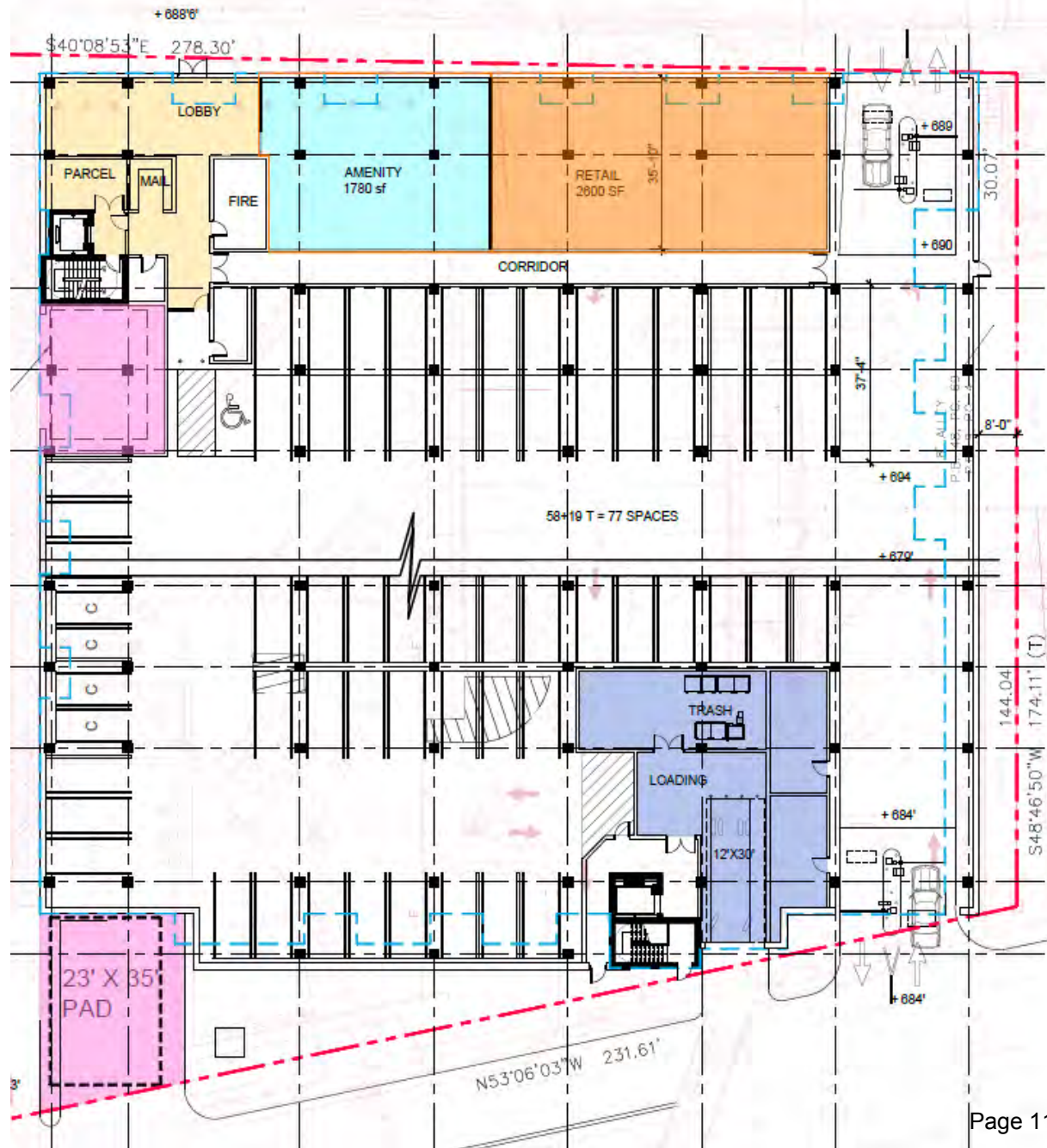
Downtown MSD Assessed Value

Projections	
2019 Assessed Value	\$ 42,959,400.00
MSD Tax (0.23 per \$100)	\$ 98,806.62
New MSD Assessed Value	\$ 92,959,400.00
MSD Tax (.23 per \$100)	\$ 213,806.62





D10 BUILDING SECTION
 SCALE: 1/8"=1'-0"
 NORTH-SOUTH





L10 SECOND FLOOR PLAN
COURT YARD LEVEL
 Page 117



CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

Planning and Development - Amendments to Proposed Fee Schedule

BRIEF SUMMARY:

As staff began implementing the fee schedule, it was discovered that there were a few items that got left out during the fee study and that clarification was needed on other items. The attached memo describes the fees which are mainly in the same category. Staff used the same method as the fee study to propose the correct fees for those items.

REQUESTED ACTION:

Motion to adopt the amended fee schedule.

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Kelly Sifford, AICP
Planning and Development Director

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

▣ Memo

MEMO

TO: Cabarrus County Board of Commissioners
FROM: Kelly Sifford
DATE: 12/23//2019
SUBJECT: Construction Standards Fee Schedule

As staff began implementation of the fee schedule in Accela, we discovered a few omissions and items that need clarification. There are four inspection types that were omitted during the fee study that staff would like to propose a revised fee for those items. The inspections are for ABC, day cares, group homes, and foster care facilities. The current fee for all of these inspections is \$100. Staff is proposing \$247.41 which is the same fee as the Certificate of Occupancy fee. The inspections are similar and require approximately the same amount of time to perform which is how the fees were calculated during the study. Additionally, there is a fee for an Existing Building Form for a Certificate of Completion for the City of Concord's jurisdiction of \$20 that did not carry over from the previous schedule. We are requesting that fee stay the same and just be formally adopted. Finally, for clarification purposes, the Homeowner Recovery fee did not show up on the category of apartments in the adopted fee schedule. Staff found out after the fee schedule was built that the Homeowner Recovery fee should be applied on apartment complexes as well. This is a state mandated fee that is applied to most residential housing permits that are pulled by General Contractors. It is not a local fee, however, we do receive an administrative portion. Staff is requesting that the fee schedule be amended to cover the aforementioned items.

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Discussion Items for Action

SUBJECT:

Planning and Development - Urgent Repair Grant

BRIEF SUMMARY:

Community Development Staff is requesting permission to pursue Urgent Repair Funding from the North Carolina Housing Finance Agency. The program does not require match and will be available for an 18 month period if funded. The program is mainly for extremely low income and low income individuals and/or households. The program also has qualification requirements that include special populations such as the disabled, elderly, Veterans, and children under age 6 facing lead hazards. Staff is proposing a \$75,000 request to NCHFA.

REQUESTED ACTION:

Approve staff to move forward with the application.

EXPECTED LENGTH OF PRESENTATION:

5 Minutes

SUBMITTED BY:

Kelly Sifford, AICP
Planning and Development Director

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

CABARRUS COUNTY



BOARD OF COMMISSIONERS WORK SESSION

**January 6, 2020
4:00 PM**

AGENDA CATEGORY:

Approval of Regular Meeting Agenda

SUBJECT:

BOC - Approval of Regular Meeting Agenda

BRIEF SUMMARY:

The proposed agenda for the January 21, 2020 regular meeting is attached.

REQUESTED ACTION:

Motion to approve the agenda for the January 21, 2020 regular meeting; and schedule the required public hearings for 6:30 p.m. or as soon thereafter as persons may be heard.

EXPECTED LENGTH OF PRESENTATION:

1 Minute

SUBMITTED BY:

Lauren Linker, Clerk to the Board

BUDGET AMENDMENT REQUIRED:

No

COUNTY MANAGER'S RECOMMENDATIONS/COMMENTS:

ATTACHMENTS:

- Proposed January 21, 2020 Agenda

CABARRUS COUNTY



BOARD OF COMMISSIONERS REGULAR MEETING

**January 21, 2020
6:30 PM**

MISSION STATEMENT

THROUGH VISIONARY LEADERSHIP AND GOOD STEWARDSHIP, WE WILL ADMINISTER STATE REQUIREMENTS, ENSURE PUBLIC SAFETY, DETERMINE COUNTY NEEDS, AND PROVIDE SERVICES THAT CONTINUALLY ENHANCE QUALITY OF LIFE

CALL TO ORDER BY THE CHAIRMAN

PRESENTATION OF COLORS

Girl Scout Troop 3561, Westford United Methodist Church

INVOCATION

Reverend Tony Hall, Shield of Faith Church

A. APPROVAL OR CORRECTIONS OF MINUTES

1. Approval or Correction of Meeting Minutes

B. APPROVAL OF THE AGENDA

C. RECOGNITIONS AND PRESENTATIONS

1. 2020 Census Partnership Resolution Presentation
2. Human Resources - Recognition of Mary "Angie" Caldwell on Her Retirement from Cabarrus County Human Services Department
3. Proclamation - Black History Month

D. INFORMAL PUBLIC COMMENTS

E. OLD BUSINESS

F. CONSENT AGENDA

(Items listed under consent are generally of a routine nature. The Board may take action to approve/disapprove all items in a single vote. Any item may be withheld from a general action, to be discussed and voted upon separately at the discretion of the Board.)

1. Appointments - Firemen's Relief Fund Trustees
2. Appointments and Removals - Home and Community Care Block Grant Advisory Committee
3. Appointments and Removals - Mental Health Advisory Board
4. Arena and Events Center - Contract Review
5. County Manager - Revised Joint Use Agreement
6. County Manager - Road Improvements at Hickory Ridge Elementary School
7. Department of Human Services - Transportation FY20 ROAP Application
8. Infrastructure and Asset Management - Cabarrus County Courthouse Expansion Construction Manager at Risk Contract Extension
9. Planning and Development - Amendments to Proposed Fee Schedule
10. Planning and Development - Urgent Repair Grant
11. Tax Administration - Refund and Release Reports - December 2019

G. NEW BUSINESS

1. Finance - Installment Financing Contract for Various School and County Projects - Public Hearing 6:30 P.M.
2. Finance - Resolution Approving Installment Contract Financing for Various Public Projects Up to \$130,000,000
3. Planning and Development - 2020-2021 HOME Program - Public Hearing 6:30 p.m.

H. REPORTS

1. BOC - Receive Updates From Commission Members who Serve as Liaisons to Municipalities or on Various Boards/Committees
2. BOC - Request for Applications for County Boards/Committees
3. County Manager - Monthly Building Activity Reports
4. County Manager - Monthly New Development Report
5. EDC - December 2019 Monthly Summary Report
6. Finance - Monthly Financial Update

I. GENERAL COMMENTS BY BOARD MEMBERS

J. WATER AND SEWER DISTRICT OF CABARRUS COUNTY

K. CLOSED SESSION

L. ADJOURN

Scheduled Meetings

February 3	Work Session	4:00 p.m.	Multipurpose Room
February 17	Regular Meeting	6:30 p.m.	BOC Meeting Room
February 28	Board Retreat	4:00 p.m.	Cabarrus Arena
February 29	Board Retreat	8:00 a.m.	Cabarrus Arena
March 9	Work Session	4:00 p.m.	Multipurpose Room

March 23

Regular Meeting

6:30 p.m.

BOC Meeting Room

Mission: Through visionary leadership and good stewardship, we will administer state requirements, ensure public safety, determine county needs, and provide services that continually enhance quality of life.

Vision: Our vision for Cabarrus is a county where our children learn, our citizens participate, our dreams matter, our families and neighbors thrive, and our community prospers.

**Cabarrus County Television Broadcast Schedule
Cabarrus County Board of Commissioners' Meetings**

The most recent Commissioners' meeting is broadcast at the following days and times. Agenda work sessions begin airing after the 1st Monday of the month and are broadcast for two weeks up until the regular meeting. Then the regular meeting begins airing live the 3rd Monday of each month and is broadcast up until the next agenda work session.

Sunday - Saturday	1:00 P.M.
Sunday - Tuesday	6:30 P.M.
Thursday & Friday	6:30 P.M.

In accordance with ADA regulations, anyone who needs an accommodation to participate in the meeting should notify the ADA Coordinator at 704-920-2100 at least forty-eight (48) hours prior to the meeting.