



KANNAPOLIS CITY COUNCIL

MEETING AGENDA
Kannapolis City Hall
401 Laureate Way, Kannapolis NC
January 28, 2019
6:00 PM

Please turn off cell phones or place on silent mode.

CALL TO ORDER AND WELCOME

MOMENT OF SILENT PRAYER AND PLEDGE OF ALLEGIANCE

ADOPTION OF AGENDA - Motion to Adopt Agenda or make revisions

RECOGNITIONS

1. Oath of Office Kannapolis Police Officers (Chief Chavis and Bridgette Bell, City Clerk)

APPROVAL/CORRECTION OF MINUTES

1. January 14, 2019 Meeting Minutes
2. Closed Session Minutes January 14, 2019

CONSENT AGENDA - Motion to Adopt Consent Agenda or make revisions

1. Delegation of Authority to Award, Approve and Execute Contracts and Other Instruments (Walter M. Safrit, II, City Attorney)
2. Amend Personnel Policy 600.02 - Holidays (Tina Cline, Human Resources Director)
3. Interlocal Agreement regarding debris disposal (Wilmer Melton, Public Works Director and Walter M. Safrit II, City Attorney).
4. Resolution for Appointment of Acting City Clerk (Mike Legg, City Manager)

BUSINESS AGENDA

- A. Public Hearing and Resolution Approving the Execution of the Amended and Restated Parking Garage Lease Agreement and the Hotel Parking Garage Lease Agreement by and between the City of Kannapolis and Kannapolis Master Venture, LLC (Mike Legg, City Manager and Walter M. Safrit II, City Attorney)
- B. Public Hearing and an adopting an Ordinance directing the Housing Code Inspector to demolish the dilapidated structure at 909 Miller Street (Zachary D. Gordon, AICP, Planning Director)
- C. Resolution of Intent to approve a request for Voluntary contiguous Annexation of property located on Moose Road (Zachary D. Gordon, AICP, Planning Director)
- D. Train Station Second Platform Agreement (Mike Legg, City Manager)

CITY MANAGER REPORT

CITY COUNCIL COMMENTS

SPEAKERS FROM THE FLOOR

In order to speak to Council, please fill out a white card and return to the City Clerk. Cards are located on the table as you enter the meeting room. Please limit comments to 3 minutes

CLOSED SESSION

GS. 143-318.11 (a) (3) to consult with an attorney in order to preserve the attorney client privilege; G.S. 143.318.11 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the area and G.S. 143-318.11 (a) (6) for the purpose of discussing personnel matters (Mayor Pro tem Haas)

MOTION TO ADJOURN

UPCOMING SCHEDULE

February 11

February 25

March 11 (Cancelled)

March 25

ADA Notice and Hearing Impaired Provisions

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), anyone who requires auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service or activity of the City of Kannapolis, should contact the office of Tina H. Cline, Human Resource Director by phone at 704-920-4302 or email at tccline@kannapolisnc.gov as soon as possible, but no later than forty-eight (48) hours before the scheduled event.



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Woody Chavis, Police Chief
TITLE Oath of Office (Police Officers)

A. Action Requested by City Council

None

B. Required Votes to Pass Required Action

Presentation Only, no action required

C. Background

The Kannapolis Police Department has added five new officers who successfully completed Basic Law Enforcement Training and graduated in early January 2019. Basic Law Enforcement Training consists of 682 hours of extensive training. They are currently in Field Training with the Department. They will be administered the ceremonial oath of office by the City Clerk.

The Officers are:

- Ronald Jared Barnes
- Brandon Chase Crowe
- Cody Thomas Franklin
- Zachary William Johnson
- Brandon Rashad Moore

D. Fiscal Considerations

None

E. Policy Issues

None

F. Legal Issues

None

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|--|
| G. Alternative Courses of Action and Recommendation |
|--|

No action by Council needed

ATTACHMENTS:

File Name

No Attachments Available

**CITY OF KANNAPOLIS
COUNCIL MEETING MINUTES
January 14, 2019**

A regular meeting of the City Council of the City of Kannapolis, North Carolina was held on Monday, January 14, 2019 at 6:00 p.m., at the Kannapolis City Hall located at 401 Laureate Way, Kannapolis, NC.

CITY COUNCIL MEMBERS PRESENT:

Mayor: Milton D. Hinnant

Council Members: Ryan Dayvault
Roger Haas
Van Rowell
Diane Berry
Doug Wilson

Council Members Absent: Tom Kincaid

City Manager: Mike Legg

Deputy City Manager: Eddie Smith

City Clerk: Bridgette Bell

City Attorney: Walter M. Safrit

Staff Present: Zac Gordon Chief Woody Chavis
Tony Eury Chief Ernie Hiers
David Jordan Terry Spry
Trent Marlow Eric Davis
Jason May Irene Sacks
Annette Privette Keller

Visitors Present: Jamie Beach Mark Spitzer
Sieta Hynes Connie Rheinecker
Sean Webster David Horne
Alex Quigley Stephanie Webster
Lamar Harper Jennifer Hyatt
Saran Hall Brett Wilhelm
Donna Cook Robert Carson
Nathan Payne Amber Johnson
David Archie Bobbie Hague
Ron Haithcock Cathy Bowers
Lester Sisk Michael Smith
Stephanie Johnson Wesley Wilson

1 **CALL TO ORDER AND WELCOME:**

2 Mayor Hinnant called the meeting to order and welcomed those in attendance. A moment of silent
3 prayer and the Pledge of Allegiance was led by Mayor Hinnant,
4

5 **PROCLAMATION:**

6 Mayor Hinnant presented a proclamation to Ms. Bobbie Hague proclaiming Monday, January 21,
7 2019 as Martin Luther King, Jr. Day in Kannapolis.
8

9 **RECOGNITIONS:**

10 **Administer the Oath of Office to Mayor Pro tem Roger Haas (Bridgette Bell, City Clerk)**

11 City Clerk Bridgette Bell administered the Oath of Office to newly appointed Mayor Pro tem
12 Roger Haas.
13

14 **Certificates of Appreciation to Officers Participating in Big Brothers Big Sisters (Police**
15 **Chief JW Chavis)**

16 For the past two years several Kannapolis Police Officers have joined forces with Big Brothers
17 Big Sisters of Central Carolinas. They volunteered to be mentors to young boys at Forrest Park
18 Elementary School. This specific program is called "Bigs in Blue". This is a great program to
19 improve relationships between the police and young children of elementary age. It is their hope to
20 see this program grow over the next few years and expand to other elementary schools in
21 Kannapolis.
22

23 Chief Chavis said that some of the benefits that we have seen or have been confirmed by school
24 staff are:

- 25 • Improved relationships and social skills with peers and adults.
- 26 • The child makes positive choices and overall better behavior.
- 27 • Improved self-esteem. Increased academic aspirations. The child is more engaged in school
28 and wants to do well.
29

30 Specifically with the "Bigs in Blue" matches:

- 31 • The Little Brothers have built trust with their officer mentor and have developed a positive
32 attitude towards law enforcement officers
- 33 • Little brothers think about and make positive choices in an effort to make their Big Brother
34 proud of them
- 35 • Classmates of Little Brothers also have a more positive attitude toward police officers
36 Some Little Brothers would like to be like their Big Brother and become a police officer
37 when they grow up.
38

39 Chief Chavis along with Connie Rheinecker, Director of the Cabarrus County Big Brothers Big
40 Sisters presented each of the six officers with a plaque of appreciation and a tee shirt.
41

| | | |
|--------------------|---------------|---------------|
| 42 Brett Wilhelm | Lamar Harper | Michael Smith |
| 43 Stephen Johnson | Wesley Wilson | David Archie |
| 44 | | |
| 45 | | |
| 46 | | |

1 **ADOPTION OF AGENDA:**

2 Mayor Pro tem Haas made a motion to approve the agenda. Motion was seconded by Council
3 Member Dayvault and approved by unanimous vote.
4

5 **APPROVAL/CORRECTION OF MINUTES**

6 Council Member Dayvault made a motion to approve the November 26, 2018 Regular Meeting
7 minutes. Motion was seconded by Council Member Wilson and approved by unanimous vote.
8

9 Council Member Berry made a motion to approve the December 17, 2018 Regular Meeting
10 minutes. Motion was seconded by Council Member Haas and approved by unanimous vote.
11

12 Council Member Dayvault made a motion to approve the November 26, 2018 Closed Session
13 minutes. Motion was seconded by Council Member Wilson and approved by unanimous vote.
14

15 Mayor Pro tem Haas made a motion to approve the December 17, 2018 Closed Session minutes.
16 Motion was seconded by Council Member Berry and approved by unanimous vote.
17

18 **CONSENT AGENDA:**

19 Motion was made by Mayor Pro tem Haas and seconded by Council Member Dayvault to approve
20 the Consent Agenda. The motion was approved by unanimous vote.
21

22 Lease for Floyd Street Communication Tower (Walter M. Safrit, II, City Attorney) (Copy included
23 as Exhibit A)
24

25 Ordinance amending the Budget for FY18-19 and Motion to approve a Reimbursement Resolution
26 related to the Demonstration Project Parking Deck (Eric Davis, Finance Director) (Copy included
27 as Exhibit B)
28

29 Ordinance amending the Budget for FY18-19 related to the North Carolina Housing Finance
30 Agency (NCHFA) Grant Matching Funds (Irene Sacks, Director of Economic & Community
31 Development) (Copy included as Exhibit C)
32

33 Ordinance amending the Budget for FY18-19 related to the Kannapolis Logistics Center NCDOT
34 Improvement Package Reimbursement (Eric Davis, Finance Director) (Copy included as Exhibit
35 D)
36

37 Resolution amending the 2019 regular meeting schedule (Mike Legg, City Manager) (Copy
38 included as Exhibit E)
39

40 **BUSINESS AGENDA**

41
42 **Public Hearing - Zoning Map Amendment (CZ-2018-04) Amendment to the previously**
43 **approved rezoning plan for a property located on an unaddressed parcel Concord Lake Rd.,**
44 **zoned Planned Unit Development to allow a change to the proposed amenity use for the**
45 **townhome portion of the development.(Zachary D. Gordon, AICP, Planning Director) (Copy**
46 **included as Exhibit F)**

1 Planning Director Zac Gordon gave a PowerPoint presentation regarding Zoning Map Amendment
2 (CZ-2018-04) to the previously approved rezoning plan for a property located on an unaddressed
3 parcel Concord Lake Road zoned Planned Unit Development (PUD) to allow a change to the
4 proposed amenity use for the townhome portion of the development. The applicant and property
5 owners are Carolina Development Services. The proposed rezoning to PUD to remove the amenity
6 use for townhome portion of development (City Council approval required as Planning and Zoning
7 Commission approved but by less than a three-fourths vote). The surrounding zoning is a mixture
8 of RV, RC, C-2 and O-I.

9
10 The Primary uses include SFR attached/detached and civic uses.
11 Secondary uses include multi-family, neighborhood-serving retail, small office and live-work
12 uses. The original plan (Z-2008-16) included amenity center for townhome portion. The amended
13 plan removes amenity center for townhome portion and replaces with gazebo and other amenities.
14 The amenity center for multi-family portion remains. All units will be market-rate rentals. The
15 revised amenity area includes: gazebo, playground equipment, benches and a lawn area.

16
17 Mr. Gordon reviewed the Policy Issues and stated that this request to modify the previously
18 approved amenity center was heard by the Planning and Zoning Commission at their November
19 7, 2018 meeting. The Commission approved the request by a vote of 5-2, which was less than the
20 75% required for the decision to be considered final. In accordance with Section 3.3 of the UDO,
21 where approval by the Commission is by less than a 75% vote, the final decision on a request for
22 rezoning must be made by City Council.

23
24 Based on the request being consistent with the Move Kannapolis Forward 2030 Comprehensive
25 Plan, Staff recommends approval with the following conditions of Zoning Map Amendment Case
26 #CZ-2018-04:

- 27
28 1. All conditions from the previously approved rezoning (Z-2008-16, attached) shall remain
29 effective with this rezoning.
30 2. A final Traffic Impact Analysis shall be reviewed and approved by the City and NCDOT.

31
32 Mr. Gordon concluded his presentation and made himself available for questions.

33
34 Council Member Dayvault asked about the price of the condos and if the project would be built in
35 phases or all at once.

36
37 Mr. Gordon stated he would defer to the applicant.

38
39 Donna Cook of 2627 Brekonridge Center Drive, Monroe representing the applicant, responded the
40 market is still being evaluated and they have not set any pricing. It will be an entry level project
41 and will be phased in. She further stated the Clubhouse cost \$15,000 per year to maintain and will
42 be borne by the homeowner at a cost of \$150 per unit.

43
44 Mayor Pro tem Haas asked if the units would be for lease for ownership. Ms. Cook responded
45 "ownership".
46

1 Council Member Rowell asked if the only change was the amenities, what the reason behind the
2 request. Mr. Gordon responded the request is to remove the amenity center area for the townhome
3 portion of the development only. It is unusual to have amenities for a planned 100 townhome
4 project.

5
6 Mayor Pro tem Haas noted when this project was originally zoned several years ago for a grocery
7 store, neighbors expressed a concern about an access point from the back side of the building
8 entering into the subdivision. Ms. Cook stated it appears by the site plan, the only access is from
9 Lake Concord Road.

10
11 Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There
12 being no speakers, Mayor Hinnant closed the public hearing.

13
14 Motion was made by Mayor Pro tem Haas to approve a Resolution adopting a Statement of
15 Consistency for Case #CZ-2018-04. Motion was seconded by Council Member Wilson and
16 approved by unanimous vote.

17
18 Motion was made by Mayor Pro tem Haas to approve a Resolution amending the zoning for Case
19 #CZ-2018-04. Motion was seconded by Council Member Rowell and approved by unanimous
20 vote.

21
22 **Public Hearing - Text Amendment (TA-2018-08) - Consider a text amendment to Section**
23 **2.2.3.1 of the Unified Development Ordinance amending the alternate membership**
24 **requirements for Board of Adjustment (BOA) (Zachary D. Gordon, AICP, Planning**
25 **Director) (SECOND READING) (Copy included Exhibit G)**

26 Planning Director Zac Gordon provided the following facts regarding Article 2 of the UDO which
27 establishes the powers, duties and membership requirements for the Board of Adjustment (BOA)
28 for the City of Kannapolis, pursuant to North Carolina General Statutes (NCGS) 160A-388. Staff
29 is proposing to amend the requirement for alternate members comprising the BOA by eliminating
30 the restriction on the maximum number of alternates (currently 2) in order to provide City Council
31 more flexibility in assigning alternate members to the Board. There have been several recent
32 meetings where cases needed to be postponed because of the absence of board members. The
33 appointment of more than 2 alternate members should address this problem.

34
35 There being no questions, Mayor Hinnant opened the public hearing to those in attendance for an
36 opportunity to speak. There being no speakers, Mayor Hinnant closed the public hearing.

37
38 Motion was made by Council Member Rowell to approve a Resolution adopting a Statement of
39 Consistency for Case #TA-2018-08. Motion was seconded by Council Member Berry and
40 approved by unanimous vote.

41
42 Motion was made by Council Member Dayvault to approve an Ordinance for Case #TA-2018-08
43 amending Section 2.2.3.1 of the Unified Development Ordinance amending the alternate
44 membership requirements for Board of Adjustment. Motion was seconded by Council Member
45 Wilson and approved by unanimous vote.

Public Hearing - Text Amendment (TA-2018-09) - Consider a text amendment to Section 3.7.2.5 of the Unified Development Ordinance (UDO) amending the timeline for a Board of Adjustment (BOA) approved Order to be signed and considered a final decision (Zachary Gordon, AICP, Planning Director) (SECOND READING) (Copy included as Exhibit H)

Planning Director Zac Gordon presented the following facts regarding Article 3 of the UDO establishes appeals and variance procedures for the Board of Adjustment (BOA) for the City of Kannapolis. Section 3.7.2.5 sets forth requirements for approving the final order for any BOA case. Staff is proposing to amend the UDO to allow for a BOA decision to be considered final after an order is signed by the chair person (which may occur at the meeting when a decision is rendered by the BOA) rather than after BOA approval of the meeting minutes pertaining to a case. Currently, an applicant must wait at least one month after their case has been heard and decided on by BOA before minutes are approved and an order signed. This amendment will result in better service to applicants and cut down on the timeline for a decision to be considered final by at least one month.

There being no questions, Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There being no speakers, Mayor Hinnant closed the public hearing.

Motion was made by Council Member Dayvault to approve a Resolution adopting a Statement of Consistency for Case #TA-2018-09. Motion was seconded by Council Member Berry and approved by unanimous vote.

Motion was made by Council Member Berry to approve an Ordinance for Case #TA-2018-09 amending Section 3.7.2.5 of the Unified Development Ordinance (UDO) amending the timeline for a Board of Adjustment (BOA). Motion was seconded by Council Member Wilson and approved by unanimous vote.

Public Hearing - Request to consider withdrawal from dedication an unopened R-O-W known as Kenneth Street located south of Kimball Street (Wilmer Melton, III, Director of Public Works) (Copy included as Exhibit I)

Public Works Director Wilmer Melton explained that a petition had been received requesting withdrawal from dedication an unopened R-O-W known as Kenneth Street located south of Kimball Street. Provided there is no evidence given at the Public Hearing that withdrawing from dedication the portion of unopened R-O-W known as Kenneth Street located south of Kimball Street is not contrary to the public interest, it is recommended that City Council approve the Order closing the unopened portion of R-O-W known as Kenneth Street located south of Kimball Street.

In accordance with NCGS 160A-299, Street Closures, all necessary documents have been received with proper notice published and posted. Staff has reviewed all documents and finds no reason to deny the request for closure.

There being no questions, Mayor Hinnant opened the public hearing to those in attendance for an opportunity to speak. There being no speakers, Mayor Hinnant closed the public hearing

Mayor Pro tem Haas made a motion to approve an order to withdraw from dedication an unopened R-O-W known as Kenneth Street located south of Kimball Street. Council Member Dayvault seconded the motion and it was approved by unanimous vote.

1 **Public Hearing - Request to consider withdrawal from dedication an unopened R-O-W**
2 **known as Mary Street located south of Kimball Street (Wilmer Melton, III, Director of**
3 **Public Works) (Copy included as Exhibit J)**

4 Public Works Director Wilmer Melton explained that a petition had been received requesting
5 withdrawal from dedication an unopened R-O-W known as Mary Street located south of Kimball
6 Street. Provided there is no evidence given at the Public Hearing that withdrawing from dedication
7 the portion of unopened R-O-W known as Mary Street located south of Kimball Street is not
8 contrary to the public interest, it is recommended that City Council approve the Order closing the
9 unopened portion of R-O-W known as Mary Street located south of Kimball Street.

10
11 In accordance with NCGS 160A-299, Street Closures, all necessary documents have been received
12 with proper notice published and posted. Staff has reviewed all documents and finds no reason to
13 deny the request for closure.

14
15 There being no questions, Mayor Hinnant opened the public hearing to those in attendance for an
16 opportunity to speak. There being no speakers, Mayor Hinnant closed the public hearing

17
18 Council Member Dayvault made a motion to approve an order to withdraw from dedication an
19 unopened R-O-W known as Mary Street located south of Kimball Street. Council Member Berry
20 seconded the motion and it was approved by unanimous vote.

21
22 **CITY MANAGER REPORT:** City Manager Legg reported he is in the process of updating a
23 report to be given to Council at each meeting. The update will be information on capital projects,
24 NCDOT city projects, downtown and other ongoing projects. Mr. Legg added that with future
25 Council meetings, outside groups like the MPO, Arts Council, Transit Commission and others,
26 will give an update to Council. He asked Council to be thinking of how they would like for the
27 groups to present, quarterly, once a month, twice a year, or to hear from everyone at once.

28
29 Staff is planning for a Meeting Retreat in March in order for Council to discuss and make decisions
30 on some one-time expenses and on-going projects. There will also be smaller items for discussion
31 as well.

32
33 **CITY COUNCIL COMMENTS:**

34 Council Member Dayvault commented since Oak Avenue has been re-opened, it looks great with
35 all the plantings and sidewalks; however, the buildings that Dr. Tuttle and Dr. Burgess now occupy
36 along with the Pizza Hut look bad. They are in need of paint and store front repairs. He just talked
37 with a visitor who expressed concerns there are no handicapped spaces in front of the doctor
38 offices. Mr. Legg responded this is a perfect example of things they will discuss at the Meeting
39 Retreat.

40
41 Public Works Director said that handicapped parking signs are already slated to be installed once
42 the project is completed.

43
44 **CLOSED SESSION:**

45 Mayor Pro tem Haas made a motion to go into closed session pursuant to G.S. 143.318.11 (a) (3)
46 for consulting with an attorney in order to preserve the attorney-client privilege and G.S.

1 143.318.11 (a) (4) for discussing matters related to the location or expansion of industries or
2 businesses in the area. Motion was seconded by Council Member Dayvault and approved by
3 unanimous vote.

4
5 Council went into closed session at 6:50 PM.

6
7 Council Member Wilson made a motion to come of out closed session. Motion was seconded by
8 Council Member Dayvault and approved by unanimous vote.

9
10 Council resumed regular session at 8:25 PM.

11
12 There being no further business, Council Member Wilson made a motion to continue to January
13 28, 2019 4:30 PM in the Executive Conference Room, Second Floor. Motion was seconded by
14 Council Member Dayvault and approved by unanimous vote.

15
16 The meeting recessed at 8:25 PM on Monday, January 14, 2019.

17
18
19
20
21
22 _____
23 Milton D. Hinnant, Mayor

24
25 _____
26 Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Walter M. Safrit, II City Attorney
TITLE Delegation of Authority to Award, Approve and
Execute Contracts and Other Instruments

A. Action Requested by City Council

Motion to approve Resolution for Delegation of Authority to Award, Approve and Execute Contracts and Other Instruments.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Council adopted a Resolution in June, 2014, authorizing the City Manager, Deputy City Manager and others as set out in the Resolution to take certain actions without further approval of City Council. As we gained experience with these actions it was clear that certain refinement and clarification should be considered. The original Resolution is shown with the requested changes or additions in the color-lined portion.

D. Fiscal Considerations

None

E. Policy Issues

None

F. Legal Issues

Pursuant to N.C.G.S. §160A-12, when a power is conferred by charter or general law without direction or restriction as to how it is to be exercised or performed, such power may be carried into execution as provided by Resolution of the City Council.

| |
|--|
| G. Alternative Courses of Action and Recommendation |
|--|

1. **Motion to approve a Resolution for Delegation of Authority to Award, Approve and Execute Contracts and Other Instruments. (Recommended)**
2. Amend and then approve the Resolution
3. Reject the Resolution
4. Table action to a future meeting

ATTACHMENTS:

File Name

- ❏ RESOLUTION_DELEGATING_AUTHORITY_TO_AWARD_(CHANGED_1-29-19).pdf
- ❏ Resolution_#2014-09_Delegating_Authority_to_award_Contracts__Etc..pdf

Resolution # _____

RESOLUTION

DELEGATION OF AUTHORITY TO AWARD, APPROVE AND EXECUTE CONTRACTS AND OTHER INSTRUMENTS

THE CITY COUNCIL FOR THE CITY OF KANNAPOLIS, NORTH CAROLINA DOES
HEREBY RESOLVE AS FOLLOWS:

WHEREAS, North Carolina cities have been granted by statute certain corporate powers, including but not limited to, the power of contract, to acquire real property and the power to grant and release easements and encroachments in City property and rights of way; and

WHEREAS, pursuant to N.C.G.S. §160A-12, when a power is conferred by charter or general law without direction or restriction as to how it is to be exercised or performed, such power may be carried into execution as provided by resolution of the City council; and

WHEREAS, the power to award and contract for construction and repairs in an amount below the formal bid threshold as set forth in N.C.G.S. §143-129 and N.C.G.S. §143-131 is conferred without direction or restriction as to who may or must exercise or perform such authority; and

WHEREAS, with certain exceptions [including sole source and piggyback awards as set forth in N.C.G.S. §143-129(e)(6) and (g)] the power to award and contract for the purchase of apparatus, supplies, materials and equipment above the formal bid threshold is conferred with provision for the delegation of such authority as set forth in N.C.G.S. §143-129 and the power to award and contract below the formal bid threshold as set forth in N.C.G.S. §143-131 is conferred without direction as to who must exercise such authority; and

WHEREAS, the power to acquire real property is conferred without direction or restriction as to who must exercise or perform such authority; and

WHEREAS, the power to grant or agree to encroachments and easements over, through, under or across City property or the right of way of any public street or alley is conferred without direction or restriction as to whom must exercise or perform such authority; and

WHEREAS, pursuant to N.C.G.S. §160A-272, the City council is authorized to delegate to the manager or other administrative officer its authority to lease or rent City owned property for terms of one year or less; and

WHEREAS, pursuant to N.C.G.S. §160A-312, the power to contract public enterprises is conferred without direction or restriction as to how it is to be exercised or performed; and

WHEREAS, pursuant to N.C.G.S. §160A-148, the manager is the chief administrator for the City and shall perform such duties as the City council may require or authorize; and

WHEREAS, the City Council of the City of Kannapolis ("City") finds that the efficiency of the City's operations will be enhanced if the Council, in a single resolution, authorizes the City Manager and the Deputy City Manager to (i) award, approve and execute contracts, and to further delegate certain such approval and execution authority, unless the law requires such award, approval or execution to be by its

City Council, and (ii) approve and execute other instruments required by City business as set forth herein without the delay occasioned by bringing such matters to the City Council for approval.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Kannapolis, that:

1.1 Authority to execute City Council approved contracts and instruments and to make non-substantial changes to such approved contracts and instruments.

The City Manager and the Deputy City Manager are authorized to (i) execute contracts and instruments awarded, approved or funded by the City Council or otherwise necessary for the proper administration of City offices, departments and agencies, and (ii) make changes, prior to execution, to a contract or other instrument approved, authorized or funded by the Council if the changes clarify or otherwise do not substantially alter the contract or instrument. This authority does not apply to deeds of the City (unless specific authority is given for such) or to contracts and instruments that the law requires be executed by the Mayor. The Finance Director and Deputy Finance Director are authorized to execute a Preaudit Certificate which meets the requirements of law.

1.2 Authority to make, award, approve, execute and amend contracts and other instruments.

Where there is no financial obligation for the City or when the City Council shall have approved a sufficient appropriation for the general contract purpose (i) in the current fiscal year's annual operating budget of (ii) as a capital project (jointly sometimes "budgeted appropriations"), the City Manager and the Deputy City Manager are authorized to make, award, approve, and execute contracts and instruments on behalf of the City of Kannapolis except as limited below, unless the law including any City ordinance, specifically requires award, approval or execution by the City Council. Such contracts shall include, by way of example and not by way of limitation, the following:

- A. Informal Range Construction and Repair Contract. Construction and repair contracts where the reasonably expected expenditure does not exceed the informal bidding range as set forth in N.C.G.S. §143-129(a) (as amended from time to time), and amendments and change orders to such contracts provided such amendments or change orders (1) fit within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded (i.e., change order criteria).
- B. Formal Range Amendments and Change-Orders. Amendments and change-orders to construction and repair contracts in the formal bidding range under N.C.G.S. §143-129(a) when the change order criteria are met.
- C. Purchase Contracts. Purchase contracts for apparatus, supplies, materials and equipment (materials and apparatus contracts) under N.C.G.S. §143-129(a) (as amended from time to time) and amendments to such contracts. This delegation includes authority to reject bids and to re-advertise. The Finance Officer and Deputy Finance Officer(s) are also delegated the non-exclusive authority to (i) award, approve, and execute materials and apparatus contracts, reject bids, and re-advertise to receive bids on behalf of the City, where the reasonably expected expenditure under the contract is less than \$90,000.00 and (ii) to execute any materials and apparatus contract awarded or approved by the City Manager or Deputy City

Manager. (GS §143-129, GS§143-129.7, and GS §143-129.8). This authority shall allow an inclusion in the specifications for the purchase of apparatus, supplies, materials or equipment an opportunity for bidders to purchase as “trade-in” specified personal property owned by the City of Kannapolis and approve the award of a contract for both the purchase of the apparatus, supplies, materials or equipment, and the sale of the trade-in property.

- D. Real Property Acquisitions. Contracts, including options and purchase agreements, to acquire real property and interests in real property for the City.
- E. Leases.
 - a. Leases of City real or personal property (where City is the Owner) of one year or less (N.C.G.S. §160A-272). In connection with this authority, the manager or deputy manager is authorized to determine property or portions of property that are temporarily surplus to City needs (NCGS 160A-272).
 - b. Leases by the City of real property owned by others without restriction as to term (where City is the lessee) NCGS 160A-19.
 - c. Leases by the City of equipment and other personal property owned by others. (All leases should be approved by the Finance Department to ensure that the lease provides the most advantageous procurement method and to determine whether the lease requires capitalization, and otherwise comply with NCGS 160A-19 and Article 8 of Chapter 143).
- F. Installment Purchase Agreements in accordance with N.C.G.S. §160A-20.
- G. Encroachment Agreements and Easements as follows:
 - a. NCDOT and public utility providers, such as PSNC, Duke Energy, and Windstream encroachment agreements for construction and/or repair projects.
 - b. Encroachment agreements and easements permitting access over, through, under or across City property or the right of way of any public street or alley in accordance with City of Kannapolis Ordinances, Standard Specifications and Details and policies.
 - c. Encroachment agreements over the land of others.
 - d. Grant of Easements, rights of way and the release of such interests upon city owned property pursuant to the provisions of N.C.G.S. 160A-27A.
- H. Grant applications when the amount of any City match is within budgeted appropriations and contracts for grant awards (unless Council authorization is required by the terms of the grant).
- I. Service contracts for services provided to the City. Service contracts are divided into categories below solely for organizational purposes.

- a. Architectural, engineering, land surveying and other professional service contracts (“AES Contracts”) and amendments thereto in accordance with Article 3D of Chapter 143 of the General Statutes and City policies and procedures up to \$50,000. This delegation includes authority to approve and execute amendments to AES Contracts originally approved by Council. The City Manager and Deputy City Manager shall have the exemption authority as set forth in policy adopted by Council.
 - b. Other legal, professional, technical service and consulting contracts including amendments thereto. This delegation includes authority to approve and execute amendments to such contracts originally approved by Council.
 - c. Building, grounds and equipment maintenance and other service contracts and amendments thereto. This delegation also includes authority to approve and execute amendments to such contracts originally approved by Council.
 - d. Utility contracts, such as contracts for electric service, including the installation maintenance and repair of street lights, the provision of interim utility services in annexations and for electricity.
- J. Services to Others. Contracts where services are provided by the City to others, including:
- a. Intergovernmental mutual aid, intergovernmental participation and other governmental agreements (including memoranda of agreement and understanding), (but not Interlocal Agreements under N.C.G.S. §160A-460 *et seq*), including agreements to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies concerning public enterprises (GS §160A-318). The Police Chief may enter into agreements for temporary assistance to other law enforcement agencies as provided in N.C.G.S. §160A-288, §160A-288.2 and §90-95.2. Any such agreement for temporary assistance shall be in writing. The Police Chief shall ascertain that such agreements meet all requirements of N.C.G.S. §90-95.2. Such assistance may include temporary work, including undercover work, with officers of the requesting agency, and the lending or borrowing of equipment and supplies. The Police Chief shall develop such further standards and guidelines as may be necessary and appropriate.
 - b. Enterprise service contracts, including contracts for water supply, sewer service, or for other public enterprise services (G.S. §160A-322).
- K. Miscellaneous Contracts and Activities.
- a. Concession, license, sponsorship and similar contracts.
 - b. Development related contracts as authorized by the City Code of Ordinances or UDO, including municipal infrastructure reimbursement agreements, public enterprise reimbursement agreements, intersection and roadway improvement agreements, and reimbursement agreements under City of Kannapolis Code of Ordinances.

- c. Employment agreements, employment related agreements and personnel policies necessary for administrative actions not requiring expenditures, in accord with City ordinances, except for employment agreements involving the City Manager.
- d. Contracts with private solid waste collection firms and fire service reimbursements in annexations (N.C.G.S. §160A-58.57, N.C.G.S. §160A-58.58, N.C.G.S. §150A-58.59, and N.C.G.S. §160A-324).
- e. Guaranteed energy savings contracts. (N.C.G.S. §143-64.17).
- f. Standard Owner Affidavit and Indemnity Agreements (lien affidavits) in connection with City real estate transactions.
- g. Estoppel certificates regarding Stormwater Agreements (lien affidavits) in connection with City real estate transactions.
- h. Permits, applications and other forms required by State or Federal entities in connection with City activities or City participation in regional organizations or other groups.
- i. Administrative actions implementing policies and projects of City Council.
- j. Planning and development documents, plats, permits and approvals.

1.3 City Attorney authority.

Provided the City Council shall have approved a sufficient budgeted appropriation, the City Attorney is authorized to make, award, approve and execute contracts for legal and related services. The City Attorney shall review and approve all City contracts prior to execution by the appropriate staff member. Further, the City Attorney may accept services of process on behalf of the City and execute Verifications for pleadings.

1.4 Sale of personal property.

The City Manager or the Deputy City Manager are authorized to declare surplus and dispose of any personal property in accordance with N.C.G.S. § 160A-266, N.C.G.S. §160A-267 and City policies and procedures. This authority is nonexclusive.

1.5 Appeal and settlement authority.

Provided the City Council shall have approved a sufficient budgeted appropriation, the City Manager and the Deputy City Manager, with the concurrence of the City Attorney, are authorized to approve and to execute contracts and instruments on behalf of the City and to take such actions as follows:

A. Contest Fines.

To contest any fine or other liability imposed against the City by a governmental authority that involves a fine or penalty.

B. Settle Worker's Compensation Claims.

To settle worker's compensation claims in any amount provided such settlement is within the guidelines of the North Carolina Workers' Compensation Act (NCGS Chapter 97) and the Workers' Compensation Rules of the North Carolina Industrial Commission, the administrative agency that oversees and administers such claims and/or settlements; and to settle condemnation actions brought by the City for any amount that is consistent with an appraised value; and to settle construction contract claims; and to settle any other claims against the City including but not limited to, employment related claims up to \$50,000, for which there is no other settlement authority.

C. Negotiate Settlements.

To negotiate or authorize the City Attorney or legal professionals to negotiate settlements on behalf of the City exceeding \$50,000 subject to and contingent upon subsequent City Council approval of any such proposed settlement once finally negotiated.

1.6 Trespass.

The City Manager and Deputy City Manager are granted the non-exclusive authority to exercise such authority as may reside in the City Council to notify others not to enter or remain on City property and to declare a trespass as provided in N.C.G.S. § 14-159.13.

1.7 Reports.

The City Manager or Deputy City Manager shall report to Council, on a quarterly basis all contracts and instruments executed by the manager during the relevant quarter that had a cost to the City of \$90,000 or more.

1.8 Nuisances.

The City Manager shall exercise authority on behalf of the City pursuant to NCGS 160A-193 to summarily remove, abate or remedy nuisances which are dangerous or prejudicial to the public health or safety.

1.9 Further Delegation.

This grant of authority is non-exclusive. The City Manager and Deputy Manager may, in any case and for any reason, refer any contract or instrument within their approval authority to City Council for award or approval. The City Manager may, by Standard Operating Procedure or by written Notice of Delegation, delegate authority to make, award, approve, execute and amend contracts that are within the City Manager's authority and that have no cost to the City or have a reasonably expected expenditure of less than \$90,000 to a department director and their associate director or equivalent position, and to delegate to the Finance Director and Deputy Finance Officers authority make, award, approve, execute and amend purchase orders that have a reasonably expected expenditure of less than \$90,000 and to execute purchase orders in any amount that were approved or awarded by the council or City Manager, unless otherwise

restricted by law or policy. The City Manager, and any delegate of the City Manager, shall comply with all statutory policy. The City Manager, and any delegate of the City Manager, shall comply with all statutory requirements related to any contract awarded or approved under the authority of this policy.

1.10 Supplemental Authority.

This grant of authority is in addition to authority granted in other resolutions, agreements or policies.

Adopted and effective this the ____ day of _____, 2019.

Milton D. Hinnant
Mayor

Attest:

Bridgette Bell, MMC
City Clerk

**CITY OF KANNAPOLIS
RESOLUTION**

**DELEGATION OF AUTHORITY TO AWARD, APPROVE
AND EXECUTE CONTRACTS AND OTHER INSTRUMENTS**

**THE CITY COUNCIL FOR THE CITY OF KANNAPOLIS, NORTH CAROLINA DOES
HEREBY RESOLVE AS FOLLOWS:**

WHEREAS, North Carolina cities have been granted by statute certain corporate powers, including but not limited to, the power of contract, to acquire real property and the power to grant easements and encroachments in City property and rights of way; and

WHEREAS, pursuant to N.C.G.S. §160A-12, when a power is conferred by charter or general law without direction or restriction as to how it is to be exercised or performed, such power may be carried into execution as provided by resolution of the City council; and

WHEREAS, the power to award and contract for construction and repairs in an amount below the formal bid threshold as set forth in N.C.G.S. §143-129 and N.C.G.S. §143-131 is conferred without direction or restriction as to who may or must exercise or perform such authority; and

WHEREAS, with certain exceptions [including sole source and piggyback awards as set forth in N.C.G.S. §143-129(e)(6) and (g)] the power to award and contract for the purchase of apparatus, supplies, materials and equipment above the formal bid threshold is conferred with provision for the delegation of such authority as set forth in N.C.G.S. §143-129 and the power to award and contract below the formal bid threshold as set forth in N.C.G.S. §143-131 is conferred without direction as to who must exercise such authority; and

WHEREAS, the power to acquire real property is conferred without direction or restriction as to who must exercise or perform such authority; and

WHEREAS, the power to grant or agree to encroachments and easements over, through, under or across City property or the right of way of any public street or alley is conferred without direction or restriction as to whom must exercise or perform such authority; and

WHEREAS, pursuant to N.C.G.S. §160A-272, the City council is authorized to delegate to the manager or other administrative officer its authority to lease or rent City owned property for terms of one year or less; and

WHEREAS, pursuant to N.C.G.S. §160A-312, the power to contract public enterprises is conferred without direction or restriction as to how it is to be exercised or performed; and

WHEREAS, pursuant to N.C.G.S. §160A-148, the manager is the chief administrator for the City and shall perform such duties as the City council may require or authorize; and

WHEREAS, the City Council of the City of Kannapolis ("City") finds that the efficiency of the City's operations will be enhanced if the Council, in a single resolution, authorizes the City Manager and the Deputy City Manager to (i) award, approve and execute contracts, and to further delegate certain such approval and execution authority, unless the law requires such award, approval or execution to be by its City council, and (ii) approve and execute other instruments required by City business as set forth herein without the delay occasioned by bringing such matters to the City Council for approval.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Kannapolis, that:

1.1 Authority to execute City Council approved contracts and instruments and to make non-substantial changes to such approved contracts and instruments.

The City Manager and the Deputy City Manager are authorized to (i) execute contracts and instruments awarded, approved or funded by the City Council or otherwise necessary for the proper administration of City offices, departments and agencies, and (ii) make changes, prior to execution, to a contract or other instrument approved, authorized or funded by the Council if the changes do not substantially alter the contract or instrument. This authority does not apply to deeds of the City (unless specific authority is given for such) or to contracts and instruments that the law requires be executed by the Mayor

1.2 Authority to make, award, approve, execute and amend contracts and other instruments.

Provided the City Council shall have approved a sufficient appropriation for the general contract purpose (i) in the current fiscal year's annual operating budget or (ii) as a capital project (jointly sometimes "budgeted appropriations"), the City Manager and the Deputy City Manager are authorized to make, award, approve, and execute contracts and instruments on behalf of the City of Kannapolis except as limited below, unless the law including any City ordinance, specifically requires award, approval or execution by the City Council. Such contracts shall include, by way of example and not by way of limitation, the following:

- A. Construction and repair contracts where the reasonably expected expenditure does not exceed the informal bidding range as set forth in N.C.G.S. §143-129(a) (as amended from time to time), and amendments and change orders to such contracts provided such amendments or change orders (1) fit within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded (i.e., change order criteria).
- B. Amendments and change-orders to construction and repair contracts in the formal bidding range under N.C.G.S. §143-129(a) when the change order criteria are met.
- C. Purchase contracts for apparatus, supplies, materials and equipment (materials and apparatus contracts) under N.C.G.S. §143-129(a) (as amended from time to time) and amendments to such contracts. This delegation includes authority to reject bids and to re-advertise. The Finance Officer and Deputy Finance Officer(s) are also delegated the non-exclusive authority to (i) award, approve, and execute materials and apparatus contracts, reject bids, and re-advertise to receive bids on behalf of the City, where the reasonably expected expenditure under the contract is less than \$90,000.00 and (ii) to execute any materials and apparatus contract awarded or approved by the City Manager or Deputy City Manager (GS §143-129, GS §143-129.7, and GS §143-129.8). This authority shall allow an inclusion in the specifications for the purchase of apparatus, supplies, materials or equipment an opportunity for bidders to purchase as "trade-in" specified personal property owned by the City of Kannapolis and approve the award of a contract for both the purchase of the apparatus, supplies, materials or equipment, and the sale of the trade-in property.
- D. Contracts, including options and purchase agreements, to acquire real property and interests in real property for the City.

E. Leases

- a. Leases of City real or personal property (where City is the lessor) of one year or less (N C G S. §160A-272).
- b. Leases by the City of real property owned by others without restriction as to term (where City is the lessee).
- c. Leases by the City of equipment and other personal property owned by others. (All leases should be approved by the Finance Department to insure that the lease provides the most advantageous procurement method and to determine whether the lease requires capitalization.)

F. Installment purchase agreements in accordance with N C.G.S §160A-20

G. Encroachment agreements, as follows.

- a. NCDOT and public utility providers, such as PSNC, Duke Energy, and Windstream encroachment agreements for construction and/or repair projects.
- b. Encroachment agreements and easements permitting access over, through, under or across City property or the right of way of any public street or alley in accordance with City of Kannapolis Ordinances, Standard Specifications and Details and policies.

H. Grant applications when the amount of any City match is within budgeted appropriations and contracts for grant awards (unless Council authorization is required by the terms of the grant).

I. Service contracts for services provided to the City. Service contracts are divided into categories below solely for organizational purposes.

- a. Architectural, engineering and land surveying professional service contracts ("AES Contracts") and amendments thereto in accordance with Article 3D of Chapter 143 of the General Statutes and City policies and procedures. This delegation includes authority to approve and execute amendments to AES Contracts originally approved by Council. The City Manager and Deputy City Manager shall have the exemption authority as set forth in policy adopted by Council.
- b. Other legal, professional, technical service and consulting contracts including amendments thereto. This delegation includes authority to approve and execute amendments to such contracts originally approved by Council.
- c. Building, grounds and equipment maintenance and other service contracts and amendments thereto. This delegation also includes authority to approve and execute amendments to such contracts originally approved by council.
- d. Utility contracts, such as contracts for electric service, including the installation maintenance and repair of street lights, the provision of interim utility services in annexations and for electricity

J Contracts where services are provided by the City to others, including:

- a. Intergovernmental mutual aid, intergovernmental participation and other governmental agreements (including memoranda of agreement and understanding), (but not Interlocal Agreements under N.C.G.S. §160A-460 *et seq*), including agreements to provide mutual aid and assistance in restoring electric, water, sewer, or gas services in the event of natural disasters or other emergencies concerning public enterprises (GS §160A-318). The Police Chief may enter into agreements for temporary assistance to other law enforcement agencies as provided in N C G.S. §160A-288, §160A-288.2 and §90-95.2. Any such agreement for temporary assistance shall be in writing. The Police Chief shall ascertain that such agreements meet all requirements of N C G S §90-95.2. Such assistance may include temporary work, including undercover work, with officers of the requesting agency, and the lending or borrowing of equipment and supplies. The Police Chief shall develop such further standards and guidelines as may be necessary and appropriate.
- b Enterprise service contracts, including contracts for water supply, sewer service, or for other public enterprise services (G.S. §160A-322).

K. Concession, license, sponsorship and similar contracts.

L. Development related contracts as authorized by the City Code of Ordinances or UDO, including municipal infrastructure reimbursement agreements, public enterprise reimbursement agreements, intersection and roadway improvement agreements, and reimbursement agreements under City of Kannapolis Code of Ordinances.

M. Employment agreements and employment related agreements, in accord with City ordinances, except for employment agreements involving the City Manager

N Contracts with private solid waste collection firms and fire service reimbursements in annexations (N C G.S §160A-58.57, N C G.S. §160A-58.58, N C G.S §150A-58.59, and N C.G.S §160A-324).

O Guaranteed energy savings contracts. (N C G S §143-64 17).

P Standard Owner Affidavit and Indemnity Agreements (lien affidavits) in connection with City real estate transactions.

1.3 City Attorney authority

Provided the City Council shall have approved a sufficient budgeted appropriation, the City Attorney is authorized to make, award, approve and execute contracts for legal and related services. The City Attorney shall review and approve all City contracts prior to execution by the appropriate staff member Further, the City Attorney may accept services of process on behalf of the City and execute Verifications for pleadings.

1 4 Sale of personal property

The City Manager, the Deputy City Manager and the procurement and risk services manager are authorized to declare surplus and dispose of any personal property in accordance with N C G.S. § 160A-266, N C G.S. §160A-267 and City policies and procedures. This authority is nonexclusive.

1.5 Appeal and settlement authority

Provided the City Council shall have approved a sufficient budgeted appropriation, the City Manager and the Deputy City Manager, with the concurrence of the City Attorney, are authorized to approve and to execute contracts and instruments on behalf of the City and to take such actions as follows.

- A. To contest any fine or other liability imposed against the City by a governmental authority that involves a fine or penalty
- B. To settle worker's compensation claims in any amount provided such settlement is within the guidelines of the North Carolina Workers' Compensation Act (NCGS Chapter 97) and the Workers' Compensation Rules of the North Carolina Industrial Commission, the administrative agency that oversees and administers such claims and/or settlements; and to settle condemnation actions brought by the City for any amount that is consistent with an appraised value; and to settle construction contract claims.
- C. To negotiate or authorize the City Attorney or legal professionals to negotiate settlements on behalf of the City not exceeding \$50,000 subject to subsequent City Council approval of any such proposed settlement once finally negotiated.

1.6 Trespass.

The City Manager and Deputy City Manager are granted the non-exclusive authority to exercise such authority as may reside in the City Council to notify others not to enter or remain on City property and to declare a trespass as provided in N C.G.S. § 14-159 13

1 7 Reports.

The City Manager or Deputy City Manager shall report to Council, on a quarterly basis all contracts and instruments executed by the manager during the relevant quarter that had a cost to the City of \$90,000 or more.

1 8 Nuisances.

The City Manager shall exercise authority on behalf of the City pursuant to NCGS 160A-193 to summarily remove, abate or remedy nuisances which are dangerous or prejudicial to the public health or safety

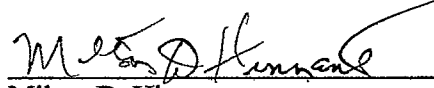
1.9 Further Delegation.

This grant of authority is non-exclusive. The City Manager and Deputy Manager may, in any case and for any reason, refer any contract or instrument within their approval authority to Council for award or approval. The City Manager may, by Standard Operating Procedure or by written Notice of Delegation, delegate authority to make, award, approve, execute and amend contracts that are within the City Manager's authority and that have no cost to the City or have a reasonably expected expenditure of less than \$90,000 to a department director and their associate director or equivalent position, and to delegate to the Finance Director and Deputy Finance Officers authority make, award, approve, execute and amend purchase orders that have a reasonably expected expenditure of less than \$90,000 and to execute purchase orders in any amount that were approved or awarded by the council or City Manager, unless otherwise restricted by law or policy. The City Manager, and any delegate of the City Manager, shall comply with all statutory policy. The City Manager, and any delegate of the City Manager, shall comply with all statutory requirements related to any contract awarded or approved under the authority of this policy.

1.10 Supplemental Authority


This grant of authority is in addition to authority granted in other policies.

Adopted and effective this the 9th day of June, 2014.



Milton D. Hinnant
Mayor

ATTEST



Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Tina Cline, HR Director
TITLE Amend Personnel Policy 600.02 - Holidays

A. Action Requested by City Council

Approve the amendment to Personnel Policy 600.02 adding Veterans Day as an observed paid holiday and correcting Item C under "Accumulation and Utilization of Holiday Hours."

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The first requested policy amendment is to add Veterans Day as an observed paid holiday. Initially when the City of Kannapolis Personnel Policy was adopted on June 23, 1986, the City did observe Veterans Day as a paid holiday for employees. The Personnel Policy was revamped in its entirety and adopted by City Council on December 19, 1994, whereas, Veterans Day was dropped from the schedule in order to maintain a total number of paid holidays observed annually by employees.

According to the 2016 Salary and Fringe Benefits Survey conducted by the North Carolina League of Municipalities, of the 274 responding agencies, 93% provide Veterans day as a paid holiday for employees. Only 14 responding agencies did not.

The second requested policy amendment is eliminate a contradictory administrative requirement in Item C of the policy.

D. Fiscal Considerations

If an employee is unable to use banked holiday hours prior to the last pay period in June, the remaining balance of banked holidays are paid to the employee with the final pay in June; however, employees are required to utilize banked holiday hours before using paid vacation or sick leave hours to reduce potential liability for banked holiday hours.

E. Policy Issues

The request to add an additional paid holiday requires City Council approval.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

1. **Motion to amend the City's Personnel Policy 600.02 adding Veterans Day as an observed paid holiday and correcting Item C under "Accumulation and Utilization of Holiday Hours."**
2. Withhold approval of the requested amendments
3. Table action to a future meeting.

ATTACHMENTS:

File Name

600.02_Holiday_Policy_-_02012019_-_Proposed.doc



CITY OF KANNAPOLIS

PERSONNEL

POLICIES AND PROCEDURES

| | |
|---------------------------|--|
| SUBJECT: | Holidays |
| POLICY NO: | 600.02 |
| EFFECTIVE DATE: | 01/01/1995 |
| REVIEW DATE: | 01/17/2019 |
| AMENDMENT DATE(S): | 05/21/2001 08/01/2017 02/01/2019 |

SUBJECT: HOLIDAYS

PURPOSE: To provide a policy for uniform administration of standard City holidays.

STATEMENT OF POLICY:

The City of Kannapolis shall celebrate the following holidays off with pay for regular full-time and regular part-time non-union employees:

| | |
|------------------------------------|--------------------------------------|
| NEW YEAR'S DAY | January 1 st |
| MARTIN LUTHER KING | 3 rd Monday in January |
| MEMORIAL DAY | Last Monday of May |
| GOOD FRIDAY | Fluctuates |
| INDEPENDENCE DAY | July 4 |
| LABOR DAY | 1 st Monday in September |
| VETERANS DAY | November 11 th |
| THANKSGIVING DAY | 4 th Thursday in November |
| DAY AFTER THANKSGIVING | |
| CHRISTMAS (3 days) – See following | |

When a holiday other than Christmas Day falls on a Saturday, Friday shall be observed as a holiday. When a holiday other than Christmas falls on a Sunday, Monday shall be observed as a holiday.

| | |
|---------------------------------|----------------------------------|
| <u>When Christmas falls on:</u> | <u>The City observes:</u> |
| Sunday | Thursday, Friday, and Monday |
| Monday | Friday, Monday, and Tuesday |
| Tuesday | Monday, Tuesday, and Wednesday |
| Wednesday | Tuesday, Wednesday, and Thursday |
| Thursday | Wednesday, Thursday, and Friday |
| Friday | Wednesday, Thursday, and Friday |
| Saturday | Thursday, Friday, and Monday |

Accumulation and Utilization of Holiday Hours:

- (a) Holiday hours, if not taken on the actual holiday, shall accumulate in a leave bank as the holiday occurs and may be banked until the last day of the pay period for the last pay date in June.
- (b) Holiday hours will bank as regular, straight time hours.
- (c) Holiday hours must be used ~~within twelve months from the date of accrual and must be utilized first~~ before using vacation, sick leave, or leave without pay.

- (d) Unused holiday hours will be paid out at regular, straight hourly pay if not used before the last day of the pay period for the last pay date in June.
- (e) Unused holiday hours will be paid out at regular, straight hourly pay upon termination.
- (f) Exempt employees will not receive pay in lieu of holiday leave.
- (g) When a holiday falls within a period of approved paid leave, the holiday shall not be counted as a leave day in computing the amount of leave debited.
- (h) An employee who is on leave without pay on the day immediately preceding or following a holiday shall lose the holiday as well as pay for that day.

DATE: _____ **APPROVAL:** _____



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Wilmer Melton, III - Director of Public Works and
Walter M. Safrit, II City Attorney
TITLE Resolution for Adoption of Interlocal Agreement
for Debris Disposal

A. Action Requested by City Council

Motion to adopt the Resolution approving the Interlocal Agreement.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The agreement is to allow the City to dispose of debris on designated County property and County debris sites during significant debris events (i.e. hurricanes, tornadoes, snow and ice events, etc.).

D. Fiscal Considerations

The County may invoice the City \$22 per ton for accepting such excess debris.

E. Policy Issues

City Council approval is required for the City Manager to execute the Interlocal Agreement.

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

1. **Adopt the Resolution approving the Interlocal Agreement (Recommended)**
2. Take no action
3. Table to future meeting

ATTACHMENTS:

File Name

- ▣ Resolution_Approving_Interlocal_Agreement_(1-23-19).doc
- ▣ Interlocal_Agreement_(City-County)__1-23-19.doc

Resolution # _____

**CITY OF KANNAPOLIS
RESOLUTION
APPROVING INTERLOCAL AGREEMENT**

WHEREAS, the City of Kannapolis and the County of Cabarrus are authorized to enter into Interlocal Agreements pursuant to the provisions of NCGS Section 160-461 for the purpose of executing any undertaking for the benefit of its citizens; and

WHEREAS, activities providing for the collection and disposal of various forms of debris is an essential function of both parties; and

WHEREAS, the City Council finds that the Interlocal Agreement providing for the disposal of debris as the result of extraordinary events is in the best interests of the citizens of the City to accomplish the goals therein set forth.

NOW, THEREFORE, the Interlocal Agreement is hereby approved and the City Manager is authorized to execute said Agreement.

Adopted this 28th day of January, 2019.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

STATE OF NORTH CAROLINA

INTERLOCAL AGREEMENT

COUNTY OF CABARRUS

THIS INTERLOCAL AGREEMENT is made and entered this ____ day of January, 2019, by and between the City of Kannapolis, a municipal corporation organized and existing under the laws of the State of North Carolina, (hereinafter called "City") and the County of Cabarrus, a body politic and political subdivision of the State of North Carolina (hereinafter called "County")

WITNESSETH:

THAT, WHEREAS, North Carolina General Statute Section 160A-461 provides that any two or more units of local government may enter into agreement in order to execute any undertaking; and

WHEREAS, the City and County agree that it is to their mutual benefit and the benefit of their citizens to provide for an orderly system for the disposal of various forms of debris; and

WHEREAS, the disposal of debris on or upon certain areas within the ownership and jurisdiction of the County will improve the coordination of services to the public and provide for maximum operational efficiency.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained and pursuant to the general power and authority of both City and county, the parties mutually contract and agree as follows:

1. Purpose.

- (a) The purpose of this Interlocal Agreement is to allow the City to dispose of debris on designated County property and county debris sites following a significant debris creation event ("Event").
- (b) The County may at its discretion allow the City, by and through its employees and contractors and subcontractors, to dispose of excess debris at the sites upon the occurrence of an Event. All vehicles and contractors shall meet FEMA qualifications or certifications. "Event" shall mean an event that generates a significant amount of debris such that the City determines it cannot adequately dispose of debris through their own or contracted services as specified in the City of Kannapolis Debris Management Plan.

2. Costs.

The County may invoice the City \$22/ton for accepting such excess debris. If agreed to in writing by the parties, the County may seek reimbursement from FEMA in lieu of payment if the event qualifies for reimbursement.

3. Monitors.

The County shall provide monitors necessary to comply with FEMA regulations and seek reimbursement from FEMA if the Event qualifies for FEMA reimbursement, otherwise the City will be invoiced for the debris.

4. Duration.

- (a) This Agreement shall become effective upon execution by both parties and shall remain effective until terminated as provided herein.
- (b) Either party to this Agreement may at any time terminate this Agreement upon giving twelve (12) months written notice to the other party of its intention to terminate same.

5. Contact Persons and Notices.

Notices shall be given as follows:

For the City of Kannapolis:

Wilmer Melton, III
Director of Public Works
wmelton@kannapolisnc.gov
704-920-4231
401 Laureate Way
Kannapolis, North Carolina 28081

For the County of Cabarrus:

Kevin Grant
County Sustainability Manager
kpgrant@cabarruscounty.us
704-920-3209
Post Office Box 707
Concord, North Carolina 28026-0707

6. Amendments.

This Agreement may be amended at any time by written consent of both parties.

[THE REMAINING PORTION OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the City of Kannapolis and the County of Cabarrus both pursuant to resolutions of their respective governing bodies, have caused this Agreement to be executed and attested by their duly authorized officers and their official seals affixed, the day and year first above written.

CITY OF KANNAPOLIS
A North Carolina municipal corporation

By: _____
Michael B. Legg
City Manager

(CORPORATE SEAL)

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

APPROVED AS TO FORM

Walter M. Safrit, II, City Attorney

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

Eric Davis, Finance Director

CABARRUS COUNTY

By: _____
County Manager

(CORPORATE SEAL)

ATTEST:

County Clerk

APPROVED AS TO FORM

County Attorney

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

Finance Director



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager
TITLE Appointment of Acting City Clerk

A. Action Requested by City Council

Motion to approve a Resolution for Appointment of Acting City Clerk

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

Among many other duties, the City Clerk often records minutes of official meetings, administers oaths of office, and attests or authenticates authorized signatures. The difficulty arises when the Clerk is unavailable on a temporary basis and no one has the authority to perform those functions. The purpose of this Resolution is to appoint Acting Clerks who can perform those limited duties during the temporary absence of the Clerk.

D. Fiscal Considerations

None

E. Policy Issues

None

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

- 1. Motion to approve a Resolution for the Appointment of Acting City Clerk (Recommended)**
2. Amend and then approve the Resolution
3. Reject the Resolution
4. Table action to a future meeting

ATTACHMENTS:

File Name

📎 Resolution_Appointing_Acting_City_Clerk_(1-24-19).pdf

**KANNAPOLIS CITY COUNCIL
RESOLUTION**

WHEREAS, North Carolina General Statutes Section 160A-171 provides that “There shall be a city clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all city records and shall perform any other duties that may be required by law or the council”; and

WHEREAS, in the event the City Clerk is unable or unavailable to perform the duties of his or her office it is imperative that an Acting Clerk be available for authentication and attestation of authorized signatures, administration of oaths of office and the recording minutes of official meeting on a temporary basis until such time that the Clerk is able to resume performance of such duties; and

WHEREAS, the City Council finds that one or more acting city clerks to perform these limited duties is vital to the efficient operation of City functions during the temporary absence of the City Clerk.

NOW, THEREFORE, BE IT RESOLVED by the Kannapolis City Council as follows:

1. Ella Rebecca Barbee is hereby appointed as Acting City Clerk for the City of Kannapolis in the absence of the City Clerk for the performance of the duties stated herein.
2. Pam S. Scaggs is hereby appointed as Acting City Clerk for the City of Kannapolis in the absence of the City Clerk for the performance of the duties stated herein.
3. The parties named above agree to perform the duties of Acting City Clerk as specified by City Council.
4. This Resolution shall become effective immediately upon its adoption.

Adopted this the 28th day of January, 2019.

Milton D. Hinnant, Mayor

Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager
TITLE Public Hearing and Resolution Approving the
Execution of the Amended and Restated Parking
Garage Lease Agreement and the Hotel Parking
Garage Lease Agreement by and between the
City of Kannapolis and Kannapolis Master
Venture, LLC

A. Action Requested by City Council

1. Conduct Public Hearing.
2. Motion to Adopt the Resolution.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

In June 2018 the City and Demonstration Project developer, LMG negotiated terms to ensure for the successful construction of the mixed use projected downtown. At the request of LMG's potential lending institution at the time, the City agreed to a delayed payment for the land purchase and a 10-year parking fee waiver equal to \$165,000 annually to the City. With a more recent change in LMG's source of financing, the previously discussed terms no longer applied. LMG agreed pay for the land at closing (which happened in December 2018) and to float the City's purchase of the parking garage until it was completed in 2020. A previous promissory note for \$340,000 for the existing buildings was also no longer needed (this was an original agreement from the beginning negotiations). The assumption was made that the parking fee waivers were no longer needed either. As a result, they were removed from the MDA amendments approved by City Council in September 2018. Since those amendments were made, LMG has maintained that the parking fee waiver is critical to getting the financing terms of the project and construction is tied to this waiver.

Additionally, in the past 30 days it has become clear that LMG intends to proceed with a hotel project on the same site as the mixed use/residential project. As a compromise LMG has agreed to execute a long term parking garage lease agreement for the planned hotel equal to the

amount of the annual fee waiver amount in the parking lease agreement for the mixed use project. This has presented itself as a win-win for both parties.

The attached resolution approves the above-described waiver for the mixed use project and also approves a new parking lease agreement for the hotel. Both amounts equal \$165,000 annually. The waiver ends after 10 years after which the mixed use project would generate parking lease revenues of \$50 per space per month (275 spaces) to the City. The Hotel would continue to generate the same amount going forward as well.

As included in the agreements, LMG's local project company is Kannapolis Master Venture, LLC.

D. Fiscal Considerations

The parking lease revenues will go towards ongoing operating and maintenance of the parking garage.

E. Policy Issues

None.

F. Legal Issues

None.

G. Alternative Courses of Action and Recommendation

1. **Conduct Public Hearing and Adopt the Resolution (recommended).**
2. Table the action to a future meeting.
3. Conduct Public Hearing and Adopt the Resolution with amendments to the related documents.

ATTACHMENTS:

File Name

- ❑ Resolution_Approving_The_Execution_Of_The_Master_Development_Agreement_(City-Kannapolis_Master_Venture_LLC_(1-23-19).pdf
- ❑ (revised_v1)_Hotel_Parking_Lease_(City_of_Kannapolis_and_KMV)_1-23-19.pdf
- ❑ rev_v3____Kannapolis_-_Amended_and_Restated_Parking_Garage_Lease_Agreement_(1-23-19).pdf
- ❑ NOTICE_OF_PUBLIC_HEARING_(Amending_Master_Development_Agreement)__1-15-19.pdf

**RESOLUTION APPROVING THE EXECUTION OF THE
AMENDED AND RESTATED PARKING GARAGE LEASE AGREEMENT
AND THE HOTEL PARKING GARAGE LEASE AGREEMENT
BY AND BETWEEN
THE CITY OF KANNAPOLIS AND KANNAPOLIS MASTER VENTURE, LLC**

WHEREAS, North Carolina General Statutes Chapter 160A, Article 19, Part 8, authorizes municipalities to engage in appropriations and expenditures of funds for community development programs and activities for the restoration or preservation of blighted, deteriorated, undeveloped or inappropriately developed properties for sound community development and growth; and

WHEREAS, the North Carolina General Statutes also authorize cities to engage in capital projects in the City's central business district to further the revitalization of such areas; and

WHEREAS, North Carolina General Statutes § 160A-458.3 authorizes the City to convey interests in property owned by it in connection with a downtown development project; and

WHEREAS, the City entered into a Master Development Agreement ("MDA") with Kannapolis Master Venture, LLC, a Florida limited liability company ("Kannapolis Master Venture") on January 27, 2017 which included the construction of a parking garage which will be owned by the City; and

WHEREAS, in connection with the execution and delivery of the MDA, the City has determined that it was in the best interest of the City to enter into a Garage Parking License Agreement with Kannapolis Master Venture which Kannapolis Master Venture the right to use certain parking spaces located in the parking facility to be constructed under the terms of the MDA; and

WHEREAS, the Council has determined that it is necessary and in the best interests of the City to amend the Garage Parking Lease relating to parking fees; and

WHEREAS, the Council has determined that it is necessary and in the best interests of the City to execute a Hotel Garage Lease Agreement relating to parking availability and fees for the hotel project contemplated as Phase 2 in the MDA (the "Hotel Garage Lease"); and

WHEREAS, on January 28, 2019, the City held a duly advertised public hearing to receive public comment on the proposed Amended and restated Parking Garage Lease and the Hotel Garage Lease.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Council Findings. Council finds that pursuant to North Carolina General Statutes § 160A-458.3 as follows:

1. Execution of the Amended and Restated Parking Garage Lease and the Hotel Garage Lease are in the best interests of the City.

2. The terms of the Amended Garage Lease and the Hotel Garage Lease are sufficient to ensure the agreement meet the needs of the City and those needs are met at a reasonable price.

3. The City duly noticed the public hearing and took public comment on the same.

4. The conveyance complies with North Carolina General Statutes § 160A-458.3 and 160A-457.

Section 2. Adoption of Instruments. The City Council hereby approves and adopts (a) Amended and Restated Parking Garage Lease Agreement, (b) and the Hotel Parking Garage Lease Agreement.

Section 3. Authorization of Manager to Execute the Instruments. The City hereby authorizes the City Manager to execute and deliver the instruments, including any and all necessary documents and agreements to effectuate the intent of the aforementioned Resolution. Further, the City Manager, or his designee, in accordance with his assigned responsibilities is hereby authorized to deliver, publish, file and record such documents, instruments, notices and records and to take such other actions that shall be necessary or desirable to accomplish the purposes of this Resolution. Further, the City Manager is allowed to make modifications, corrections and clerical revisions as may be necessary and not inconsistent with the intent of this Resolution.

Section 4. Effective Date. This Resolution is effective on the date of this adoption.

Milton D. Hinnant, Mayor

Bridgette Bell, MMC, NCCMC
City Clerk

HOTEL PARKING LEASE AGREEMENT

THIS HOTEL PARKING LEASE AGREEMENT (“Agreement”) is made as of the ____ day of January 2019, by and between the CITY OF KANNAPOLIS, NORTH CAROLINA, a public body corporate and politic (the “City”), and KANNAPOLIS MASTER VENTURE, LLC, a North Carolina limited liability company (the “Developer”).

RECITALS:

WHEREAS, Developer and City are parties to that certain Master Development Agreement dated January 23, 2017, as amended and assigned to Developer (the “MDA”) which sets forth the plan for Developer’s construction and development of the Demonstration Project (as defined in the MDA);

WHEREAS, the Demonstration Project will include the Parking Garage, (as defined in the MDA);

WHEREAS, Developer plans to develop the portion of the Property (as defined in the MDA) as a Hotel (as defined in the MDA) on the Hotel Tract including approximately 120 rooms and related amenities and infrastructure which will be situated north of the Parking Garage (as defined in the MDA) which needs to be served by a certain number of parking spaces in order to be economically viable. The parties acknowledge that Developer cannot develop the Hotel as contemplated by the MDA without the assurance of long-term access to parking spaces in the Parking Garage;

WHEREAS, considerable economic benefit is expected to accrue to City from Developer’s construction and operation of the Hotel, and City desires to provide a competitive long-term lease of a portion of the spaces in the Parking Garage for the use and benefit of the Hotel;

WHEREAS, City is agreeable to leasing to Developer, and any of its successors or assignees, parking spaces in the Parking Garage as provided in this Agreement;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Lease of Parking Spaces

During the Term (as defined below) of this Agreement, City hereby leases to Developer, and Developer hereby leases from City, parking spaces in the Parking Garage subject to the following terms and conditions:

a. City leases to Developer and its successors and assigns approximately ninety-six (96) parking spaces (the “Spaces”) in the Parking Garage for users of the Hotel for vehicular parking. The Spaces shall be determined by the City as depicted on floor plans of the parking levels of the Parking Garage to be created at a later date, subject to the written approval of the City. The final number of spaces to be leased shall be equal to a minimum of 0.8 spaces for each room in the hotel. Developer shall notify City of the final number upon issuance of the certificate

of occupancy (the “C.O.”). Developer shall pay for and have the non-exclusive right to use the Spaces throughout the Term of this Agreement 24 hours a day, 365 days a year.

b. The parties acknowledge that the Parking Garage will be a public facility available to the public on an “open occupancy” basis with no reserved spaces or access gates installed; provided, however, City reserves its right to later designate certain spaces as “Reserved” and to install access gates to the Parking Garage. The Parties further acknowledge that the availability of such “open occupancy” parking (“Open Occupancy Parking”) shall not diminish the City’s obligation to provide parking capacity sufficient to accommodate the Spaces in the Parking Garage.

2. Rent

Developer shall pay City the amount of Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750.00) per month (the “Rent”). To reflect the “ramp up” period for the Hotel, the Developer’s obligation to pay Rent shall arise from the issuance of the C.O. for the Hotel as follows:

Commencing on the date of the issuance of the C.O.: no Rent payment shall be due; and

Commencing on the sixtieth (60th) day after the issuance of the C.O.: the Developer shall pay Rent in the amount of One Thousand Dollars (\$1,000.00) per month, which shall increase by One Thousand Dollars (\$1,000.00) per month thereafter until the Rent of \$13,750.00 per month is reached.

| Month | Rent |
|----------------------|----------|
| 1 | \$0 |
| 2 | \$0 |
| 3 | \$1,000 |
| 4 | \$2,000 |
| 5 | \$3,000 |
| 6 | \$4,000 |
| 7 | \$5,000 |
| 8 | \$6,000 |
| 9 | \$7,000 |
| 10 | \$8,000 |
| 11 | \$9,000 |
| 12 | \$10,000 |
| 13 | \$11,000 |
| 14 | \$12,000 |
| 15 | \$13,000 |
| 16 and future months | \$13,750 |

City, in the sole discretion of its City Council, reserves the right to amend, alter, or change the Rent, provided that the new Rent amount shall not exceed the parking rates charged to other bulk/wholesale hotel parking users in the City; provided, however, City agrees that the Rent shall

remain as illustrated above for five (5) years after the Substantial Completion (as defined in the MDA) of the Hotel.

Monthly invoices will be billed to the Developer in advance for the Spaces on or about the fifteenth (15th) of each month. Payment shall be due on the first (1st) day of the following month and shall be paid by the Developer via check or electronic payment made payable to “City of Kannapolis” at 401 Laureate Way, Kannapolis, NC 28081, Attn: Finance Director or at such other address or other payee as City may designate in writing. In the event Developer shall fail to make such monthly payment by the fifth (5th) of each month, a late fee of eight percent (8%) of the monthly invoice amount past due or an amount established by the City in its fee schedule will be assessed. Furthermore, any past due payments shall also accrue interest at the rate of one percent (1%) per month for any portion of the payment thirty (30) days or more in arrears until the full amount is paid, with any payments being applied first to any interest and late fees due.

3. Operation and Use

a. City or its designated operator shall operate the Parking Garage with all services and facilities normally associated with comparable public parking areas.

b. City shall allow unimpeded and open access to users and occupiers (“Occupiers”) of the Hotel to and from the Parking Garage at all times, i.e., twenty-four (24) hours per day, seven (7) days per week, including holidays. City agrees to individually number the spaces in the Parking Garage and to provide a clear signage system throughout the Parking Garage.

c. Use of the Parking Garage by Developer, Occupiers, and their agents, employees, contractors and guests shall be subject to City policies and procedures and such reasonable rules and regulations as City may adopt from time to time.

d. Except as provided in Section 2 above, City reserves the right to charge parking fees to the public for use of the Parking Garage.

4. Term

The initial term of the Agreement (“Initial Term”) shall be for a period of fifty (50) years, commencing no sooner than the Substantial Completion (as defined in the MDA) of the Hotel (the “Commencement Date”), unless this Agreement is sooner terminated as provided for in this Agreement. So long as (i) the Hotel is operated as a Hotel project at the expiration of the Initial Term, (ii) Developer is not in default under this Agreement beyond applicable notice and cure periods at the expiration of the Initial Term, and (iii) Developer has not given City written notice of its desire to terminate the Initial Term to end at the expiration of the Initial Term at least ninety (90) days prior to the expiration of the Initial Term, then the Term of this Agreement shall automatically extend for one (1) additional successive extension term of forty-nine (49) years (“Renewal Term”). As used in this Agreement, “Term” means the Initial Term and any Renewal Term(s). The Renewal Term shall be upon all the terms and conditions set forth in this Agreement.

5. Electronic Access, Signage, Cameras, Garage Improvements

Prior to the Commencement Date, the City shall pay for all costs associated with the initial purchase and installation of access and revenue equipment, along with any hardware and/or software needed by the City for the City's use of the Parking Garage. Thereafter, the City shall pay for the maintenance, repair, upgrade, or replacement of the systems serving the Parking Garage. City and Developer shall have mutual access to any reports generated by the access and revenue equipment, including those reports generated by any Hotel modules(s) that are mutually selected, purchased, and installed in the Parking Garage. Developer may request that the Developer be permitted to upgrade and/or replace certain exterior doors, gates, locks, and/or signage to permit Occupiers access to the Parking Garage and to facilitate ADA access to and from the Hotel as may be required by for the lawful operation of the Hotel or to improve security for the Occupiers and to make other nonstructural, cosmetic changes for the purpose of improving the general appearance of the Parking Garage. Prior to making any such improvements, the Developer shall provide the City with ten (10) days prior written notice of such proposed improvements. The City will work cooperatively with the Developer to assure access to and from the Parking Garage by Occupiers and will endeavor to grant the Developer permission to place such items, including monitoring cameras and pre-approved signage (collectively, "Upgrades"), in and around the Parking Garage, all subject to the City's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. However, upon request of the City, the Developer must present the City with sufficient drawings and/or information, together with any required engineering documentation, to establish that the Upgrades will not damage and/or impair the Parking Garage or the use of the Parking Garage and will not interfere with the City's operation of the Parking Garage. Developer shall be solely responsible for all costs, expenses, and responsibility, including any claims of any type or nature that may be made in connection with or resulting from the placement, installation, use, operation, maintenance, repair, removal or the Upgrades, and/or any other matters involving the Upgrades, and Developer agrees to indemnify and hold the City and its parking management company, their employees, agents, and representatives, harmless from any and all such claims relating to the Upgrades, including reasonable attorney's fees. Upon request by the City, Developer shall also be solely responsible for relocating any Upgrades for any reason whatever, providing the City shall not unreasonably request that any Upgrades be relocated. Developer further assumes all risks of any type or nature in connection with any Upgrades, including, but not limited to, any damage to, any theft of, or any vandalism of the Upgrades. Upon the expiration and/or termination of this Agreement, Developer shall properly and timely remove any Upgrades, including any signs, that it installed or had installed and restore the areas where Upgrades were installed to the condition the areas were in prior to the installation of the Upgrades by Developer. Developer agrees that if Developer fails to remove the Upgrades and properly restore the areas within thirty (30) days of any such expiration or termination of this Agreement that City may do so and dispose of the Upgrades as City sees fit and charge the Developer all reasonable costs and expenses of such removal and disposal. Furthermore, all Upgrades, including cameras, and signage are subject to applicable federal, state and local laws, rules, and regulations and Developer shall also obtain at Developer's cost any required approvals and permits.

6. Operation, Maintenance, Repair and Temporary Relocation

a. City will operate the Parking Garage in a manner similar to the operation of other municipal-owned and/or controlled parking facilities in the region. City will maintain the Parking Garage in good working condition and repair and will make such repairs, perform such

preventative maintenance, structural repairs or other improvements as the City reasonably deems necessary. In performing maintenance, repairs or replacements, City shall use all commercially reasonable efforts to minimize interference with the use, occupation and enjoyment of the Parking Garage by Developer and Occupiers. If possible, maintenance, repairs and replacements shall be confined to the area actually being so maintained, repaired or replaced. The City will use commercially reasonable efforts to make other parking spaces available in the event of temporary closure of the Parking Garage for the purposes of maintenance, repair, or replacement, at no additional cost or expense of the alternate parking spaces to the Developer. Other than in the event of an emergency, the City will confer with Developer prior to any closures of the Parking Garage and will endeavor to accomplish all Garage maintenance, repairs and replacements in a manner that will result in the least inconvenience for the Occupiers. In the event that Developer is denied the use of any Spaces due to any such maintenance, repairs, replacements or otherwise, and replacement parking in the Parking Garage reasonably satisfactory to Developer is not provided by the City, the Rent with respect to such parking may be abated until use of the affected Spaces is restored. Otherwise, the Developer will not be entitled to any payments or offsets from the City's monthly, hourly, daily, or parking revenues against the parking charges otherwise due from the Developer to the City under the terms of this Agreement. Developer and/or Occupiers shall have no rights in or to any monies paid by anyone to the City, or revenues received from anyone by the City on account of parking in the Parking Garage.

b. City shall provide and maintain interior and exterior illumination sufficient to illuminate the Parking Garage and all means of pedestrian and vehicular access and egress thereto and therefrom, during all twilight and evening hours of operation.

c. City shall provide suitable and sufficient signs in and around the Parking Garage as required for safe and orderly flow of pedestrian and vehicular traffic, including signage directing garage users to the appropriate Mixed Use Structure entrances and on any general directories provided by City in the Parking Garage. Notwithstanding the foregoing, Developer shall be solely responsible for all costs and expenses in connection with or resulting from the placement, installation, use, operation, maintenance, repair, removal, and/or any other matters involving nonstructural and cosmetic changes to the signage and re-marking of the Spaces. Any signs pertaining to the Hotel will be subject to City's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

d. The Parties acknowledge that the design and operational plan of the Parking Garage is not complete at the time of the execution of this agreement. As such, future Condominium documents or operational plans may require further refinement of access and maintenance plans.

7. Damage to the Parking Garage

During the Term of this Agreement, in the event of any damage or destruction of all or any portion of the Parking Garage, City shall undertake promptly to repair and/or rebuild the Parking Garage to provide to Developer as promptly as reasonably possible after the date of such damage or destruction the parking contemplated by this Agreement. In the event that any or all of the Spaces are unavailable for Developer's use as a result of any such damage or destruction, fees payable for such Spaces shall be abated until the Parking Garage is restored and the affected Spaces are again available for use by Developer.

8. Default by Developer

a. Each of the following shall constitute a default hereunder by the Developer (each of the following events is hereinafter referred to as "Default"):

i. The failure or refusal by Developer to make any payment due to the City hereunder within fifteen (15) days after written notice of nonpayment is given by the City to the Developer and to any mortgagee of the Hotel;

ii. The failure or refusal by the Developer to perform any of its other covenants or obligations hereunder within sixty (60) days after written notice of nonperformance is given by the City to the Developer and to any mortgagee of the Hotel; provided, however, that if such failure to perform cannot reasonably be cured within sixty (60) days, the Developer shall not be in default if it commences within sixty (60) days steps reasonably calculated to cure the nonperformance and in good faith pursues those steps diligently and in good faith to completion (not to exceed ninety (90) days).

b. Upon the occurrence of a Default as set forth in Section 8(a), the City may immediately terminate this Agreement by written notice to the Developer. In addition to this right to terminate this Agreement, the City may also in the event of a Default by Developer under this Agreement exercise any and all other rights and remedies available to the City at law or in equity, including without limitation the recovery of any and all monetary damages that the City has suffered as a result of such Default.

c. The City agrees to give Developer's lender or other applicable financing partner with first deed of trust on the Hotel a copy of any notice of default sent to Developer, provided that the City has been notified in writing by certified mail, return receipt requested, of the addresses of such parties. The City further agrees that if Developer fails to cure any default under this Agreement within the time provided for in this Agreement, then prior to the City exercising any right to terminate this Agreement on account of such default, Developer's lender or other applicable financing partner shall have an additional sixty (60) days within which to cure such default. If such default cannot be cured within that time, Developer's lender or other applicable financing partner shall have such additional time as may be necessary if within such sixty (60) days, Developer's lender or other applicable financing partner has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings, if necessary to effect such cure). The City may not exercise any right to terminate this Agreement on account of any such default by Developer, whether available under this Agreement, at law or in equity, while such remedies are being so diligently pursued by Developer's lender or other applicable financing partner.

9. Force Majeure

A delay in, or failure of, performance by any party, shall not constitute a default, nor shall the Developer or the City be held liable for loss or damage, or be in breach of this Agreement, if and to the extent that such delay, failure, loss or damage is caused by an occurrence beyond the reasonable control of such party, and its agents, employees, contractors, subcontractors, and consultants, including results from Acts of God or the public enemy, compliance with any order

or request of any governmental authority or person authorized to act therefore, acts of declared or undeclared war, public disorders, rebellion, sabotage, revolution, earthquake, floods, riots, strikes, labor or equipment difficulties, delays in transportation, inability to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities or any other causes, whether direct or indirect, and which by the exercise of reasonable diligence said party is unable to prevent. For purposes of this Agreement any one delay caused by any such occurrence shall not be deemed to last longer than six (6) months and the party claiming delay caused by any and all such occurrences shall give the other party written notice of the same within thirty (30) days after the date such claiming party learns of or reasonably should have known of such occurrence. Notwithstanding anything else set forth above, after a total of nine (9) months of delays of any type have been claimed by a party as being subject to force majeure, no further delays or claims of any type shall be claimed by such party as being subject to force majeure and/or being an excusable delay.

10. Default by the City

In the event of any default, nonperformance, or breach of any of the terms or conditions of this Agreement by the City, Developer shall be entitled to the repayment of monies paid by Developer to the City during the period of default or a deduction from any payment due from Developer to the City for any Spaces that are not able to be used due to such default, nonperformance, or breach for the period of time of such inability to use such Spaces. In addition to the remedies set forth in the prior sentence, if the City is in default, nonperformance, or breach of any of the terms or conditions of the Agreement, Developer may provide the City and any City mortgagee with written notice of the same and the City shall have sixty (60) days following receipt of such notice from the Developer to cure any such default, nonperformance, or breach, provided if such default, nonperformance, or breach cannot be cured within sixty (60) days from the date of receipt of the notice from the Developer, the City, and/or its mortgagee shall be deemed to have cured the default as long as the City and/or its mortgagee undertakes to remedy the same within sixty (60) days following receipt of notice and the City and/or its mortgagee diligently proceeds to remedy such default, nonperformance, and/or breach.

11. Insurance Requirements

Developer shall maintain the insurance coverage as set forth in Exhibit "A" attached and incorporated into this Agreement and provide the proof of such insurance coverage as called for in Exhibit "A", including workers' compensation coverage if Developer hires any employees. If Exhibit "A" coverage exceeds reasonable insurance requirements for a parking deck, serving the intended purposes, then the City and Developer will agree on acceptable coverage. Such insurance coverage shall be obtained at the Developer's sole expense and maintained during the Term of this Agreement and shall be effective prior to the beginning of any performance by the Developer or others under this Agreement. All insurance companies providing the coverages required hereunder must be lawfully authorized to do business in North Carolina and be acceptable to City's risk manager, in its reasonable discretion. Certificates evidencing required insurance shall be delivered to the City prior to the Commencement Date (as defined in Section 18 of this Agreement) or opening date of the Parking Garage, whichever is later and upon renewal of the applicable policies. Notice of cancellation or reduction or elimination of coverage shall be provided to additional insureds in accordance with the terms of the applicable policy.

12. Indemnity

a. *City Indemnity.* To the extent permitted by law, City hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless Developer, its leasehold mortgagees, and their respective affiliates, officers, directors, employees, agents, contractors, subcontractors, licensees and invitees (individually a “Developer Indemnatee” and collectively, “Developer Indemnitees”) from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys’ fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a Developer Indemnatee, as applicable (collectively, “Developer Claims”), arising out of or resulting from: (i) any default, breach, violation, or nonperformance by City under this Agreement (including breach of any representation, warranty or covenant of City contained herein); or (ii) any negligent act or omission of City, including, without limitation, injury to or death of any person or damage to property arising out of any work, construction, reconstruction, restoration, maintenance, repair or other work to be done hereunder by City, except in all cases to the extent such Developer Claims are caused by the negligent act or omission or willful misconduct of Developer or Developer Indemnitees. The provisions of this Section 12(a) shall survive the expiration or earlier termination of this Agreement.

b. *Developer Indemnity.* Developer hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless City and its council members, officers, employees, agents, contractors, subcontractors, successors, assigns, licensees, mortgagees of City and invitees (individually a “City Indemnatee” and collectively, “City Indemnitees”) from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys’ fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a City Indemnatee, as applicable (collectively, “City Claims”), arising out of or resulting from: (i) any default, breach, violation, or nonperformance by Developer under this Agreement (including breach of any representation, warranty or covenant of Developer contained herein); or (ii) any negligent act or omission of Developer, including, without limitation, injury to or death of any person or damage to property arising out of any work construction, reconstruction, restoration, maintenance, repair or other work to be done hereunder by Developer, except in all cases to the extent such City Claims are caused by the negligent act or omission or willful misconduct of City or City Indemnitees. The provisions of this Section 12(b) shall survive the expiration or earlier termination of this Agreement.

13. Intentionally Deleted.

14. Title to Property; Memorandum

a. City covenants that it has full right to enter into this Agreement as of the date hereof and City is or will be seized in fee simple of and have good and marketable title to the Parking Garage, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent City from performing its obligations hereunder.

b. Upon Developer’s request, City will execute and deliver to Developer an original memorandum of this Agreement in form reasonably satisfactory to City and Developer, and Developer may record the memorandum in the land records of the County of Cabarrus, North

Carolina. Developer will pay all recording taxes or fees required in connection with recording such memorandum.

15. Attorneys' Fees

In the event of any litigation between City and Developer arising out of this Agreement, each party shall bear its own expense.

16. Assignment and Leasing

a. Developer may not assign this Agreement, in whole or in part, except to a purchaser of the Hotel in the event of a sale thereof, subject to the written approval of the City which approval shall not be unreasonably withheld. Developer shall also be permitted to assign this Agreement to any affiliate or to any lender or other applicable financing partner providing financing in connection with the Hotel as collateral for its loan and to sublease individual spaces that may, from time to time, be in excess of the amount of parking required to accommodate the needs of the Hotel.

b. Except as provided in Section 16(a) above, Developer may not assign, transfer, or pledge any of its rights under this Agreement without the prior written consent of the City and the City may grant or deny its consent in City's sole discretion.

c. Notwithstanding any permitted assignment, the Developer shall remain responsible for all obligations under this Agreement unless the City specifically grants the Developer a release in writing.

17. Notices

Except where other forms of notice are expressly and specifically authorized in this Agreement, all notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

To the City
City Manager
City of Kannapolis
401 Laureate Way
Kannapolis, NC 28081
Attn: Michael B. Legg

With a copy to:
City Attorney
City of Kannapolis
401 Laureate Way
Kannapolis, NC 28081
Attn: Walter M. Safrit, II

With a copy to:
Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 South Tryon St., Suite 3000
Charlotte, NC 28202

Attn: Anthony Fox, Esq.

To Developer Kannapolis Master Venture, LLC
2240 East Sunrise Boulevard, #90
Fort Lauderdale, Florida 33304
Attn: Peter Flotz

With a copy to: Mr. Kent Gregory
3 E. Gordon St.
Savannah, GA 31401

With a copy to: Melville Law, P.A.
101 NE 3rd Avenue Suite 1500
Fort Lauderdale, Florida 33301
Attn: Drew Melville, Esq.

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

18. MDA

This Agreement is expressly conditioned on the execution, delivery and performance of the MDA by the Developer which terms are incorporated herein by reference; provided that after the Commencement Date (defined as the date of the first Certificate of Occupancy for the Mixed Use Project), this Agreement shall not be terminated or voided by City for any default by Developer under the MDA.

19. Dispute Resolution.

Disputes arising under this Agreement shall be mediated pursuant to the City “Rules Implementing Mediated Settlement Conferences”. Disputes resulting in unsuccessful mediations shall be determined in the state courts of North Carolina with its venue in Cabarrus County.

20. Iran Divestment Act Certification

Developer certifies that, if it submitted a successful bid for this Agreement, then as of the date it submitted the bid, Developer was not identified on the Iran List. If it did not submit a bid for this Agreement, Developer certifies that as of the date that this Agreement is entered into, Developer is not identified on the Iran List. It is a material breach of this Agreement for Developer to be identified on the Iran List during the term of this Agreement or to utilize on this Agreement any contractor or subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section – “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with N.C.G.S. §143C-6A-4 of the N.C. Iran Divestment Act.

21. Entire Agreement

This Agreement, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties hereto with respect to the matters addressed herein and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by City and Developer.

22. Miscellaneous

a. The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

b. In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

c. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of North Carolina.

d. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

[REMAINDER PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY:

CITY OF KANNAPOLIS, NORTH CAROLINA

By: _____

Name: _____

Title: City Manager

Bridgette Bell, City Clerk, MMC, NCCMC

Approved as to form:

Walter M. Safrit, II, City Attorney

DEVELOPER:

KANNAPOLIS MASTER VENTURE, LLC,
a North Carolina limited liability company

By: PETER FLOTZ, its Manager

Peter Flotz, Manager

Exhibit "A"

Insurance Requirements

Hotel Parking Lease Insurance

A. Insurance Coverage

Developer shall obtain insurance to satisfy the requirements hereunder. The policies shall be with companies authorized to do business in North Carolina and rated "A" or above by A.M. Best Company. Developer, individually or by and through its subcontractors, shall satisfy the following requirements and provide the following coverage:

(a) General Requirements.

1. Developer shall name the City as an additional insured under the liability policies required by this section.
2. Developer's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from Developer's operations under this Agreement. Developer and each of its subcontractors shall and does waive all rights of subrogation against the City.
3. City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Developer and/or subcontractor providing such insurance.
4. Developer shall provide the City with certificates of insurance and endorsements documenting that the insurance requirements-set forth in this paragraph have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. Developer shall further provide such certificates of insurance to the City at any time requested by the City after the execution of this Agreement, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of Developer shall not relieve Developer of its obligation to meet the insurance requirements set forth in this Agreement.
5. Should any or all of the required insurance coverage be self-funded/self-insured, Developer shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

(b) Types of Insurance.

1. Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combines single limit-bodily injury and property damage.
2. Commercial General Liability. Bodily injury and property damage liability as shall protect Developer and any subcontractor performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations

are performed by Developer, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement.

3. Workers' Compensation Insurance. Developer shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

(c) Certificates of all required insurance and endorsements shall be furnished to the City and shall contain the provision that the City will be given thirty (30) day advance written notice of any intent to amend or terminate by either the insurance or the insuring company.

(d) Failure to maintain the insurance coverage required in this paragraph is a material default subject to termination of this Agreement.

B. Notice of Cancellation

Developer shall notify the City, in writing immediately upon learning of cancellation or reduction of the insurance afforded by its policy.

Garage Construction Insurance:

In addition to the above, property insurance on a builder's "all risk" or equivalent policy in the amount of the contract amount plus the value of any subsequent modifications, cost of materials supplied or installed on a replacement cost basis.

AMENDED AND RESTATED PARKING GARAGE LEASE AGREEMENT

THIS PARKING GARAGE LEASE AGREEMENT ("Agreement") is made as of the ____ day of January, 2019, by and between the CITY OF KANNAPOLIS, NORTH CAROLINA, a public body corporate and politic (the "City"), and KANNAPOLIS CITY CENTER I, LLC, a North Carolina limited liability company (the "Developer").

RECITALS:

WHEREAS, Developer was selected by the City through a competitive process to facilitate the development and construction of a public parking facility as a mixed use project (the "Mixed Use Project") including retail uses, residential uses, and a parking garage containing four hundred (400) parking spaces (the "Garage");

WHEREAS, Developer and City are parties to that certain Master Development Agreement dated January 23, 2017, as amended (the "MDA") which sets forth the plan for Developer's construction and development of the Demonstration Project (as defined in the MDA);

WHEREAS, in accordance with the MDA, the City will retain fee simple ownership of the land on which the Garage is constructed and the City will own the improvements constituting the portion of the Garage used for vehicular parking, such real estate being described as the Garage Tract (as defined in the MDA);

WHEREAS, Developer plans to develop the portion of the Mixed Use Structure (as defined in the MDA) as a mixed-use structure to be comprised of multi-family residential improvements including approximately 286 residential units and related amenities and infrastructure in the Air Rights Tract (as defined in the MDA) which will be situated above the Garage and wrapped around the Garage structure along the West Street side of Phase 1, and shall include ground level retail space of up to 19,000 square feet which needs to be served by a certain number of parking spaces in order to be economically viable. The parties acknowledge that Developer could not lease the Mixed Use Structure as contemplated by the MDA without the assurance of long term access to parking spaces in the Garage;

WHEREAS, considerable economic benefit is expected to accrue to City from Developer's construction and leasing of the Mixed Use Structure, and City desires to provide a competitive long term lease of a portion of the spaces in the Garage for the use and benefit of the Mixed Use Structure;

WHEREAS, City is agreeable to leasing to Developer, and any successor thereof, parking spaces in the Garage as provided herein;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Lease of Parking Spaces

During the Term (as defined below) of this Agreement, City hereby leases to Developer, and Developer hereby leases from City, parking spaces in the Garage subject to the following terms and conditions:

a. *Minimum Number of Spaces.* City leases to Developer and its successors and assigns approximately two hundred seventy-five (275) parking spaces (the “Spaces”) in the Garage for users of the Mixed Use Structure for vehicular parking. The Spaces shall be determined by the City as depicted on floor plans of the parking levels of the Garage to be created at a later date, subject to the written approval of the City. The final number of spaces to be leased shall be equal to a minimum of one space for each dwelling unit in the Mixed Use Structure. Developer shall notify City of the final number upon issuance of the certificate of occupancy (the “C.O.”). Developer shall pay for and have the non-exclusive right to use such spaces throughout the Term of this Agreement 24 hours a day, 365 days a year.

b. The parties acknowledge that the Garage will be a public facility available to the public on an “open occupancy” basis with no reserved spaces or access gates installed thereto; provided, however, City reserves its right to later designate certain spaces as “Reserved” and to install access gates to the Garage. The Parties further acknowledge that the availability of such “open occupancy” parking (“Open Occupancy Parking”) shall not diminish the City’s obligation to provide parking capacity sufficient to accommodate the Spaces. Such spaces may be provided in the Garage or within a quarter mile of the Garage structure, which shall be determined at the sole discretion of the City. Notwithstanding the foregoing, the Parties agree that the Garage is to complement Phase 1 of the Demonstration Project only (as defined in the MDA) and does not obligate the City to provide for Phase 2 of the Demonstration Project (as defined in the MDA) including but not limited to hotel parking or the Hotel Alternative (as defined in the MDA).

2. Rent

Developer shall pay City the amount of Fifty Dollars (\$50.00) per apartment parking space per month (the “Rent”) beginning on the 1st day of the 121st month after issuance of the C.O. for the Mixed Use Structure; provided, however, during the period between the issuance of the C.O. and the aforementioned 121st month, the Developer will share revenue with the City if the average per square foot rent exceeds the “Monthly Apt. Rent Threshold” as set forth in Exhibit “A” attached hereto up to a maximum of \$50 per space per occupied unit per month through the aforementioned 121st month. Developer shall report occupancy and average per square foot rent to the City on a quarterly basis along with calculations of any parking fees due.

City, in the sole discretion of its City Council, reserves the right to amend, alter, or change the Rent, provided that the new Rent shall not exceed the parking rates charged to other bulk/wholesale parking users in the City.

Monthly invoices will be billed to the Developer in advance for the Spaces on or about the 15th of each month. Payment shall be due on the first day of the following month and shall be paid by the Developer in one check or electronic payment made payable to “City of Kannapolis” at 401 Laureate Way, Kannapolis, NC 28081, Attn: Finance Director or at such other address

and/or other payee as City may designate in writing. In the event Developer shall fail to make such monthly payment by the 5th of each month, a late fee of eight percent (8%) of the monthly invoice amount past due or an amount established by the City in its fee schedule will be assessed. Furthermore, any past due payments shall also accrue interest at the rate of one percent (1%) per month for any portion of the payment thirty (30) days or more in arrears until the full amount is paid, with any payments being applied first to any interest and late fees due.

3. Operation and Use

a. City or its designated operator shall operate the Garage with all services and facilities normally associated with comparable public parking areas.

b. City shall allow unimpeded and open access to users and occupiers (“Occupiers”) of the Mixed Use Structure to and from the Garage at all times, i.e., twenty-four (24) hours per day, seven (7) days per week, including holidays. City agrees to individually number the spaces in the Garage and to provide a clear signage system throughout the Garage.

c. Use of the Garage by Developer, Occupiers, and their agents, employees, contractors and guests shall be subject to City policies and procedures and such reasonable rules and regulations as City may adopt from time to time.

d. Except as provided in Section 2 above, City reserves the right to charge parking fees to the public for use of the Garage.

4. Term

The initial term of the Agreement (“Initial Term”) shall be for a period of fifty (50) years, commencing no sooner than the Substantial Completion (as defined in the MDA) of the applicable Infrastructure (the “Commencement Date”), unless this Agreement is sooner terminated as provided for in this Agreement. Provided that (i) the Apartments are operated as an apartment or condominium project at the expiration of the Initial Term, (ii) Developer is not in default under this Agreement beyond applicable notice and cure periods at the expiration of the Initial Term, and (iii) Developer has not given City written notice of its desire to terminate the Initial Term to end at the expiration of the Initial Term at least ninety (90) days prior to the expiration of the Initial Term, then Term of this Agreement shall automatically extend for one (1) additional successive extension term of forty-nine (49) years (“Renewal Term”). As used in this Agreement, “Term” means the Initial Term and any Renewal Term(s). The Renewal Term shall be upon all the terms and conditions set forth in this Lease.

5. Electronic Access, Signage, Cameras, Garage Improvements

Prior to the Commencement Date, the City shall pay for all costs associated with the initial purchase and installation of access and revenue equipment, along with any hardware and/or software needed by the City for the City’s use of the Garage. Thereafter, the City shall pay for the maintenance, repair, upgrade, or replacement of the systems serving the Garage. City and Developer shall have mutual access to any reports generated by the access and revenue equipment, including those reports generated by any Apartment modules(s) that are mutually selected, purchased, and installed in the Garage. Developer may request that the Developer be permitted to

upgrade and/or replace certain exterior doors, gates, locks, and/or signage to permit Occupiers access to the Garage and to facilitate ADA access to and from the Apartments as may be required by for the lawful operation of the Apartments or to improve security for the Occupiers and to make other nonstructural, cosmetic changes for the purpose of improving the general appearance of the Garage. Prior to making any such improvements, the Developer shall provide the City with ten (10) days prior, written notice of such proposed improvements. The City will work cooperatively with the Developer to assure access to and from the Garage by Occupiers and will endeavor to grant the Developer permission to place such items, including monitoring cameras and pre-approved signage (collectively, "Upgrades"), in and around the Garage, all subject to the City's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. However, upon request of the City, the Developer must present the City with sufficient drawings and/or information, together with any required engineering documentation, to establish that the Upgrades will not damage and/or impair the Garage or the use of the Garage and will not interfere with the City's operation of the Garage. Developer shall be solely responsible for all costs, expenses, and responsibility, including any claims of any type or nature that may be made in connection with or resulting from the placement, installation, use, operation, maintenance, repair, removal or the Upgrades, and/or any other matters involving the Upgrades, and Developer agrees to indemnify and hold the City and its parking management company, their employees, agents, and representatives, harmless from any and all such claims relating to the Upgrades, including reasonable attorney's fees. Upon request by the City, Developer shall also be solely responsible for relocating any Upgrades for any reason whatever, providing the City shall not unreasonably request that any Upgrades be relocated. Developer further assumes all risks of any type or nature in connection with any Upgrades, including, but not limited to, any damage to, any theft of, or any vandalism of the Upgrades. Upon the expiration and/or termination of this Agreement, Developer shall properly and timely remove any Upgrades, including any signs, that it installed or had installed and restore the areas where Upgrades were installed to the condition the areas were in prior to the installation of the Upgrades by Developer. Developer agrees that if Developer fails to remove the Upgrades and properly restore the areas within thirty (30) days of any such expiration or termination of this Agreement that City may do so and dispose of the Upgrades as City sees fit and charge the Developer all reasonable costs and expenses of such removal and disposal. Furthermore, all Upgrades, including cameras, and signage are subject to applicable federal, state and local laws, rules, and regulations and Developer shall also obtain at Developer's cost any required approvals and permits.

6. Operation, Maintenance, Repair and Temporary Relocation

a. City will operate the Garage in a manner similar to the operation of other municipal-owned and/or controlled parking facilities in the region. City will maintain the Garage in good working condition and repair and will make such repairs, perform such preventative maintenance, structural repairs or other improvements as the City reasonably deems necessary. In performing maintenance, repairs or replacements, City shall use all commercially reasonable efforts to minimize interference with the use, occupation and enjoyment of the Garage by Developer and Occupiers. If possible, maintenance, repairs and replacements shall be confined to the area actually being so maintained, repaired or replaced. The City will use commercially reasonable efforts to make other parking spaces available in the event of temporary closure of the Garage for the purposes of maintenance, repair, or replacement, at no additional cost or expense of the alternate parking spaces to the Developer. Other than in the event of an emergency, the City will

confer with Developer prior to any closures of the Garage and will endeavor to accomplish all Garage maintenance, repairs and replacements in a manner that will result in the least inconvenience for the Occupiers. In the event that Developer is denied the use of any Spaces due to any such maintenance, repairs, replacements or otherwise, and replacement parking in the Garage reasonably satisfactory to Developer is not provided by the City, the Rent with respect to such parking may be abated until use of the affected Spaces is restored. Otherwise, the Developer will not be entitled to any payments or offsets from the City's monthly, hourly, daily, or parking revenues against the parking charges otherwise due from the Developer to the City under the terms of this Agreement. Developer and/or Occupiers shall have no rights in or to any monies paid by anyone to the City, or revenues received from anyone by the City on account of parking in the Garage.

b. City shall provide and maintain interior and exterior illumination sufficient to illuminate the Garage and all means of pedestrian and vehicular access and egress thereto and therefrom, during all twilight and evening hours of operation.

c. City shall provide suitable and sufficient signs in and around the Garage as required for safe and orderly flow of pedestrian and vehicular traffic, including signage directing garage users to appropriate Mixed Use Structure entrances and on any general directories provided by City in the Garage. Notwithstanding the foregoing, Developer shall be solely responsible for all costs and expenses in connection with or resulting from the placement, installation, use, operation, maintenance, repair, removal, and/or any other matters involving nonstructural and cosmetic changes to the signage and re-marking of the Spaces. Any signs pertaining to the Mixed Use Structure will be subject to City's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

d. The Parties acknowledge that the design and operational plan of the garage is not complete at the time of the execution of this agreement. As such, future Condominium documents or operational plans may require further refinement of access and maintenance plans.

7. Damage to the Garage

During the Term of this Agreement, in the event of any damage or destruction of all or any portion of the Garage, City shall undertake promptly to repair and/or rebuild the Garage to provide to Developer as promptly as reasonably possible after the date of such damage or destruction the parking contemplated by this Agreement. In the event that any or all of the Spaces are unavailable for Developer's use as a result of any such damage or destruction, fees payable for such Spaces shall be abated until the Garage is restored and the affected Spaces are again available for use by Developer.

8. Default by Developer

a. Each of the following shall constitute a default hereunder by the Developer (each of the following events is hereinafter referred to as "Default"):

i. The failure or refusal by Developer to make any payment due to the City hereunder within fifteen (15) days after written notice of nonpayment is given by the City to the Developer and to any mortgagee of the Mixed Use Structure;

ii. The failure or refusal by the Developer to perform any of its other covenants or obligations hereunder within sixty (60) days after written notice of nonperformance is given by the City to the Developer and to any mortgagee of the Mixed Use Structure; provided, however, that if such failure to perform cannot reasonably be cured within sixty (60) days, the Developer shall not be in default if it commences within sixty (60) days steps reasonably calculated to cure the nonperformance and in good faith pursues those steps diligently and in good faith to completion (not to exceed ninety (90) days).

b. Upon the occurrence of a Default as set forth in Section 8(a), the City may immediately terminate this Agreement by written notice to the Developer. In addition to this right to terminate this Agreement, the City may also in the event of a Default by Developer hereunder exercise any and all other rights and remedies available to the City at law or in equity, including without limitation the recovery of any and all monetary damages that the City has suffered as a result of such Default.

c. The City agrees to give Developer's lender with first deed of trust on the Mixed Use Structure a copy of any notice of default sent to Developer, provided that the City has been notified in writing by certified mail, return receipt requested, of the addresses of such parties. The City further agrees that if Developer fails to cure any default under this Agreement within the time provided for in this Agreement, then prior to the City exercising any right to terminate this Agreement on account of such default, Developer's lender shall have an additional sixty (60) days within which to cure such default. If such default cannot be cured within that time, Developer's lender shall have such additional time as may be necessary if within such sixty (60) days, Developer's lender has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings, if necessary to effect such cure). The City may not exercise any right to terminate this Agreement on account of any such default by Developer, whether available under this Agreement, at law or in equity, while such remedies are being so diligently pursued by Developer's lender.

9. Force Majeure

A delay in, or failure of, performance by any party, shall not constitute a default, nor shall the Developer or the City be held liable for loss or damage, or be in breach of this Agreement, if and to the extent that such delay, failure, loss or damage is caused by an occurrence beyond the reasonable control of such party, and its agents, employees, contractors, subcontractors, and consultants, including results from Acts of God or the public enemy, compliance with any order or request of any governmental authority or person authorized to act therefore, acts of declared or undeclared war, public disorders, rebellion, sabotage, revolution, earthquake, floods, riots, strikes, labor or equipment difficulties, delays in transportation, inability to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities or any other causes, whether direct or indirect, and which by the exercise of reasonable diligence said party is unable to prevent. For purposes of this Agreement any one delay caused by any such occurrence shall not be deemed to last longer than six (6) months and the party claiming delay caused by any and all such occurrences shall give the other party written notice of the same within thirty (30) days after the date such claiming party learns of or reasonably should have known of such occurrence. Notwithstanding anything else set forth above, after a total of nine (9) months of delays of any type have been claimed by a party as being subject to force majeure, no further

delays or claims of any type shall be claimed by such party as being subject to force majeure and/or being an excusable delay.

10. Default by the City

In the event of any default, nonperformance, or breach of any of the terms or conditions of this Agreement by the City, Developer shall be entitled to the repayment of monies paid by Developer to the City during the period of default or a deduction from any payment due from Developer to the City for any Spaces that are not able to be used due to such default, nonperformance, or breach for the period of time of such inability to use such Spaces. In addition to the remedies set forth in the prior sentence, if the City is in default, nonperformance, or breach of any of the terms or conditions of the Agreement, Developer may provide the City and any City mortgagee with written notice of the same and the City shall have sixty (60) days following receipt of such notice from the Developer to cure any such default, nonperformance, or breach, provided if such default, nonperformance, or breach cannot be cured within sixty (60) days from the date of receipt of the notice from the Developer, the City, and/or its mortgagee shall be deemed to have cured the default as long as the City and/or its mortgagee undertakes to remedy the same within sixty (60) days following receipt of notice and the City and/or its mortgagee diligently proceeds to remedy such default, nonperformance, and/or breach.

11. Insurance Requirements

Developer shall maintain the insurance coverage as set forth in Exhibit “B” attached and incorporated into this Agreement and provide the proof of such insurance coverage as called for in Exhibit “B”, including workers’ compensation coverage if Developer hires any employees. If Exhibit “B” coverage exceeds reasonable insurance requirements for a parking deck, serving the intended purposes, then the City and Developer will agree on acceptable coverage. Such insurance coverage shall be obtained at the Developer’s sole expense and maintained during the Term of this Agreement and shall be effective prior to the beginning of any performance by the Developer or others under this Agreement. All insurance companies providing the coverages required hereunder must be lawfully authorized to do business in North Carolina and be acceptable to City’s risk manager, in its reasonable discretion. Certificates evidencing required insurance shall be delivered to the City prior to the Commencement Date (as defined in Section 18 of this Agreement) or opening date of the garage, whichever is later and upon renewal of the applicable policies. Notice of cancellation or reduction or elimination of coverage shall be provided to additional insureds in accordance with the terms of the applicable policy.

12. Indemnity

a. *City Indemnity.* To the extent permitted by law, City hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless Developer, its leasehold mortgagees, and their respective affiliates, officers, directors, employees, agents, contractors, subcontractors, licensees and invitees (individually a “Developer Indemnatee” and collectively, “Developer Indemnatees”) from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys’ fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a Developer Indemnatee, as applicable (collectively, “Developer Claims”), arising out of or resulting from: (i) any default, breach, violation, or

nonperformance by City under this Agreement (including breach of any representation, warranty or covenant of City contained herein); or (ii) any negligent act or omission of City, including, without limitation, injury to or death of any person or damage to property arising out of any work, construction, reconstruction, restoration, maintenance, repair or other work to be done hereunder by City, except in all cases to the extent such Developer Claims are caused by the negligent act or omission or willful misconduct of Developer or Developer Indemnitees. The provisions of this Section 12(a) shall survive the expiration or earlier termination of this Agreement.

b. *Developer Indemnity.* Developer hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless City and its council members, officers, employees, agents, contractors, subcontractors, successors, assigns, licensees, mortgagees of City and invitees (individually a “City Indemnatee” and collectively, “City Indemnitees”) from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys’ fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a City Indemnatee, as applicable (collectively, “City Claims”), arising out of or resulting from: (i) any default, breach, violation, or nonperformance by Developer under this Agreement (including breach of any representation, warranty or covenant of Developer contained herein); or (ii) any negligent act or omission of Developer, including, without limitation, injury to or death of any person or damage to property arising out of any work construction, reconstruction, restoration, maintenance, repair or other work to be done hereunder by Developer, except in all cases to the extent such City Claims are caused by the negligent act or omission or willful misconduct of City or City Indemnitees. The provisions of this Section 12(b) shall survive the expiration of earlier termination of this Agreement.

13. Intentionally Deleted.

14. Title to Property; Memorandum

a. City covenants that it has full right to enter into this Agreement as of the date hereof and City is or will be seized in fee simple of and have good and marketable title to the Garage, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent City from performing its obligations hereunder.

b. Upon Developer’s request, City will execute and deliver to Developer an original memorandum of this Agreement in form reasonably satisfactory to City and Developer, and Developer may record the memorandum in the land records of the County of Cabarrus, North Carolina. Developer will pay all recording taxes or fees required in connection with recording such memorandum.

15. Attorneys’ Fees

In the event of any litigation between City and Developer arising out of this Agreement, each party shall bear its own expense.

16. Assignment and Leasing

a. Developer may not assign this Agreement, in whole or in part, except to a purchaser of the Apartments in the event of a sale thereof, subject to the written approval of the City which approval shall not be unreasonably withheld. Developer shall also be permitted to assign this Agreement to any affiliate or to any lender providing financing in connection with the Apartments as collateral for its loan and to sublease individual spaces that may, from time to time, be in excess of the amount of parking required to accommodate the needs of the Mixed Use Structure.

b. Except as provided in Section 16(a) above, Developer may not assign, transfer, or pledge any of its rights under this Agreement without the prior written consent of the City and the City may grant or deny its consent in City's sole discretion.

c. Notwithstanding any permitted assignment, the Developer shall remain responsible for all obligations under this Agreement unless the City specifically grants the Developer a release in writing.

17. Notices

Except where other forms of notice are expressly and specifically authorized in this Agreement, all notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

| | |
|-----------------|---|
| To the City | City Manager City of Kannapolis 401 Laureate Way Kannapolis, NC 28081 Attn: Michael B. Legg |
| With a copy to: | City Attorney City of Kannapolis 401 Laureate Way Kannapolis, NC 28081 Attn: Walter M. Safrit, II |
| With a copy to: | Parker Poe Adams & Bernstein LLP Three Wells Fargo Center 401 South Tryon St., Suite 3000 Charlotte, NC 28202 Attn: Anthony Fox, Esq. |
| To Developer | Kannapolis Master Venture, LLC 2240 East Sunrise Boulevard, #90 Fort Lauderdale, Florida 33304 Attn: Peter Flotz |
| With a copy to: | Mr. Kent Gregory 3 E. Gordon St. |

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

18. MDA

This Agreement is expressly conditioned on the execution, delivery and performance of the MDA by the Developer which terms are incorporated herein by reference; provided that after the Commencement Date (defined as the date of the first Certificate of Occupancy for the Mixed Use Project), this Lease shall not be terminated or voided by City for any default by Developer under the MDA.

19. Dispute Resolution.

Disputes arising under this Agreement shall be mediated pursuant to the City “Rules Implementing Mediated Settlement Conferences”. Disputes resulting in unsuccessful mediations shall be determined in the state courts of North Carolina with its venue in Cabarrus County.

20. Iran Divestment Act Certification

Developer certifies that, if it submitted a successful bid for this Agreement, then as of the date it submitted the bid, Developer was not identified on the Iran List. If it did not submit a bid for this Agreement, Developer certifies that as of the date that this Agreement is entered into, Developer is not identified on the Iran List. It is a material breach of this Agreement for Developer to be identified on the Iran List during the term of this Agreement or to utilize on this Agreement any contractor or subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section – “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with N.C.G.S. §143C-6A-4 of the N.C. Iran Divestment Act.

21. Entire Agreement

This Agreement, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties hereto with respect to the matters addressed herein and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by City and Developer.

22. Miscellaneous

a. The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

b. In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

c. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of North Carolina.

d. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

[REMAINDER PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY:

CITY OF KANNAPOLIS, NORTH CAROLINA

By: _____

Name: _____

Title: City Manager

Bridgette Bell, City Clerk, MMC, NCCMC

Approved as to form:

Walter M. Safrit, II, City Attorney DEVELOPER:

KANNAPOLIS CITY CENTER I, LLC,
a North Carolina limited liability company

By: KANNAPOLIS CITY CENTER I MANAGER, LLC,
a Delaware limited liability company, its Manager

Peter Flotz, Manager

Exhibit “A”

PARKING FEE WAIVER AND RENT THRESHOLD

| Year | Monthly Apt. Rent Threshold | Monthly Parking Payment |
|-------------|------------------------------------|---|
| Year 1 | \$1.41 | 50% of rent above threshold, max of \$50/space/unit |
| Year 2 | \$1.45 | 50% of rent above threshold, max of \$50/space/unit |
| Year 3 | \$1.50 | 50% of rent above threshold, max of \$50/space/unit |
| Year 4 | \$1.54 | 50% of rent above threshold, max of \$50/space/unit |
| Year 5 | \$1.59 | 50% of rent above threshold, max of \$50/space/unit |
| Year 6 | \$1.63 | 50% of rent above threshold, max of \$50/space/unit |
| Year 7 | \$1.68 | 50% of rent above threshold, max of \$50/space/unit |
| Year 8 | \$1.73 | 50% of rent above threshold, max of \$50/space/unit |
| Year 9 | \$1.79 | 50% of rent above threshold, max of \$50/space/unit |
| Year 10 | \$1.84 | 50% of rent above threshold, max of \$50/space/unit |
| Year 11 | Waiver ends | Per Development Agreement |

1. “Year 1 begins at issuance of C.O. of Mixed Use Structure

Exhibit "B"

Insurance Requirements

Garage Lease Insurance

A. Insurance Coverage

Developer shall obtain insurance to satisfy the requirements hereunder. The policies shall be with companies authorized to do business in North Carolina and rated "A" or above by A.M. Best Company. Developer, individually or by and through its subcontractors, shall satisfy the following requirements and provide the following coverage:

(a) General Requirements.

1. Developer shall name the City as an additional insured under the liability policies required by this section.
2. Developer's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from Developer's operations under this Agreement. Developer and each of its subcontractors shall and does waive all rights of subrogation against the City.
3. City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of Developer and/or subcontractor providing such insurance.
4. Developer shall provide the City with certificates of insurance and endorsements documenting that the insurance requirements-set forth in this paragraph have been met, and that the City be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. Developer shall further provide such certificates of insurance to the City at any time requested by the City after the execution of this Agreement, and shall provide such certificates within five (5) days after the City's request. The City's failure to review a certificate of insurance sent by or on behalf of Developer shall not relieve Developer of its obligation to meet the insurance requirements set forth in this Agreement.
5. Should any or all of the required insurance coverage be self-funded/self-insured, Developer shall furnish to the City a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

(b) Types of Insurance.

1. Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combines single limit-bodily injury and property damage.
2. Commercial General Liability. Bodily injury and property damage liability as shall protect Developer and any subcontractor performing work under this Agreement, from claims of bodily

injury or property damage which arise from operation of this Agreement, whether such operations are performed by Developer, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement.

3. Workers' Compensation Insurance. Developer shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

(c) Certificates of all required insurance and endorsements shall be furnished to the City and shall contain the provision that the City will be given thirty (30) day advance written notice of any intent to amend or terminate by either the insurance or the insuring company.

(d) Failure to maintain the insurance coverage required in this paragraph is a material default subject to termination of this Agreement.

B. Notice of Cancellation

Developer shall notify the City, in writing immediately upon learning of cancellation or reduction of the insurance afforded by its policy.

Garage Construction Insurance:

In addition to the above, property insurance on a builder's "all risk" or equivalent policy in the amount of the contract amount plus the value of any subsequent modifications, cost of materials supplied or installed on a replacement cost basis.



NOTICE OF PUBLIC HEARING

NOTICE IS GIVEN that the Kannapolis City Council (“City Council”) will conduct a public hearing relating to the City of Kannapolis (“City”) amending the Master Development Agreement executed January 23, 2017, as amended April 26, 2018 and November 12, 2018, (“Agreement”) pursuant to North Carolina General Statutes §§ 160-457, and 160A-458.3 with Kannapolis Master Venture, LLC or an associated affiliate (hereinafter, “KMV”). Pursuant to the Agreement, the City has conveyed to KMV certain unimproved real property consisting of approximately 3.81 acres to be conveyed as a part of the downtown development project located in the City’s Central Business District (“Property”), comprised of Cabarrus County Tax Parcel Numbers:

56136904880000; 56136913010000; 56136902640000; 56136901270000; and 56135981640000,

As a part of the downtown development project, KMV will construct a 400-space public parking garage to be conveyed to the City. The City will lease 275 parking spaces in the parking garage to KMV. The City Council and KMV now propose to amend the Agreement (the “Amendment”) and the proposed Parking Garage Lease Agreement to restructure the parking fees. The City will allow a conditional waiver of the parking fee for ten years subject to the KMV project meeting certain rent thresholds. If those rent thresholds are exceeded, fifty percent of the amount above the threshold would be paid as a parking fee until a fifty dollar per unit per month fee is achieved. Upon the expiration of the ten year period, the parking fee shall not exceed the parking rate charged to other bulk/wholesale parking users in the City. A garage parking fee for the hotel constructed in Phase 2 shall be a monthly fee of \$13,750. The Agreement will also be amended to provide for a property tax minimum guarantee for Phase 1 and Phase 2 of the Demonstration Project.

A copy of the proposed Amendment will be available for public inspection at the office of the City Manager, located in City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, during regular business hours.

The City Council intends to accept public input and vote on the Amendment following the public hearing.

The hearing will be held in the City Council Chambers located at City Hall, 401 Laureate Way, Kannapolis, North Carolina 28081, beginning at or after 6:00 p.m. on January 28, 2019. At the time and place fixed for this public hearing, the City will discuss the terms of the Master Development Agreement Amendment and its related documents. The City Council will receive public comment relating to the Amendment.

Bridgette Bell, City Clerk
City of Kannapolis
North Carolina

Publish this Friday (Jan. 18) and next Friday (Jan. 25)



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE Public Hearing and Action on Minimum Housing
Code Violations - 909 Miller Street

A. Action Requested by City Council

1. Hold a Public Hearing for Minimum Housing Code Violations
2. Motion to adopt an Ordinance directing the Housing Code Inspector to demolish the structure at 909 Miller Street.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The original Minimum Housing Code case for 909 Miller Street was opened on November 2, 2015 but the estate for the original related owners had not been completely resolved. Over the next several months communication with different family members continued as the estate was slowly distributed to family members. Those family members contested demolition of the structure indicating that the structure is not a house but rather a storage building used to store related items for other rental properties. Per Article 5.2.1.4. of the Unified Development Ordinance (UDO), storage buildings are defined as accessory structures and shall not be constructed or established on a lot until the primary use has been established. With no other primary structure on the property, the accessory use of the uninhabitable structure violates the UDO.

A title search was ordered once it was determined that the estate work had been completed and a new case with the new owner was opened on April 4, 2017. Aside from the removal of an out-building and debris by the new owner, there was no change in the status of the structure. To date, no permits have been obtained to repair the structure nor to demolish it. According to the water department's current monitoring system, it appears that water utilities have never been connected to the structure. Due to lack of response from the owner, a certified letter was sent making the owner aware that this case is scheduled to go before City Council.

D. Fiscal Considerations

Funding is available in the Planning Department budget. The expected cost to remove the structure is approximately \$3000 plus the cost to remove any asbestos found during an inspection.

E. Policy Issues

None

F. Legal Issues

None

G. Alternative Courses of Action and Recommendation

1. **Adoption of an Ordinance to demolish the substandard structure (Recommended)**
2. Do not adopt the ordinance and take no action
3. Table action to a future meeting

ATTACHMENTS:

File Name

- 📎 Hearing_Notice_909_Miller_Street_CE17-2068.docx
- 📎 Exhibit_A_909_Miller_Street.doc
- 📎 Findings_CE17-2068_909_Miller_Street.docx
- 📎 100_1619.JPG
- 📎 100_1623.JPG
- 📎 100_1620.JPG
- 📎 100_1621.JPG
- 📎 Lis_Pendens_909_Miller_Street_HC17-2068.pdf
- 📎 Demo_Ordinance_909_Miller_Street.pdf



File No. HC17-2068

COMPLAINT AND NOTICE OF HEARING BEFORE
THE HOUSING INSPECTOR UNDER THE MINIMUM HOUSING CODE

TO: Owners and parties in interest in the property located at **909 Miller Street (PIN 5613-29-4007)**, in the City of Kannapolis, North Carolina.

YOU ARE HEREBY NOTIFIED that the housing unit and/or lot located at the address designated above is a condition that appears to be unfit for human habitation and to violate the City of Kannapolis Minimum Housing Code in the following ways:

See Exhibit "A" Enclosed.

YOU ARE FURTHER NOTIFIED that a hearing will be held before the Inspector of the City of Kannapolis 401 Laureate Way at **10:00 A.M on November 21, 2017** for the purpose of finding the facts as to whether or not the condition of such property falls within the scope of the above mentioned sections of the Minimum Housing Code. At the hearing, you shall be entitled to offer such evidence as is relevant to material to the questions sought to be determined or the remedies to be effected.

YOU ARE FURTHER NOTIFIED that if, upon such hearing, the Housing Inspector shall find that the conditions of the above described property do in fact violate the Minimum Housing Code, and do in fact render such dwelling unit unfit for human habitation, the Housing Inspector will issue an order in writing directed to the owner of such property requiring the owner to remedy these conditions. The Housing Inspector may make such other orders and take such other procedures as are authorized under the Housing Code and the General Statutes of North Carolina.

Further information as to this matter may be obtained by contacting the undersigned at 704-920-4356. I can also be reached by e-mail at twcline@kannapolisnc.gov.

This the 8th day of November 2017.

Tony W. Cline
Housing Inspector

"Exhibit A"
Inspection conducted on October 19, 2016
909 Miller Street

A building or structure to be especially dangerous to life and held unsafe if the inspector finds any one of the following conditions existing in such building or structure (all conditions below apply to this property)

Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or welfare of the occupants or other people of the jurisdiction

Inadequate facilities for egress in case of fire or panic

Defects significantly increasing the hazards of fire, accident or other calamities

Lack of adequate ventilation, light, heating or sanitary facilities to such extent as to endanger the health, safety or general welfare of the occupants or other residents of the jurisdiction

Lack of proper electrical, heating or plumbing facilities required by this article which constitutes a health or a definite safety hazard

For any building whose occupancy classification requires it, lack of connection to a potable water supply and/or to the public sanitary sewer or other approved sewage disposal system

Any violation of the State Fire Prevention Code which constitutes a condition which is unsafe and especially dangerous to life

Any abandoned residential building which is found to be a health or safety hazard by the Inspector as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vacant as living quarters in absence of sanitary facilities

Specific violations will be discussed at the hearing with pictures to show substandard conditions around and within the structure

Repair cost is expected to be more than \$8,306 which is 50% of the tax value of the structure. The total tax value of the structure is \$16,612.00

November 21, 2017

File No. CE17-2068

FINDINGS OF FACT AND ORDER

TO: Owners and parties of interest of the property located at **909 Miller Street (5613-29-4007), in the City of Kannapolis, North Carolina.**

The undersigned Minimum Housing Code Inspector of the City of Kannapolis pursuant to law conducted a hearing at the time and place stated in the Complaint and Notice heretofore issued and served, or at a time to which the hearing with previous notice to the above-named owners and parties in interest or their agents or attorneys. At the hearing, the Answer, if any, filed by the owners and parties in interest were carefully analyzed and considered by the undersigned. In addition to other evidence presented, the undersigned personally inspected the property described above, and such inspection and examination has been considered, along with other evidence offered at this hearing.

Upon the record and all of the evidence offered and contentions made, the undersigned Minimum Housing Code Inspector does hereby find the following facts:

1. The above-named owners and parties in interest with respect to the property located at the place specified above were duly served as required by law with written Complaint and Notice of Hearing which set forth the Complaint that the premises located at the above address is in violation of the City of Kannapolis Minimum Housing Code and the particulars thereof, and fixed a time and place for a hearing upon the Complaint as provided by law. At the hearing, the following owners, persons in interest or their agents or their agent's attorneys, were present and participated therein:
Gwin Hilton

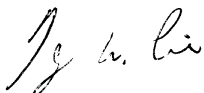
2. The premises described above does violate the City of Kannapolis Minimum Housing Code by reason of the conditions found to be present and to exist in and about the structure.

3. Due to these conditions, the building and/or premises described above is within the meaning of the City Minimum Housing Code, so as to be unfit for occupation.

IT IS THEREFORE ORDERED that the owners of the property above are required to bring such property into compliance with the Minimum Housing Code by:

- ☐ repairing, altering, improving or vacating and closing the deteriorated structure;
- ☒ repairing, altering, improving or vacating and demolishing the dilapidated structure;
- ☒ cleaning up the premises.

By a date no later than the 21st day of February, 2018.



Tony W. Cline
Code Enforcement Officer



11/29/2018
13:38



11/29/2018
13:39



11/29/2018
13:38

11/29/2018
13:39



NOTICE OF LIS PENDENS
FILED PURSUANT TO N.C. GEN. STAT. § 1-120.2
CITY OF KANNAPOLIS
PROCEEDING

THIS NOTICE OF LIS PENDENS is filed by the City of Kannapolis, a Municipal Corporation of Cabarrus County, North Carolina, to provide record notice of the following code enforcement proceeding:

1. This code enforcement proceeding is pending before the Housing Inspector of the City of Kannapolis, 401 Laureate Way, Kannapolis, NC 28081.

2. The parties to this code enforcement action are:

Gwin and Sally Hilton

3. The nature and purpose of this code enforcement action is correction of violations of the Kannapolis Code of Ordinances under (applicable proceeding checked):

☒ Chapter 8, Minimum Housing and Article 19, Part 6, North Carolina General Statutes.

☐ Chapter 4, Article II. Non-Residential Building Code, and Article 19, Part 5, North Carolina General Statutes.

Other: _____

A copy of the complaint and notice of hearing issued in said code enforcement proceeding is attached hereto and incorporated herein by reference.

4. The real property affected by this code enforcement proceeding is described as follows:

909 Miller Street

Cabarrus County Tax Department Parcel Identification Number (PIN#) **5613-29-4007**

The undersigned certifies further that a copy of this Notice of Lis Pendens was served upon the owners and parties in interest in the subject building or dwelling in accordance with NC Gen. Stat. §§ 1-120.2 and 160A-428 or 160A-445 as applicable.

Date: **November 8, 2017**

Title: Code Enforcement Officer

City of Kannapolis, North Carolina

For completion by Clerk:

JD _____, Page _____

File No. HC17-2068

AN ORDINANCE DIRECTING THE HOUSING INSPECTOR TO REMOVE OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED

WHEREAS, the City of the Kannapolis finds that the dwelling described herein is unfit for human habitation under the City Minimum Housing Code and that all of the procedures of the Minimum Housing Code have been complied with; and

WHEREAS, this dwelling should be removed or demolished as directed by the Code Administrator/Housing Inspector and should be placarded by placing thereon a notice prohibiting use for human habitation; and

WHEREAS, the owner of this dwelling has been given a reasonable opportunity to bring the dwelling up to the standards of the Minimum Housing Code in accordance with NCGS 160A-443(5) pursuant to an order issued by the Code Enforcement Officer/Housing Inspector on **November 21, 2017**, and the owner has failed to comply with the Order;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Kannapolis that:

Section 1. The owner of such building(s), dwelling(s) and premises is hereby ordered to vacate any occupants or personal property therein on or before **February 15, 2019**.

Section 2. The Housing Inspector is hereby authorized and directed to place a placard containing the legend:

"This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful."

on the building located at the following address:

909 Miller Street (5613-29-4007)

Section 3. The Code Enforcement Officer/Housing Inspector is hereby authorized and directed to proceed to remove or demolish the above described structure in accordance with his order to the owner thereof dated the **21st day of February 2018**, and in accordance with the Housing Code and NCGS 160A-443;

Section 4. (a) The cost of removal or demolition shall constitute a lien against the real property upon which the cost was incurred. The lien shall be filed in the office of the County Tax Collector, and shall have the same priority and be collected in the same manner as the lien for special assessments in Article 10 of NCGS Chapter 160A or as otherwise allowed by law. Each such Ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property is located, and shall be indexed in the name of the property owner in the grantor index, as provided by NCGS 160A-443(5).

(b) Upon completion of the required removal or demolition, the Code Enforcement Officer/Housing Inspector shall sell the materials of the dwelling and credit the proceeds against the cost of removal or demolition. The Code Enforcement Officer/Housing Inspector shall certify the remaining balance to the Tax Collector. If a surplus remains after the sale of the materials and satisfaction of the cost of removal or demolition, the Code Enforcement Officer/Housing Inspector shall deposit the surplus in the Superior Court where it shall be secured and disbursed in the manner provided by NCGS 160A-443(6).

Section 5. It shall be unlawful for any person to remove or cause to be removed the placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building therein declared to be unfit for human habitation.

Section 6. This Ordinance shall become effective upon its adoption.

ADOPTED this _____ day of _____.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Zachary D. Gordon, AICP, Planning Director
TITLE Voluntary Annexation of unaddressed property
located on Moose Road (Rowan County PIN
145-063-01)

A. Action Requested by City Council

1. Motion to approve a Resolution directing the Clerk to investigate the sufficiency of the petition and prepare a Certificate of Sufficiency
2. Motion to approve a Resolution of Intent to annex unaddressed property located on Moose Road - (Rowan County PIN 145-063-02) and Fix Date of Public Hearing on Question of Annexation for February 11, 2019

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

The property owner (PP&I LLC), has submitted a petition for the voluntary annexation of approximately 5.9 acres of property located off Moose Road. The subject property adjoins and is part of a subdivision located partially within the City's corporate limits. The applicant is requesting annexation to facilitate the extension of City utilities to this site. The property is located in an unincorporated portion of Rowan County, within the City's extra-territorial jurisdiction (ETJ). (See attached Vicinity Map).

D. Fiscal Considerations

None

E. Policy Issues

The subject property is located in an unincorporated area of Rowan County within the Extra-territorial Jurisdiction (ETJ) of the City that is zoned RM-2, with a 10,000 sq. ft. required minimum lot size. According to the City's current long range planning document - *Move Kannapolis Forward 2030 Comprehensive Plan* - this property is located in a designated "Primary Service Area". A Primary Service Area is "land where provision of services is preferred.

These are areas to encourage development within the planning horizon. Annexation is also envisioned as a part of the agreement to provide services.”

F. Legal Issues

Prior to considering the Annexation Ordinance, pursuant to NCGS 160A-31, the City Council must first direct the City Clerk to investigate the sufficiency of the petition. City Council must also adopt a Resolution of Intent to Annex and fix a public hearing date for consideration of the petition. It is requested that the public hearing date be set for February 11, 2019.

G. Alternative Courses of Action and Recommendation

1. **Motion to approve a Resolution Directing the Clerk to Investigate the sufficiency of the petition and prepare a Certificate of Sufficiency for the Petition (Recommended).**
2. **Motion to approve a Resolution of Intent to Annex for property located on Moose Road (Rowan County Property Identification Number (PIN) 145-063-02 and fix date of public hearing for February 11, 2019 on question of annexation (Recommended).**
3. Do not approve Resolutions
4. Table action to a future meeting.

ATTACHMENTS:

File Name

- ☐ Annex_Form_Signed.pdf
- ☐ Vicinity_A_2019_01.pdf
- ☐ MOOSE_ROAD_LEGAL_DESCRIPTION.pdf
- ☐ MOOSE_RD_ANNEX_PLAT.PDF
- ☐ Resolution_directing_the_Clerk_to_investigate_an_intent_to_annex.pdf
- ☐ Certificate_of_Sufficiency.pdf
- ☐ Resolution_to_set_a_public_hearing.pdf

KANNAPOLIS



PETITION REQUESTING A CONTIGUOUS ANNEXATION

DATE: 12/7/2018

To the City Council of the City of Kannapolis, North Carolina:

1. We, the undersigned owners of real property, respectfully request that the area described in paragraph 2 below be annexed to the City of Kannapolis, North Carolina.
2. The area to be annexed is contiguous to the primary limits of the City of Kannapolis, North Carolina and the boundaries of such territory are as follows:

See Attached **Survey Map** and **Metes and Bounds Description**

3. This petition is signed by all property owners of the area to be annexed.
4. _____ The undersigned owners acknowledge that the following City service(s) is (are) not presently available for immediate taps upon annexation: water _____ sewer _____; and, subsequently agree that the City shall not provide water and sewer service to the area to be annexed except in accordance with the City's standard water and sewer policy.
5. _____ The undersigned owners declare that zoning vested rights have been established on the area to be annexed under G.S. 160A-385.1 or G.S. 153A-344.1, and provide proof of such rights by attachment hereto.

_____ The undersigned owners hereby declare that no such vested rights have been established and that any vested rights previously acquired are hereby terminated.

| | <u>Name</u> (print or type) | <u>Address</u> | <u>Signature*</u> |
|----|-----------------------------|--|-------------------|
| 1. | PP&I, LLC | 77 Mccachern Blvd. SE ste 2, Concord, NC 28025 | |
| 2. | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ |

*Family members (e.g., husbands and wives) need to sign separately. Signatures for corporations, institutions, etc., are by those with the authority to sign legal documents.

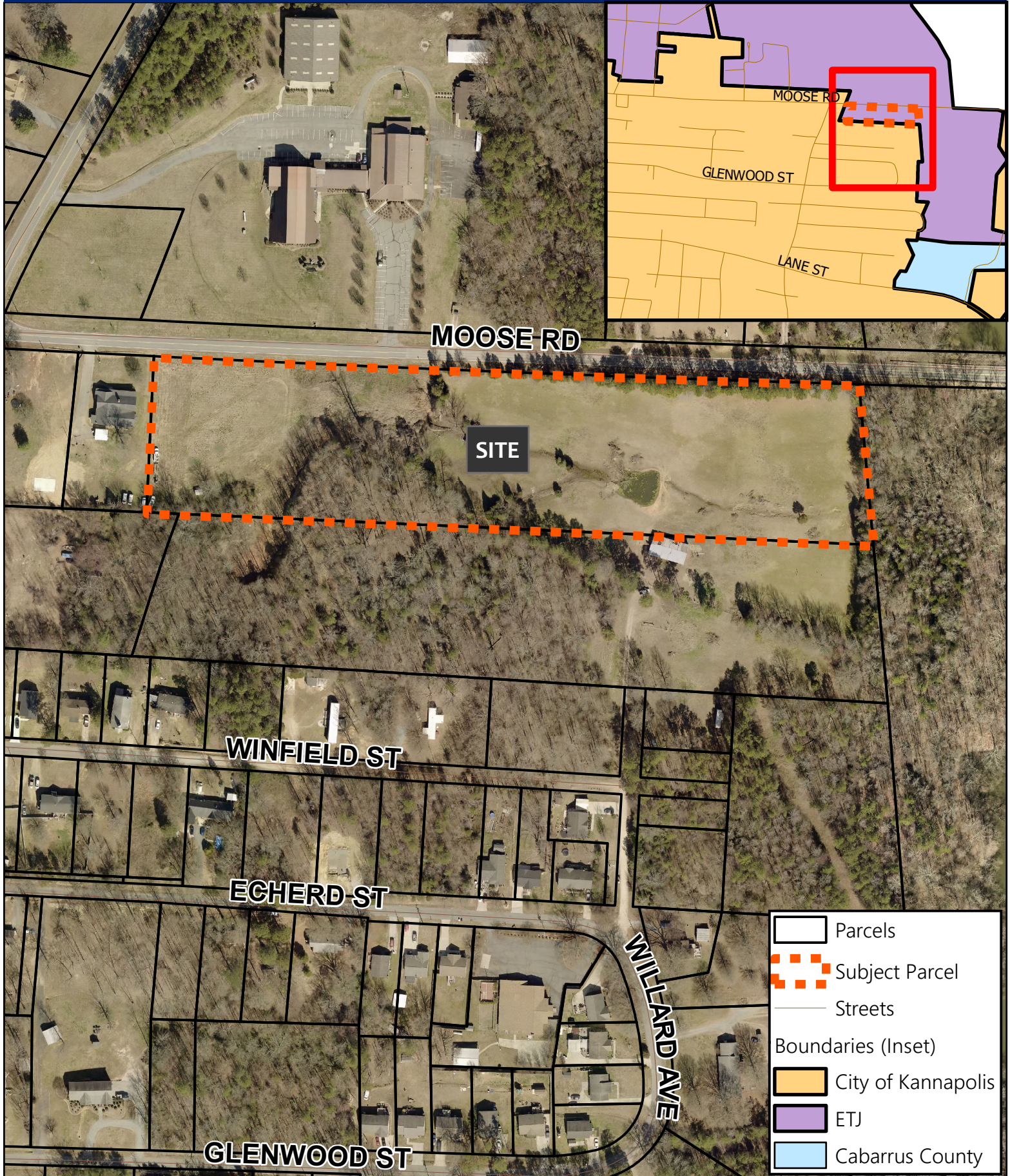


Vicinity Map

Case Number: Z-2019-01

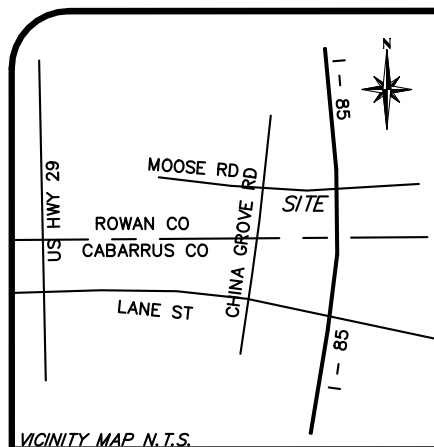
Applicant: PP & I, LLC

Moose Rd



LYING AND BEING IN THE CITY OF KANNAPOLIS. CHINA GROVE TOWNSHIP, ROWAN COUNTY, NORTH CAROLINA AND BEING ON THE SOUTH SIDE OF MOOSE ROAD, STATE ROUTE NUMBER 1308 (HAVING A 60' PUBLIC RIGHT OF WAY) ALSO BEING 5.91AC PORTION OF DEED BOOK (DB) 1319 PAGE (PG) 435 AND ROWAN COUNTY TAX IDENTIFICATION NUMBER (TAX ID) 145 063 2 MORE FULLY DESCRIBED AS FOLLOWS:

POINT OF ORIENTATION IS A NORTH CAROLINA GEODETIC MONUMENT NAMED "GLENN" WITH GRID COORDINATES OF N: 647,487.97ft E: 1,530,497.58ft; THENCE FROM SAID MONUMENT **S 25-37-50 E – 3,866.38'** TO A NAIL AT A 1" PIPE HAVING GRID COORDINATES OF N 644,002.03ft E: 1,532,170.23ft AND BEING **THE POINT OF BEGINNING**; SAID 1" PIPE BEING WITHIN THE SOUTHERN EDGE OF THE AFOREMENTIONED 60' RIGHT OF WAY (R/W) FOR MOOSE ROAD AND BEING A POINT IN THE LINE OF THE BOARD OF LIGHT & WATER COMMISSIONS OF THE CITY OF CONCORD "LAKE FISHER PROPERTY"; THENCE WITH SAID LAKE FISHER PROPERTY LINE **S 4-41-04 E – 280.09'** (CROSSING THE SOUTHERN EDGE OF SAID R/W AT 6.81') TO A POINT BEING THE TAX LINE BETWEEN TAX ID # 145 063 2 AND 145 063 1; THENCE WITH SAID TAX LINE **N 87-17-21 W – 932.52'** TO A POINT IN THE LINE OF BRIAN RABON DB 1300 PG 351; THENCE WITH SAID RABON LINE **N 3-37-42 E – 286.64'** (CROSSING A NEW IRON SET ON SAID R/W FOR MOOSE ROAD AT 263.33') TO A COMPUTED POINT IN THE ASPHALT OF SAID MOOSE ROAD; THENCE RUNNING IN A SOUTH EASTERLY DIRECTION WITHIN THE SAID R/W FOR MOOSE ROAD **S 86-43-16 E – 891.92'** TO **THE POINT OF BEGINNING**, CONTAINING 5.91 AC AND BEING SHOWN ON A REZONING MAP BY HARRISBURG SURVEYING, DATED DECEMBER 10, 2018; JOB# 181003REZONE



THE STATE OF NORTH CAROLINA
I, JAMES T. WEST, CERTIFY THAT THIS MAP WAS DRAWN BY ME
OR UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE BY ME
OR UNDER MY SUPERVISION; DEED DESCRIPTION RECORDED IN BOOK
1319 PAGE 435, THAT THE ERROR OF CLOSURE AS CALCULATED BY
LATITUDES AND DEPARTURES IS 1:23,000; THAT THE BOUNDARIES NOT
SURVEYED ARE SHOWN AS BROKEN LINES PLATED FROM INFORMATION
FOUND AS NOTED, THAT THIS MAP WAS PREPARED IN ACCORDANCE
WITH GENERAL STATUTE 47-30 AS AMENDED.
WITNESS MY HAND AND SEAL THIS 10th DAY OF DECEMBER 2018
JAMES T. WEST
L-3392
REG. NO.

I, JAMES T. WEST, CERTIFY TO ONE OR MORE OF THE FOLLOWING AS INDICATED
YES NO
☒ ☐ THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF
LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS
AN ORDINANCE THAT REGULATES PARCELS OF LAND.
☐ ☒ THAT THIS PLAT IS OF A SURVEY THAT IS LOCATED IN SUCH A PORTION
OF A COUNTY OR MUNICIPALITY THAT IS UNREGULATED AS TO AN
ORDINANCE THAT REGULATES PARCELS OF LAND.
☐ ☒ THAT THIS PLAT IS OF A SURVEY OF AN EXISTING PARCEL OR PARCELS
OF LAND.
☐ ☒ THAT THIS PLAT IS OF A SURVEY OF ANOTHER CATEGORY, SUCH AS
THE RECOMBINATION OF EXISTING PARCELS, A COURT ORDERED
SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION.
☐ ☒ THAT THE INFORMATION AVAILABLE TO THIS SURVEYOR IS SUCH THAT,
I AM UNABLE TO MAKE A DETERMINATION TO THE BEST OF MY PROF.
ABILITY AS TO PROVISIONS CONTAINED IN A. THROUGH D. ABOVE

| NUM | DISTANCE | BEARING |
|-----|----------|-------------|
| L1 | 33.15' | N2°58'23"E |
| L2 | 23.31' | S3°37'42"W |
| L3 | 6.81' | S4°41'04"E |
| L4 | 101.57' | S3°08'14"W |
| L5 | 146.90' | N86°59'04"W |
| L6 | 103.14' | N3°08'14"E |
| L7 | 100.99' | N20°18'20"E |
| L8 | 97.05' | N18°25'38"E |
| L9 | 53.61' | N20°18'00"E |
| L10 | 55.89' | N87°14'50"W |

I HEREBY CERTIFY THAT I AM OWNER OF THE PROPERTY SHOWN
AND DESCRIBED HEREON, WHICH IS LOCATED IN THE SUBDIVISION
JURISDICTION OF THE CITY OF KANNAPOLIS, AND THAT I HEREBY
SUBMIT THIS PLAN OF SUBDIVISION WITH MY FREE CONSENT,
ESTABLISH MINIMUM BUILDING SETBACK LINES. AND DEDICATE
TO PUBLIC USE ALL AREAS SHOWN ON THIS PLAT AS STREETS,
WALKS, PARKS, OPEN SPACE AND EASEMENTS (IF APPLICABLE)
EXCEPT THOSE SPECIFICALLY INDICATED AS PRIVATE, AND THAT
I WILL MAINTAIN ALL SUCH AREAS UNTILL ACCEPTED BY THE CITY
OF KANNAPOLIS, AND FURTHER THAT I HEREBY GUARANTEE THAT I
WILL CORRECT DEFECTS OR FAILURES OF IMPROVEMENTS IN SUCH
AREAS FOR A PERIOD OF ONE (1) YEAR COMMENCING AFTER
CERTIFICATE OF APPROVAL HAS BEEN EXECUTED BY THE CITY,
OR AFTER FINAL ACCEPTANCE OF REQUIRED IMPROVEMENTS,
WHICHEVER OCCURS LATER.

DATE OWNER

BY AUTHORITY OF THE CITY OF KANNAPOLIS SUBDIVISION REGULATIONS,
THIS FINAL PLAT FOR "MOOSE ROAD" IS HEREBY APPROVED.

DATE DIRECTOR OF PLANNING

DATE CITY ENGINEER

DATE DIRECTOR OF PUBLIC WORKS

APPROVAL DOES NOT GUARANTEE WATER AND SEWER AVAILABILITY
OR THE RIGHT TO BUILD A STRUCTURE ON THESE LOTS.

APPROVAL OF THIS PLAT DOES NOT PERMIT THE OWNER THE RIGHT TO
TO ALTER, PIPE, FILL OR RELOCATE ANY EXISTING DRAINAGE FEATURE
LOCATED ON THE PROPERTY WITHOUT SUBMITTING ENGINEERED PLAN
FOR REVIEW AND APPROVAL TO THE CITY OF KANNAPOLIS AND OTHER
APPROPRIATE STATE AGENCIES.

STATE OF NORTH CAROLINA, ROWAN COUNTY

I, _____, REVIEW OFFICER OF ROWAN COUNTY
, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS
AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

DATE REVIEW OFFICER

SITE CALCULATION TABLE:
TOTAL AREA: 11.45 AC
TOTAL NEW LOTS: 0

LEGEND:

EIP - EXISTING IRON PIN / PIPE PWW-PROPOSED WATER METER
NIP - NEW IRON PIN (#4 REBAR) PCO-PROPOSED SEWER CLEAN OUT
CP - COMPUTED POINT OVHDUTIL - OVERHEAD UTILITIES
P/P - POWER POLE FH - FIRE HYDRANT
MH - MANHOLE PDE - PUBLIC DRAINAGE EASEMENT
R/W - RIGHT OF WAY ESMT - EASEMENT
PVMT. - PAVEMENT STE - SIGHT TRIANGLE EASEMENT
CONC. - CONCRETE TRANSF. - ELECTRIC TRANSFORMER

Boundary & Lot Lines - - - - - Sight Triangle as labeled
-R/W- Road Right of Way -w-w- Waterline
-P- Adjoiners -OHU- Overhead Utilities
- Old Tract Line -ss-ss- Sanitary Sewer
-Setbacks- -sd-sd- Storm Drainage
- Easement as labeled -E-E- Electric Line
ETJ - Extra Territorial Limits

REZONING PLAT FOR

Part of 11.45ac on the South Side of
MOOSE ROAD
Part of DB 1319 PG 435 * TAX# 145 063 - 2
Owned by: PP & I, LLC
CITY OF KANNAPOLIS ETJ*CHINA GROVE TOWNSHIP
ROWAN COUNTY*NC
SURVEY FOR: PP & I, LLC
77 McCACHERN BLVD, CONCORD NC

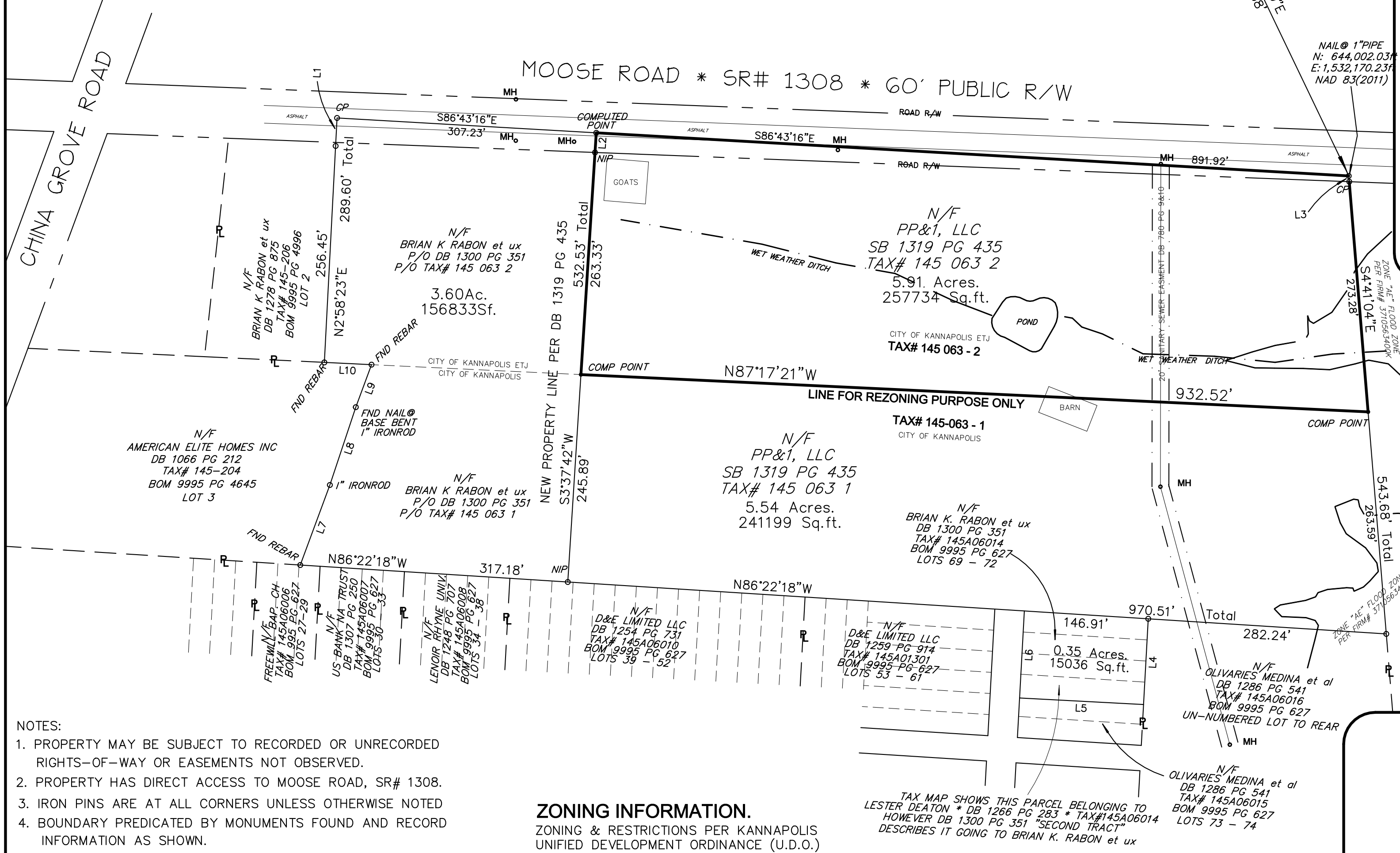


DATE: DECEMBER 2018
SCALE: 1" = 100'
CITY OF KANNAPOLIS
China Grove Twp
COUNTY: ROWAN
STATE: NORTH CAROLINA

HARRISBURG SURVEYING
DEUT. V: 27-17/PROV. V: 22-28
115 Plaza Dr Harrisburg, N.C.
(704)-455-9553 PHONE
http://www.harrisburgsurveying.com

DRAWN BY: SDG
COMP BY: JTW
REVISION
MSCAD: 181003Rezone

N.C.G.S. GRID NORTH
N.C.G. SURVEY COGS SYSTEM NAD 83
OBSERVED BY GPS SP80



- NOTES:
- PROPERTY MAY BE SUBJECT TO RECORDED OR UNRECORDED RIGHTS-OF-WAY OR EASEMENTS NOT OBSERVED.
 - PROPERTY HAS DIRECT ACCESS TO MOOSE ROAD, SR# 1308.
 - IRON PINS ARE AT ALL CORNERS UNLESS OTHERWISE NOTED
 - BOUNDARY PREDICATED BY MONUMENTS FOUND AND RECORD INFORMATION AS SHOWN.
 - AREAS DETERMINED BY THE COGO CALCULATION METHOD.
 - THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT THEREFORE OTHER EASEMENTS OR ENCUMBRANCES MAY EXIST THAT WERE NOT OBSERVED BY THIS SURVEYOR.
 - THIS PROPERTY LIES IN THE "LAKE FISHER WS-IV-CRITICAL AREA" ANY DEVELOPMENT OF THIS LAND IS SUBJECT TO MAXIMUM OF 24% IMPERVIOUS BUILT UPON AREA PER KANNAPOLIS UDO.
 - THE BEARING AND DISTANCES SHOWN HEREON ARE GROUND, NAD 83 (2011 ADJUSTMENT) BASED UPON THE NORTH CAROLINA GEODETIC STATE PLANE COORDINATE SYSTEM. THIS INFORMATION WAS TAKEN FROM A GPS OBSERVATION ON OCTOBER 8, 2018 USING A SP 80 IN CONJUNCTION WITH THE N.C.G.S., V.R.S. AND BASED ON THE C.O.R.S.

ZONING INFORMATION.

ZONING & RESTRICTIONS PER KANNAPOLIS
UNIFIED DEVELOPMENT ORDINANCE (U.D.O.)
Zoning District: RM-2
Setbacks:
Front: 25'
Side: 10'
Rear: 25'
SEE LOT #1 FOR TYPICAL PLACEMENT
"LAKE FISHER WS-IV - CA"
U.D.O.-CHAPTER 4.16.B.3
FOR FURTHER INFORMATION CONTACT
THE CITY OF KANNAPOLIS
PLANNING & ZONING AT 704-920 0000

A PORTION OF THIS PROPERTY IS LOCATED IN A ZONE"AE"
SPECIAL FLOOD HAZARD AREA AS SHOWN ON THE RATE
MAP PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT
AGENCY, FEDERAL INSURANCE ADMINISTRATION:
F.I.R.MAP: 3701563400K / EFFECTIVE DATED: 6/16/2009
F.I.R.MAP: 3701563400L / PRELIMINARY DATE: 8/30/2016

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE AN
INTENT TO ANNEX UNDER Chapter 160A ARTICLE 4A**

WHEREAS, the City Council may initiate annexation of contiguous property owned by the petitioners by adopting a resolution stating its intent to annex the property of the area described herein; and

WHEREAS, N.C.G.S Chapter 160A, Article 4A, Part 1 provide that the sufficiency of the petition shall be investigated by the City Clerk of the City of Kannapolis, North Carolina before further annexation proceedings consistent within the intent to annex can take place; and

WHEREAS, the City Council of the City of Kannapolis, North Carolina deems it advisable to direct the City Clerk to investigate the sufficiency of the intent to annex;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kannapolis, North Carolina that:

The City Clerk is hereby directed to investigate the sufficiency of the above-described intent to annex under N.C.G.S. Chapter 160A, Article 4, Part 1 and to certify as soon as possible to the City Council the result of the investigation.

ADOPTED this the 28th day of January 2019.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk

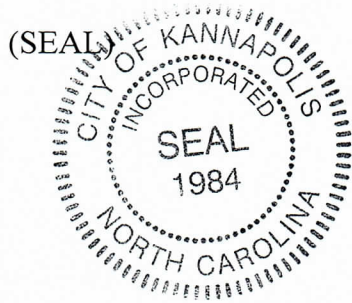
CERTIFICATE OF SUFFICIENCY

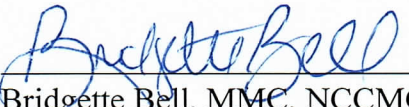
To the City Council of the City of Kannapolis, North Carolina.

I, Bridgette Bell, Kannapolis City Clerk, do hereby certify that I have investigated the attached petition and hereby make the following findings:

- a) The petition contains an adequate property description of the area proposed for annexation.
- b) The area described in petition is contiguous to the City of Kannapolis primary corporate limits, as defined by G.S. 160A-31.
- c) The petition is signed by and includes addresses of all owners of real property lying in the area described therein.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Kannapolis, this 28th day of January 2019.




Bridgette Bell, MMC, NCCMC
City Clerk

**RESOLUTION OF INTENT TO ANNEX AND FIX DATE OF PUBLIC HEARING ON QUESTION OF
ANNEXATION PURSUANT TO CHAPTER 160A ARTICLE 4A (Part 1) Section 160A-31(a)**

WHEREAS, pursuant to NCGS 160A-31 the City Council may initiate annexation of real property contiguous to the City's boundary pursuant to a Petition for Annexation by all property owners located therein by adopting a Resolution stating its intent to annex the property described.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Kannapolis, North Carolina that:

- Section 1. A public hearing on the question of annexation of the area described herein will be held at the Laureate Center, 401 Laureate Way, Kannapolis, NC at 6:00 PM on the 11th day of February, 2019.
- Section 2. The area proposed for annexation is described as follows:
See Attached Metes and Bounds Description
- Section 3. Notice of public hearing shall be published in the Independent Tribune on February 1 and February 8, 2019

ADOPTED this the 28th day of January, 2019.

Milton D. Hinnant, Mayor

ATTEST:

Bridgette Bell, MMC, NCCMC
City Clerk



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager
TITLE Train Station Second Platform Agreement

A. Action Requested by City Council

Motion to Approve the Kannapolis Station Second Platform Agreement.

B. Required Votes to Pass Required Action

Majority present at meeting

C. Background

A 2001 Municipal Agreement between the City and NCDOT provided for a future phase of the Kannapolis Train Station project. NCDOT has now secured funding for this phase. This phase (described generally in the attached agreement) consists of:

1. Construction of a second platform on the east side of the railroad tracks.
2. Construction of a bridge connecting the east and west sides of the railroad tracks (the two platforms). This bridge will now be located on the north side of the train station closer to the B Street intersection (the attached plans show it on the south side near the new parking lot). Option A on the attached site plans has been established as the preferable option. The bridge will include an elevator and will be also remain open for public, non-train station users.
3. Acquisition of the two single family homes north of the Train Station (owned by the City).
4. Demolition of the two homes and construction of a parking lot.

D. Fiscal Considerations

Under the agreement, NCDOT will be responsible for all design, right of way acquisition and construction. All of these costs will be the responsibility of NCDOT. There is not a local match for this project. The agreement provides that the City will be the owner of these facilities when completed and will responsible for future maintenance.

The total estimated costs of the Project is \$6,550,000 including preliminary engineering of \$600,000, right of way acquisition of \$1,250,000, and construction of \$4,700,000.

| |
|-------------------------|
| E. Policy Issues |
|-------------------------|

None.

| |
|------------------------|
| F. Legal Issues |
|------------------------|

None.

| |
|--|
| G. Alternative Courses of Action and Recommendation |
|--|

1. **Adopt the Agreement (Recommended).**
2. Table the action to a future meeting.
3. Take no action (potentially stopping the project).

ATTACHMENTS:

File Name

- ❏ 2018.11.19_NCDOT_Kannapolis_Station_Second_Platform_Project_Agreement.docx
- ❏ P-5725_Kannapolis_Station_Revised_Concepts_9_1_2018.pdf

NORTH CAROLINA
CABARRUS COUNTY

DRAFT 11/19/2018

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

KANNAPOLIS STATION SECOND
PLATFORM PROJECT AGREEMENT

AND

CITY OF KANNAPOLIS

TIP NO: P-5725
WBS: 47603, PE
WBS: TBD, CONST
WBS: TBD, ROW

This **KANNAPOLIS STATION SECOND PLATFORM PROJECT AGREEMENT** ("Agreement") is made this _____ day of _____ 2018, and constitutes an agreement between the North Carolina Department of Transportation, an agency of the State of North Carolina ("Department"), and City of Kannapolis, a local government entity ("Municipality"), to describe the proposed actions to be taken by the Department and Municipality ("Parties") to govern the design, planning, construction, ownership, maintenance, and coordination efforts associated with a second platform at the Kannapolis Station.

WITNESSETH:

WHEREAS, the Parties entered into a Municipal Agreement dated June 11, 2001, which was supplemented by Supplemental Municipal Agreement No. 1 on December 10, 2014, for certain passenger train station, platform, track, parking lot, and landscape improvements within the Municipality under Project P4010, Cabarrus County; and,

WHEREAS, the Municipal Agreement consisted of three phases: (1) removal and relocation of existing freight siding, and construction of a new concrete platform; (2) purchase of three parcels, and construction of a new station building, parking lot, traffic signal modifications, landscaping, and street improvements; and (3) purchase of three additional parcels, and construction of an addition parking lot thereon; and,

WHEREAS, the Department's Rail Division was awarded Federal funds through the American Recovery and Reinvestment Act of 2009 (ARRA) to invest in infrastructure improvements which would spur intercity passenger rail operations and long-term growth; and,

WHEREAS, the Department and the Municipality supplemented the Municipal Agreement executed on June 11, 2001 to provide certain additional improvements to the existing Kannapolis Station to increase ridership and improve the utility of intercity passenger rail operations by providing the construction of a platform canopy at the Kannapolis Station, located at Milepost 349.2; and,

WHEREAS, the Parties now agree that this Agreement shall supersede the aforementioned Municipal Agreement and Supplemental Municipal Agreement No. 1 to provide for the ownership and maintenance of the improvements performed pursuant to those agreements, executed on June 11, 2001, and December 10, 2014, under Project P4010; and,

WHEREAS, except as modified herein, all provisions contained in the aforementioned Municipal Agreement and Supplemental Municipal Agreement No. 1 shall remain in effect and are incorporated into this Agreement by reference; and

WHEREAS, the Parties now agree that the provisions of this Agreement shall govern the design, planning, construction, ownership, and maintenance of a second platform and associated improvements to the Kannapolis Station between Mileposts 349.1 to 349.3 for the Kannapolis Station Second Platform Project ("Project"); and,

WHEREAS, the Parties now agree that this Project, and the provisions of this Agreement, while superseding the aforementioned Municipal Agreement and Supplemental Municipal Agreement No. 1, shall be entered with the primary intent of spurring intercity passenger rail operations, long-term growth, increasing ridership, and improving the utility of intercity passenger rail operations; and,

WHEREAS, the Department is authorized by N.C. Gen. Stat. §§ 136-44.36 and 136-44.38, to administer State railroad revitalization programs and provide State financial assistance to cities for rail revitalization; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

NOW, THEREFORE, the Parties, each in consideration of the promises and undertakings of the other as set forth herein, do hereby covenant and agree, each with the other, as follows:

SECTION 1. SCOPE OF WORK

- (a) The Scope of Work shall generally consist of the design and planning ("Preliminary Engineering"), construction ("Project Work"), ownership, and maintenance of a second platform, and associated improvements, to the Kannapolis Station for the Project. Logical termini for the Project shall be between Mileposts 349.1 and 349.3, as shown on the site plan, attached as "Exhibit A," and made a part of this Agreement.

The Parties recognize and agree that consultants and/or sub-consultants may perform all or any portion of the Preliminary Engineering or Project Work.

SECTION 2. PRELIMINARY ENGINEERING RESPONSIBILITIES

- (a) The Department, its agents, and/or contractors, shall be responsible preparing and performing the following:
 - (1) environmental and planning document(s) in accordance with State Minimum Criteria, and coordination with State Historic Preservation Officer;
 - (2) Project plans, specifications, and a professional estimate of costs (PS&E package) needed to construct the Project;
 - (3) obtaining all State and local regulatory approvals, permits, licenses, and inspections as may be necessary for the construction of the Project,

including all erosion and sediment control permits using approved plans and documents; and

- (4) any additional work required to complete Preliminary Engineering.

SECTION 3. RIGHT OF WAY

- (a) The Department shall be responsible for the acquisition of right of way needed for the Project. All right of way activities, including acquisition or relocation of easement or property, shall be accomplished in accordance with N.C. Gen. Stat. §§ 133-5 through 133-8, 136-44.36, and the Department's Right of Way Manual.

SECTION 4. UTILITIES

- (a) In the event utility conflicts within the Project limits are discovered, the Department shall be solely responsible for relocation and adjustment of the utility, the cost of which shall be a Project cost.

SECTION 5. PROJECT WORK

- (a) The Municipality shall grant the Department a continuous and permanent right of entry for access to any Municipally-owned property in order to perform any necessary work for the additional improvements. The Municipality shall take no action to deny the Department required access, and assure its properties located at 205 S. Main Street, and 207 S. Main Street are vacated no later than May 1, 2019.
- (b) The Department shall construct, or cause to be constructed, the project in accordance with the plans and specifications of the Project, including demolition of the structures at the aforementioned addresses, and the procedures as provided herein shall be followed:
 - (1) during construction of the project, if any changes in the plans are necessary, such changes shall be approved by the Parties prior to the work being performed;
 - (2) the Department shall be responsible for all sampling and testing required;
 - (3) all materials incorporated into the project, and workmanship performed by the contractor, shall be in conformity with the standards and specifications of the Department;
 - (4) upon completion of the project, the Department shall furnish the Municipality with digital "record drawings" in PDF file;
 - (5) the Department shall ensure that the contractor complies with all of the terms of the contract and any instructions issued by the Department as a result of any review or inspection made by the Department not inconsistent with the standards or specifications referenced herein; and
 - (6) during construction of the project, the Department shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of both railroad and roadway traffic in

conformance with Department standards and specifications, and the latest edition of the Manual of Uniform Traffic Control Devices for Streets and Highways as published by the Federal Highway Administration.

SECTION 6. OWNERSHIP AND MAINTENANCE

- (a) It is understood by the Municipality that the ownership and permanent continuing control and maintenance of the existing Kannapolis Station and any improvements covered by this Agreement shall remain solely with the Municipality, in perpetuity. By entering into this Agreement, the Municipality is affirming it has the capability and financial resources to maintain the proposed facilities improvements as denoted in this Agreement.
- (b) As set forth in Section 5, Subsection (b) of this Agreement, if the Municipality relinquishes ownership and/or control of the Kannapolis Station or the Station facility ceases to be used and designated as described in this Agreement, the Department shall seek reimbursement of its investment.
- (c) The Useful Life of this Project is twenty (20) years. The minimum duration of this provision for this Agreement is for the Useful Life of the Project.
- (d) The Municipality shall provide the Department with a sixty (60) day written notice prior to any transfer of responsibilities for the Kannapolis Station facility, or any sale or transfer, in whole or in part, of the assets of, or interests in, the Kannapolis Station facility.
- (e) If, under the provisions of this Agreement, the property ceases to be used for rail passenger purposes as a result of a voluntary action by the Municipality, and/or its successors/assignees, the Department may, at the discretion of the Secretary, in accordance with applicable State law, and 49 C.F.R. §§ 18.31 and 18.32, require reimbursement for the prorated value of any Department investments. Reimbursement to the Department shall be made by the Municipality in one lump sum payment within thirty (30) days of receipt of an invoice from the Department.
- (f) In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment as provided in Section I.H.1, N.C.G.S. § 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by N.C.G.S. § 136-41.1 until such time as the Department has received payment in full.
- (g) This Agreement is binding upon, and shall inure to the benefit of the Parties themselves, as well as their respective representatives, successors, permitted assigns, agents, subsidiaries, affiliates, and lessees.

SECTION 7. FUNDING

- (a) The estimated costs of the Project are as follows:
 - (1) total estimated cost is \$6,550,000.00;
 - (2) estimated cost of Preliminary Engineering is \$600,000.00;
 - (3) estimated cost of Right of Way acquisition is \$1,250,000.00; and

- (4) estimated construction cost of Project Work is \$4,700,000.00.
- (b) The Department shall be responsible for the cost of the Project.
- (c) It is understood by all Parties to this Agreement that the amounts dedicated to the Project are based upon an estimated cost of the Project.

SECTION 8. LOCAL GOVERNMENT FINANCE

- (a) The Municipality shall be responsible for satisfying the requirements and responsibilities of Chapter 159 of the General Statutes of North Carolina.
- (b) The Municipality shall furnish the Department with a copy of the independent audit report required by Chapter 159 of the General Statutes of North Carolina within thirty days of completion of the report, but no later than nine months after the end of the audit period.

SECTION 9. OTHER PROVISIONS

- (a) **RECORD RETENTION.** Pursuant to N.C. Gen. Stat. §147-64.7, the Department, the State Auditor, and their respective authorized employees or agents shall be authorized to examine all books, records, and accounts of the Municipality insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement, or to costs charged to this Agreement. The Municipality shall retain any such books, records, and accounts for a minimum of three (3) years after the final date of payment under this Agreement, and shall make them available at its office at reasonable times during the contract period and until the expiration of the term required by this paragraph for inspection and audit by the Department and the State Auditor.
- (b) **INDEMNIFICATION OF DEPARTMENT.** The Municipality agrees to indemnify and hold harmless the Department, and the State of North Carolina, to the extent allowed by law, for any and all judgments for payment, damages, and/or liabilities of any nature, rendered against the Department, in connection with the Project. The Department shall not be responsible for any damages which may be initiated by third parties.
- (c) **DEBARMENT POLICY.** It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this Agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal or State Agency, or Department, and that they will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.
- (d) **AGREEMENT MODIFICATIONS.** Any modification to this Agreement will be agreed upon in writing by the Parties prior to being implemented.
- (e) **OTHER AGREEMENTS.** The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for the Project.

- (f) **AVAILABILITY OF FUNDS.** All terms and conditions of the Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement, and the Agreement shall automatically terminate if funds cease to be available.
- (g) **TERMINATION OF PROJECT.** The Department reserves the right to terminate this Agreement in the event the Municipality fails to comply with the terms of this Agreement, goes Bankrupt, transfers its rights in the Kannapolis Station facility, discontinues operations of the Kannapolis Station facility, or fails to remedy occurrences of Force Majeure events within 120 days of its initial occurrence. The Department shall provide the Municipality with a ninety (90) days written notice of termination. If the Municipality terminates the Preliminary Engineering or the Project Work prior to completion and acceptance, the Municipality shall reimburse the Department one hundred percent (100%) of all actual costs expended by the Department associated with the Project Work.
- (h) **COMPLETE UNDERSTANDING.** The Parties agree that this Agreement embodies the complete understanding of the Parties with respect to the Project, and supersedes other prior or contemporaneous written or oral agreements, understandings, and negotiations with respect to the Project.
- (i) **SEVERABILITY.** The Parties agree that if any part, term, or provision of this Agreement is held to be illegal or in conflict with any State or Federal law or regulation, such provision shall be severable, and the remaining provisions will remain valid and enforceable.
- (j) **GOVERNING LAW.** North Carolina law shall govern interpretation and enforcement of this Agreement and any other matters relating to this Agreement. Any legal actions or proceedings brought by a Party arising from this Agreement shall be brought in the courts of Rowan County or Wake County, North Carolina, and in accordance with the laws of North Carolina. By the execution of this Agreement, the Parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections that they may have with respect to venue in any court sitting in Rowan County or Wake County, North Carolina.
- (k) **AUTHORIZATION.** The Parties acknowledge that the individual executing the Agreement on their respective behalves is authorized to execute this Agreement, on his/her behalf and to bind the respective entities to the terms contained herein, and that he/she has read this Agreement, conferred with his/her attorney, and fully understands its contents.
- (l) **SIGNATURES AND DUPLICATES.** A copy or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the Parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.
- (m) **ETHICS.** N.C. Gen. Stat. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C. Gen. Stat. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

IN WITNESS WHEREOF, this Supplemental Municipal Agreement No. 1 has been executed, in duplicate originals, the last day and year set out below, on the part of the Department and the Municipality by authority duly given.

ATTEST:

CITY OF KANNAPOLIS

CLERK

(MUNICIPAL SEAL)

BY: _____

MAYOR

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

Municipal Finance Officer

IN WITNESS WHEREOF, this Supplemental Municipal Agreement No. 1 has been executed, in duplicate originals, the last day and year set out below, on the part of the Department and the Municipality by authority duly given.

ATTEST

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: _____

BY: _____

NAME: Elizabeth Smith

NAME: Julie White

TITLE: Processing Agent

TITLE: Deputy Secretary for Multi-Modal
Transportation

DATE: _____

DATE: _____

MAILING ADDRESS:

North Carolina Department of Transportation

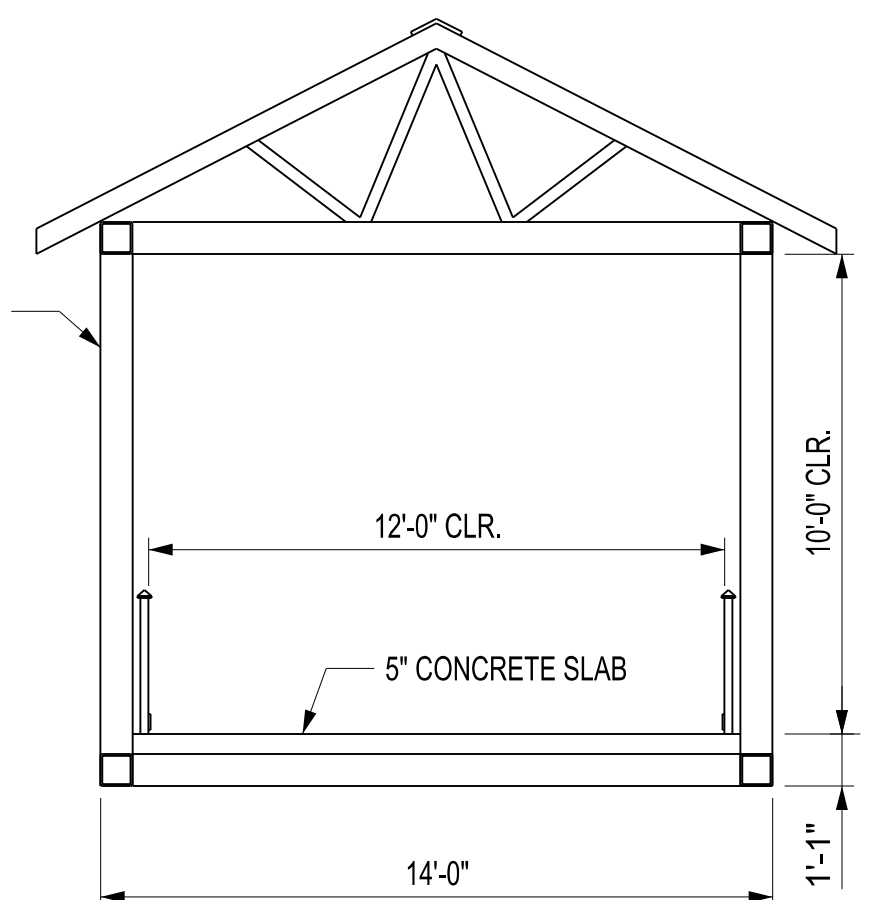
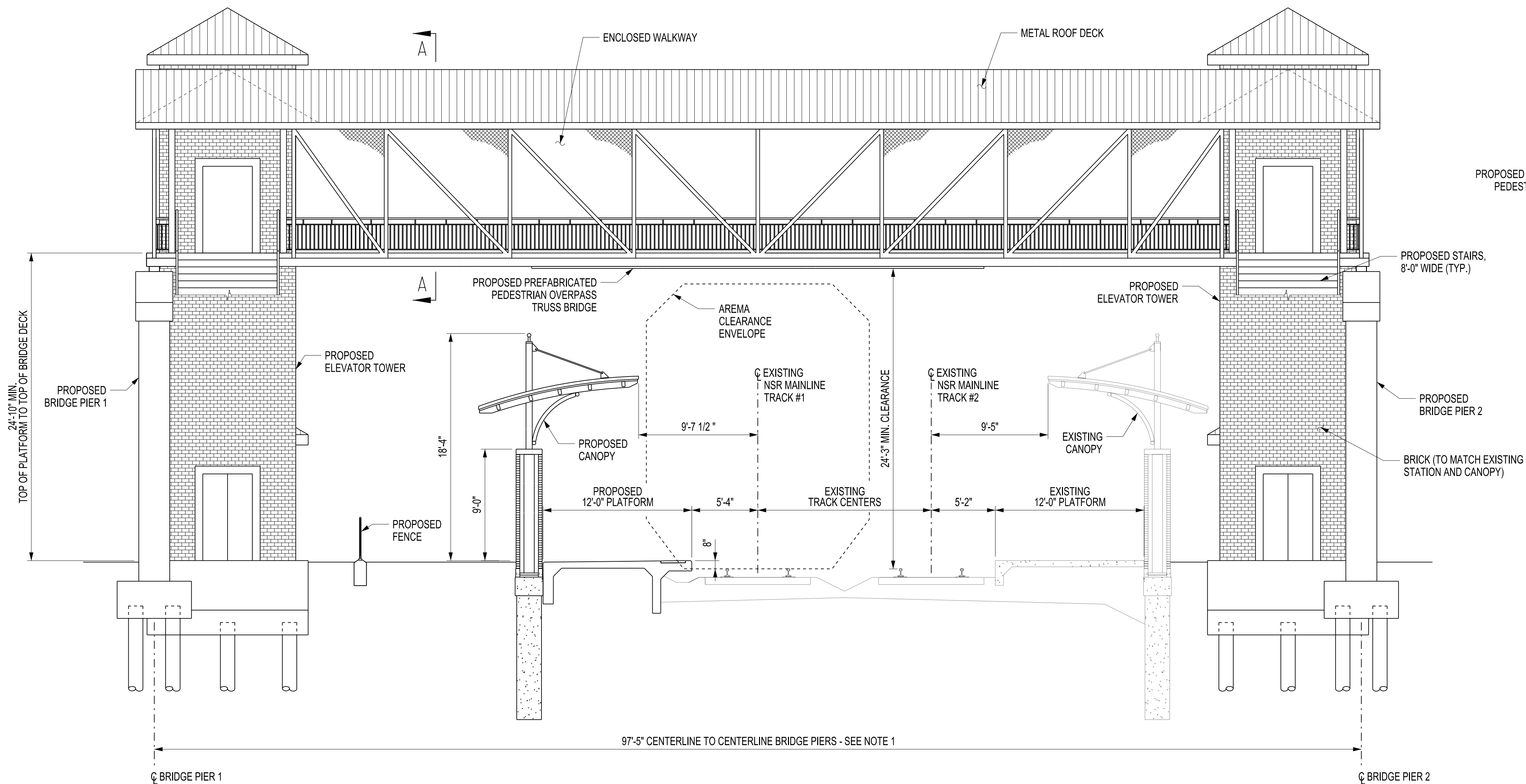
Rail Design & Construction Branch

1556 Mail Service Center

Raleigh, North Carolina 27699-1556

ATTN: Brad Smythe, PE
Senior Design Engineer

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____
(Date)



SECTION A-A

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

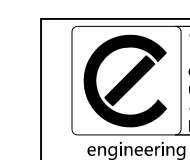
ELEVATION - PROPOSED TWO TRACK LAYOUT

LOOKING RAILROAD SOUTH
SCALE: 3/16" = 1'-0"

NOTE 1: CENTERLINE TO CENTERLINE OF BRIDGE PIERS FOR OPTION "B" IS 106'-0"

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

DOCUMENT NOT CONSIDERED
FINAL UNLESS ALL
SIGNATURES COMPLETED



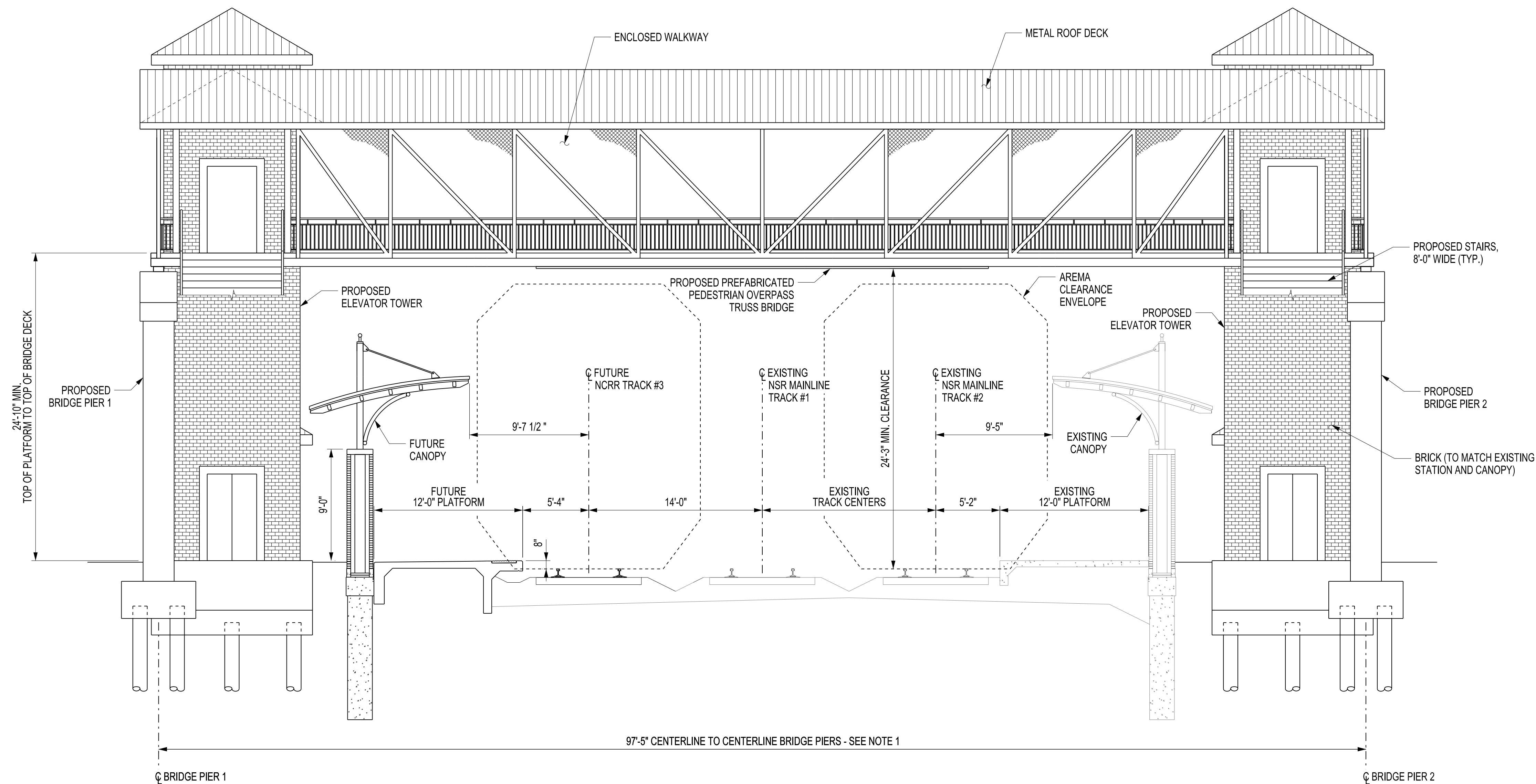
CROUCH ENGINEERING, INC.
NC License No. C-4246
5115 Maryland Way, Suite 225
Brentwood, TN 37027

DRAWN BY : K. LINDSEY DATE : 8/18
CHECKED BY : F. SOSA DATE : 8/18
DESIGN ENGINEER OF RECORD: K. LINDSEY DATE : -

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH

PROPOSED
ELEVATION

| REVISIONS | | | | | | SHEET NO. |
|-----------|-----|-------|-----|-----|-------|-------------------|
| NO. | BY: | DATE: | NO. | BY: | DATE: | |
| 1 | | | 3 | | | S-1 |
| 2 | | | 4 | | | TOTAL SHEETS 8 |



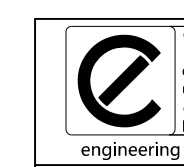
NOTE 1: CENTERLINE TO CENTERLINE OF BRIDGE PIERS FOR OPTION "B" IS 106'-0"

ELEVATION - FUTURE THREE TRACK LAYOUT

LOOKING RAILROAD SOUTH
SCALE: $\frac{3}{16}" = 1'-0"$

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

DOCUMENT NOT CONSIDERED
FINAL UNLESS ALL
SIGNATURES COMPLETED



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NC License No. C-4246
5115 Maryland Way, Suite 225
Brentwood, TN 37027

DRAWN BY : K. LINDSEY DATE : 8/18
CHECKED BY : F. SOSA DATE : 8/18
DESIGN ENGINEER OF RECORD: K. LINDSEY DATE : -

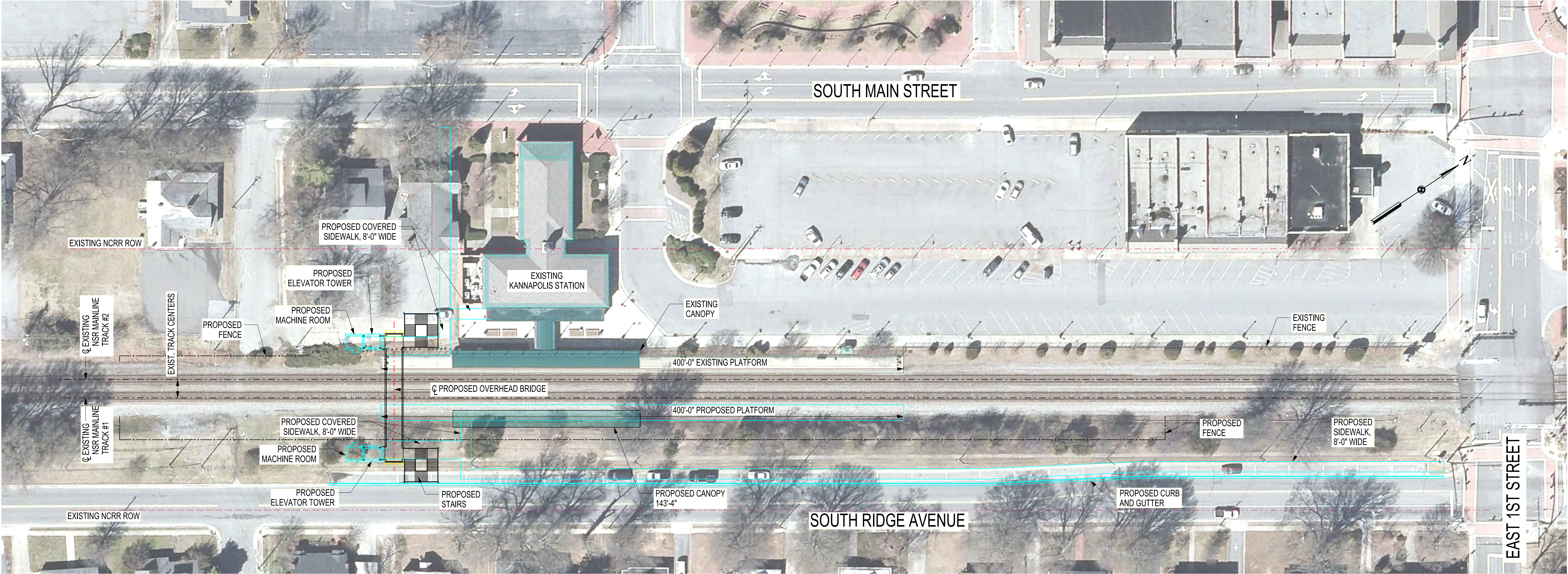
STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH

FUTURE ELEVATION

| REVISIONS | | | | | | SHEET NO. |
|--------------|-----|-------|-----|-----|-------|-----------|
| NO. | BY: | DATE: | NO. | BY: | DATE: | |
| 1 | | | 3 | | | S-2 |
| 2 | | | 4 | | | |
| TOTAL SHEETS | | | | | | 8 |

TO CHARLOTTE, NC
RR SOUTH

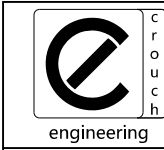
TO SALISBURY, NC
RR NORTH



PLAN VIEW - OPTION "A"
SCALE: 1" = 40'-0"

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

DOCUMENT NOT CONSIDERED
FINAL UNLESS ALL
SIGNATURES COMPLETED

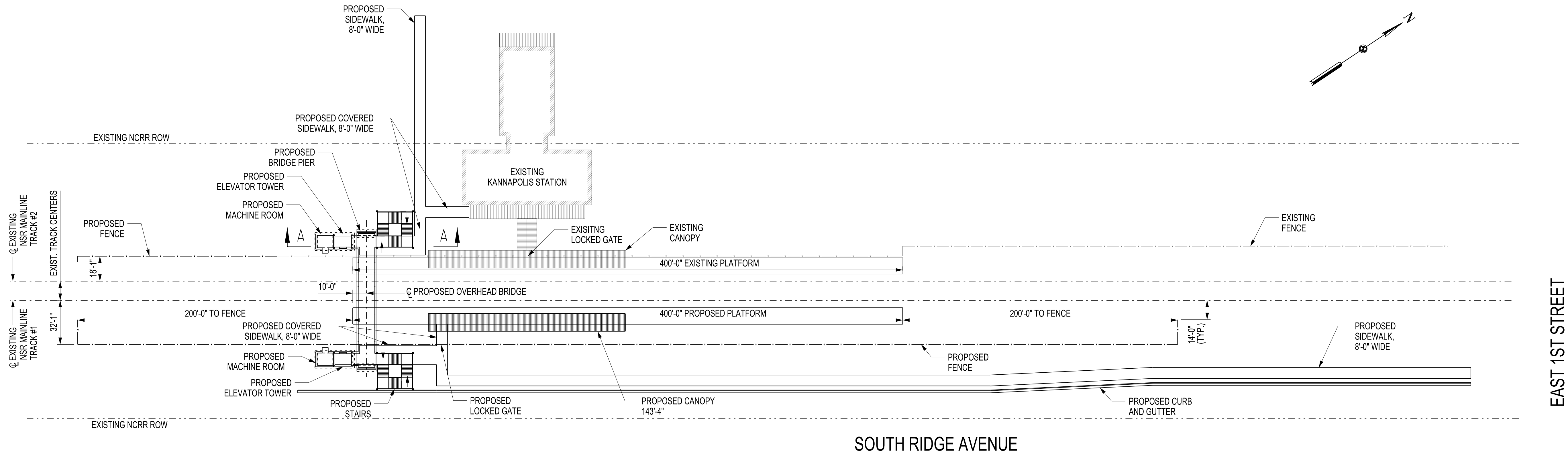
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|  CROUCH ENGINEERING, INC. NC License No. C-4246 5115 Maryland Way, Suite 225 Brentwood, TN 37027 | | | |
| DRAWN BY : | K. LINDSEY | DATE : | 8/18 |
| CHECKED BY : | F. SOSA | DATE : | 8/18 |
| DESIGN ENGINEER OF RECORD: | K. LINDSEY | DATE : | - |

| | | | | | |
|--|-----|-------|-----|-----|----------------------|
| STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION RALEIGH | | | | | |
| PLAN VIEW - AERIAL STATION CONCEPT OPTION "A" | | | | | |
| REVISIONS | | | | | |
| NO. | BY: | DATE: | NO. | BY: | DATE: |
| 1 | | | 3 | | |
| 2 | | | 4 | | |
| SHEET NO. S-3 | | | | | TOTAL SHEETS 8 |

TO CHARLOTTE, NC
←
RR SOUTH

TO SALISBURY, NC
→
RR NORTH

SOUTH MAIN STREET



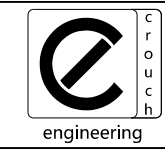
PLAN VIEW - OPTION "A"

SCALE: 1" = 40'-0"

NOTE: SEE SHEET S-5 FOR VIEW A-A

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

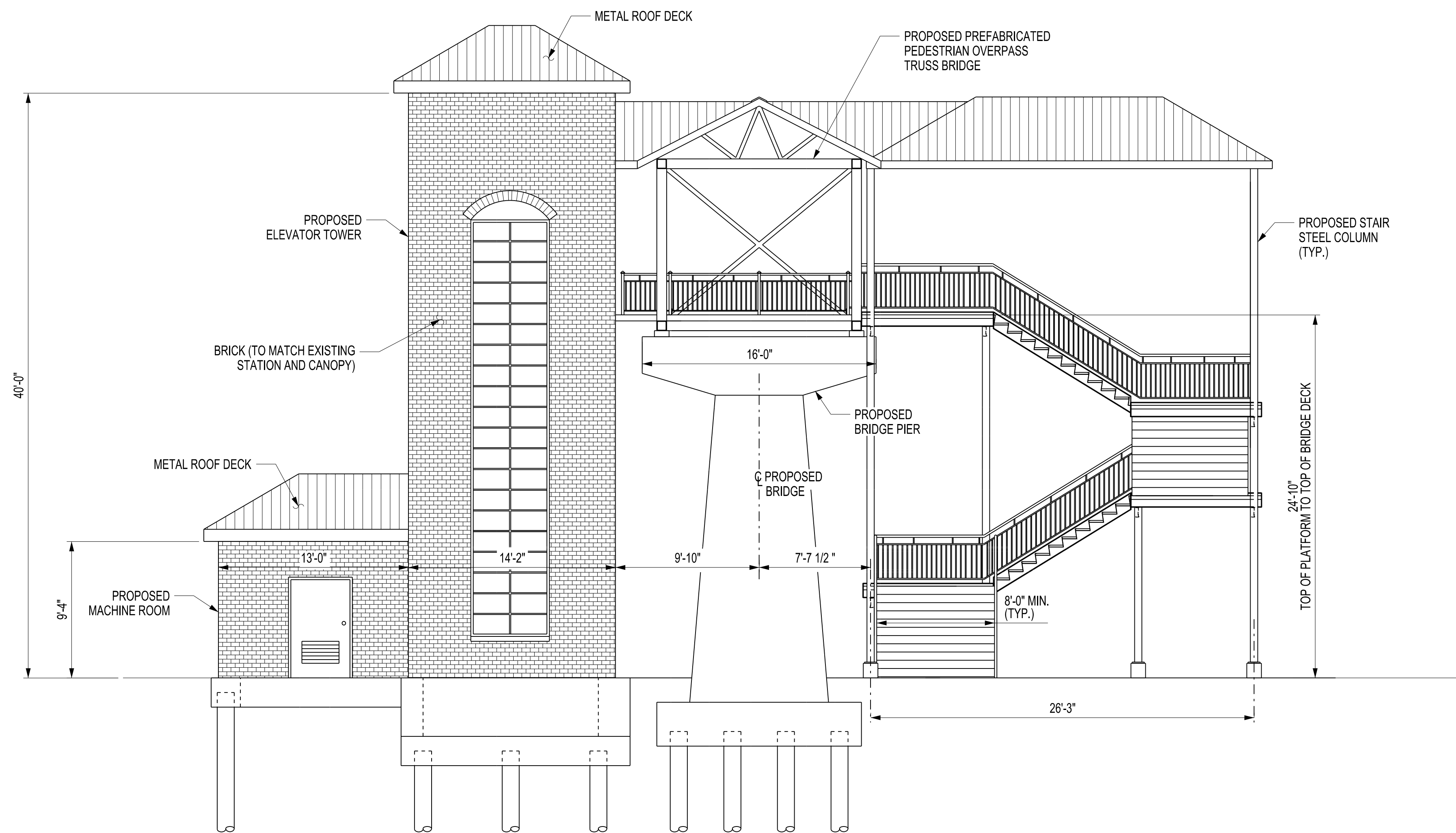
DOCUMENT NOT CONSIDERED
FINAL UNLESS ALL
SIGNATURES COMPLETED



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5115 Maryland Way, Suite 225
Brentwood, TN 37027

DRAWN BY : K. LINDSEY DATE : 8/18
CHECKED BY : F. SOSA DATE : 8/18
DESIGN ENGINEER OF RECORD: K. LINDSEY DATE : -

| STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION RALEIGH | | | | | |
|--|-----|-------|-----|-----|----------------------|
| PLAN VIEW STATION CONCEPT OPTION "A" | | | | | |
| REVISIONS | | | | | |
| NO. | BY: | DATE: | NO. | BY: | DATE: |
| 1 | | | 3 | | |
| 2 | | | 4 | | |
| SHEET NO. S-4 | | | | | TOTAL SHEETS 8 |



VIEW A-A

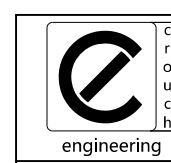
SIDE TOWER ELEVATION - OPTION "A"

LOOKING RAILROAD WEST
SCALE: $\frac{3}{16}" = 1'-0"$

NOTE: SEE SHEET S-4 FOR LOCATION OF VIEW A-A

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

DOCUMENT NOT CONSIDERED
FINAL UNLESS ALL
SIGNATURES COMPLETED



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Brentwood, TN 37027

DRAWN BY : K. LINDSEY DATE : 8/18
CHECKED BY : F. SOSA DATE : 8/18
DESIGN ENGINEER OF RECORD: K. LINDSEY DATE : -

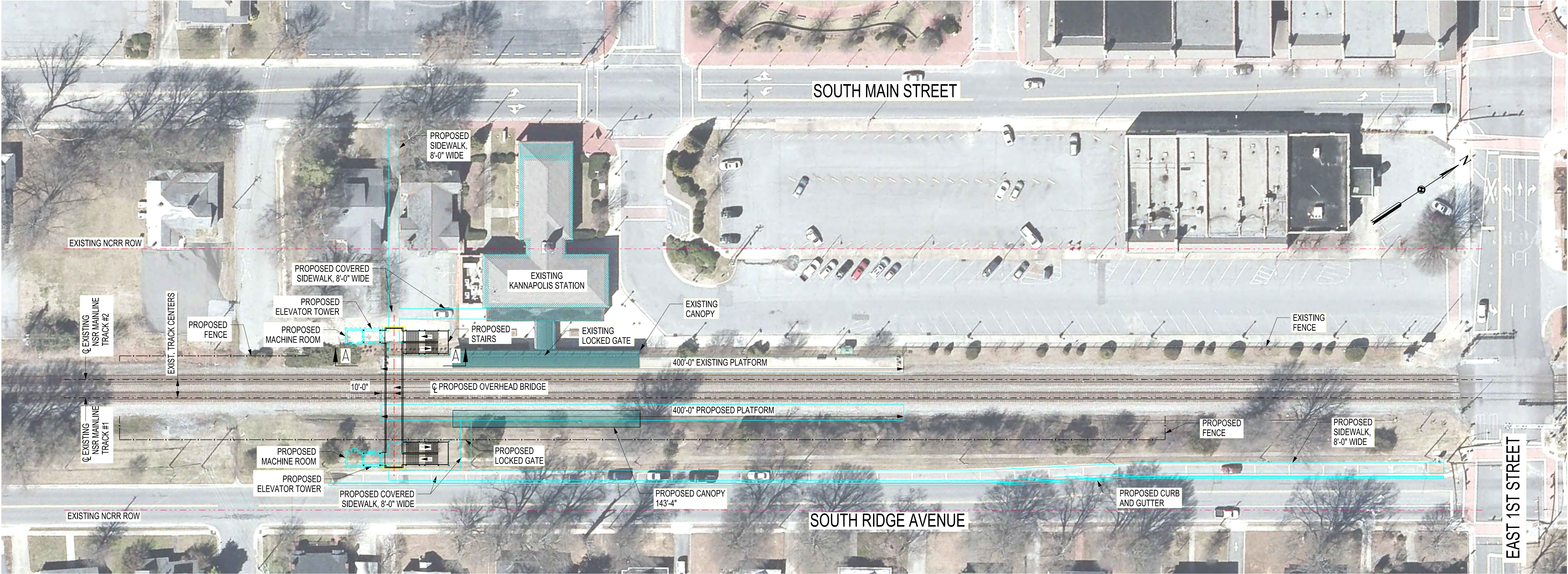
STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH

TOWER ELEVATION
VIEW A-A
OPTION "A"

| REVISIONS | | | | | | SHEET NO. |
|-----------|-----|-------|-----|-----|-------|----------------------|
| NO. | BY: | DATE: | NO. | BY: | DATE: | S-5 |
| 1 | | | 3 | | | TOTAL SHEETS 8 |
| 2 | | | 4 | | | |

TO CHARLOTTE, NC
RR SOUTH

TO SALISBURY, NC
RR NORTH

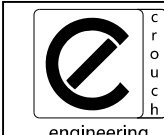


PLAN VIEW - OPTION "B"
SCALE: 1" = 40'-0"

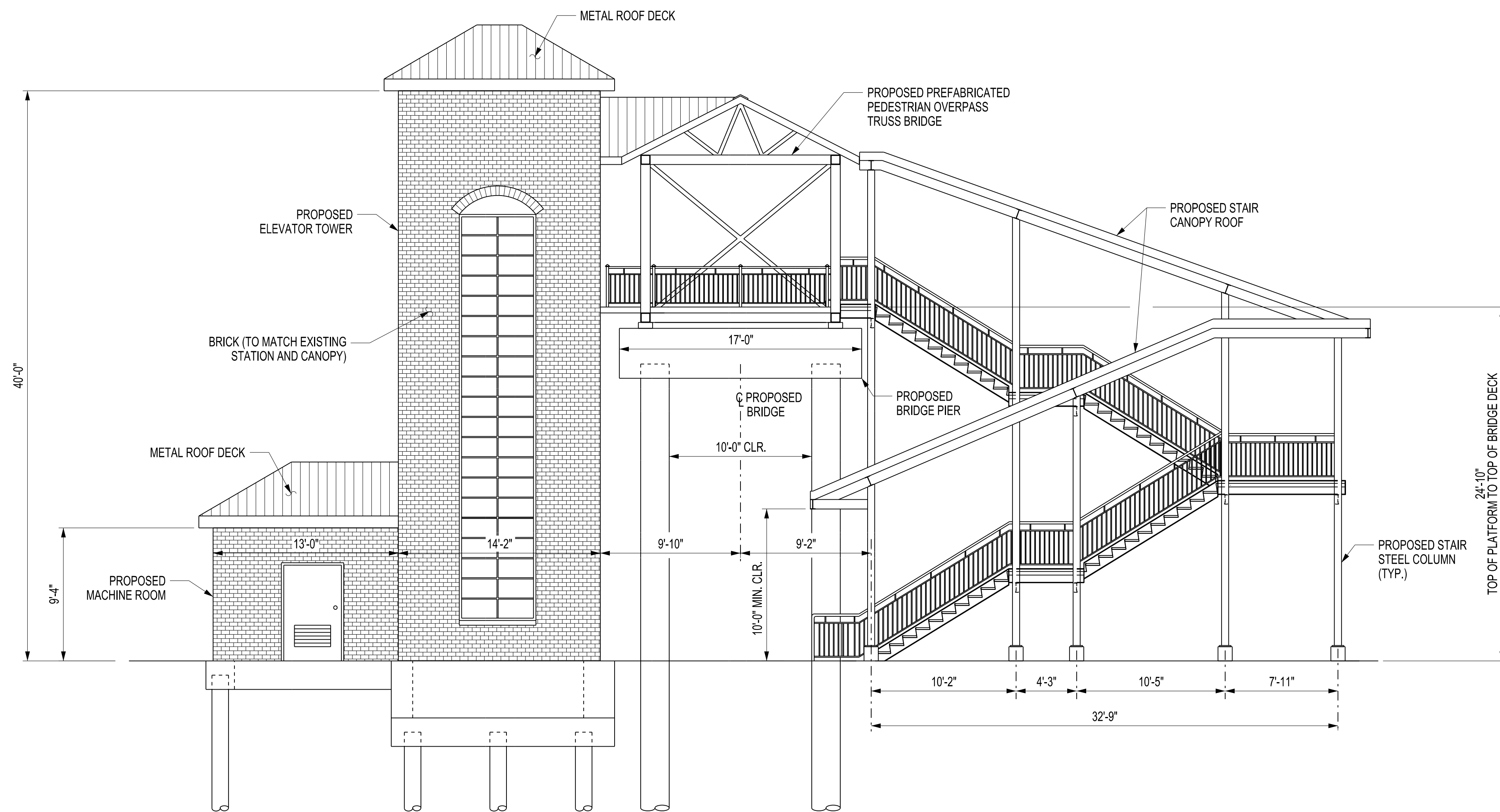
NOTE: SEE SHEET S-7 FOR VIEW A-A

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

DOCUMENT NOT CONSIDERED
FINAL UNLESS ALL
SIGNATURES COMPLETED

| | | | |
|--|------------|--------|------|
|  <div>CROUCH ENGINEERING, INC. NC License No. C-4246 5115 Maryland Way, Suite 225 Brentwood, TN 37027</div> | | | |
| DRAWN BY : | K. LINDSEY | DATE : | 8/18 |
| CHECKED BY : | F. SOSA | DATE : | 8/18 |
| DESIGN ENGINEER OF RECORD: | K. LINDSEY | DATE : | - |

| | | | | | |
|--|-----|-------|-----|-----|-------|
| STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION RALEIGH | | | | | |
| PLAN VIEW - AERIAL STATION CONCEPT OPTION "B" | | | | | |
| REVISIONS | | | | | |
| NO. | BY: | DATE: | NO. | BY: | DATE: |
| 1 | | | 3 | | |
| 2 | | | 4 | | |
| SHEET NO. | | | | | S-6 |
| TOTAL SHEETS | | | | | 8 |



VIEW A-A

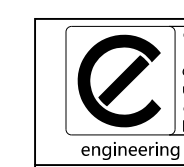
SIDE TOWER ELEVATION - OPTION "B"

LOOKING RAILROAD WEST
SCALE: $\frac{3}{16}" = 1'-0"$

NOTE: SEE SHEET S-6 FOR LOCATION OF VIEW A-A

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

DOCUMENT NOT CONSIDERED
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SIGNATURES COMPLETED



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Brentwood, TN 37027

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CHECKED BY : F. SOSA DATE : 8/18
DESIGN ENGINEER OF RECORD: K. LINDSEY DATE : -

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH

TOWER ELEVATION
VIEW A-A
OPTION "B"

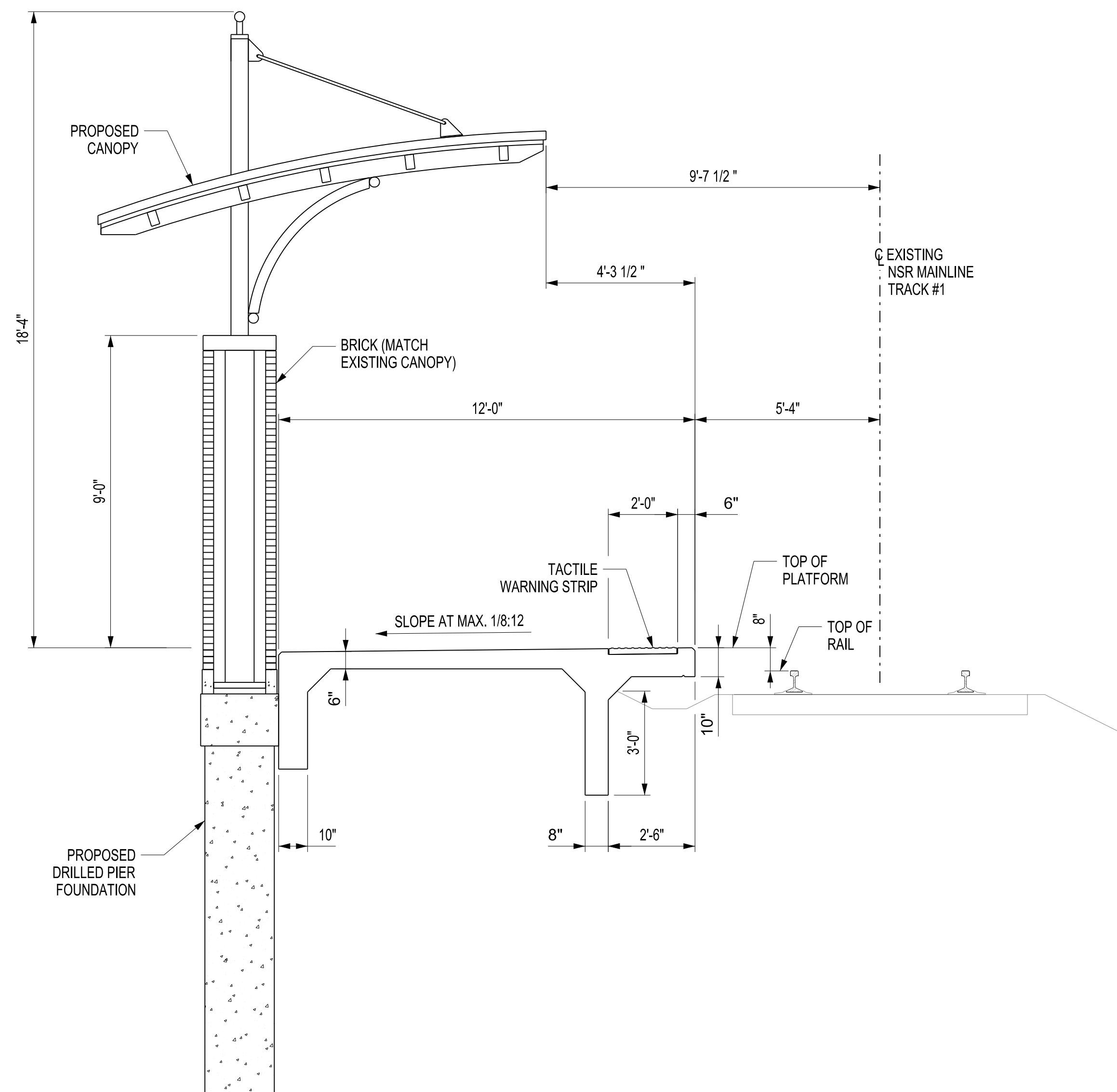
REVISIONS

| NO. | BY: | DATE: | NO. | BY: | DATE: |
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| 1 | | | 3 | | |
| 2 | | | 4 | | |

SHEET NO.

S-7

TOTAL
SHEETS
8

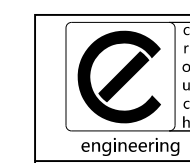


TYPICAL PROPOSED PLATFORM SECTION

LOOKING RAILROAD SOUTH
SCALE: $\frac{3}{8}$ " = 1'-0"

PROJECT NO. P-5725
CABARRUS COUNTY
STATION: -

DOCUMENT NOT CONSIDERED
FINAL UNLESS ALL
SIGNATURES COMPLETED



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DESIGN ENGINEER OF RECORD: K. LINDSEY DATE : -

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH

PLATFORM - CONCEPT
TYPICAL SECTION

| REVISIONS | | | | | | SHEET NO. |
|-----------|-----|-------|-----|-----|-------|-------------------|
| NO. | BY: | DATE: | NO. | BY: | DATE: | |
| 1 | | | 3 | | | S-8 |
| 2 | | | 4 | | | TOTAL SHEETS 8 |



**City of Kannapolis
City Council Meeting
January 28, 2019
Staff Report**

TO: Mayor and City Council
FROM: Mike Legg, City Manager
TITLE Closed Session

A. Action Requested by City Council

GS. 143-318.11 (a) (3) to consult with an attorney in order to preserve the attorney client privilege; G.S. 143.318.11 (a) (4) for discussing matters relating to the location or expansion of industries or businesses in the area and G.S. 143-318.11 (a) (6) for the purpose of discussing personnel matters (Mayor Pro tem Haas)

MOTION TO ADJOURN

B. Required Votes to Pass Required Action

C. Background

D. Fiscal Considerations

E. Policy Issues

F. Legal Issues

G. Alternative Courses of Action and Recommendation

ATTACHMENTS:

File Name

No Attachments Available