



**PINEVILLE TOWN COUNCIL WORK SESSION AGENDA  
PINEVILLE POLICE BLDG.  
118 COLLEGE ST., PINEVILLE, NC  
TUESDAY, JANUARY 21, 2020  
6:00 P.M.**

- 1) Call Meeting to Order:**
- 2) Discussion Items:**
  - A. NTB Tire:** *(Travis Morgan)* - a new rendering of the proposed façade will be presented.
  - B. MOU for Library:** *(Ryan Spitzer)* – Ryan will present a Memorandum of Understanding for the new County Library/Town Hall building.
  - C. Payroll/Time Clock System:** *(Ryan Spitzer)* – Ryan will present additional information pertaining to a new time clock system.
  - D. Performance Management System:** *(Ryan Spitzer)* – Information will be presented on a new employee evaluation system.
  - E. Closed Session:** *Discussion of matters pursuant to NCGS 143-318.11 (5), Real Estate Matter and (6), personnel matter.*
- 3) Motion to End the Closed Session and Move Back into Open Session**
- 4) Adjourn**

*If you require any type of reasonable accommodation as a result of physical, sensory, or mental disability in order to participate in this meeting, please contact Barbara Monticello, Clerk of Council, at 704-889-2291 or [bmonticello@pinevillenc.gov](mailto:bmonticello@pinevillenc.gov). Three days' notice is required.*

# Workshop Meeting



**To:** Town Council

**From:** Travis Morgan

**Date:** 1/21/2020

**Re:** 10000 Pineville-Matthews Road Reestablish Auto Service Use

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**Background:**

The former NTB Tire Store located at 10000 Pineville-Matthews Road (beside current Walgreens) Vacated the property early 2018. There was a store closed/relocated banner that was up longer than 14 days that triggered zoning violations starting 5/4/18. Existing auto servicing in that zoning district is a non-conforming use and therefore could not re-establish if operations ceased for longer than 90 days. The non-conforming use was not re-established within 90 days.

**Request:**

Conditional Zoning request to re-establish auto servicing in the existing building with new façade and sidewalks.

**Staff Comment (UPDATE):**

Follow up from our previous workshop meeting I had noted from feedback was:

- 1) Revise and improve elevations. **See new entry, details and cornice.**
- 2) Make front bay doors just windows to prevent open bay doors and servicing in the front yard. Applicant did not make these changes. **Applicant proposes auto close front bay windows instead.**

Staff notes the sidewalks are much needed in that area. Elevation and entry are improved. Staff recommends sidewalk extend all the way to west property line to curve around utility pole if needed. Staff notes front screening shrubs need to be 2'x 2' planted 5' on center minimum. Only gallon size shrubs shown. Staff notes that they could meet the missing 4 parking spaces without the operating front bay doors. Staff does not support the front opening bay doors. It is an applicant request. The rear bay doors could be utilized better instead bringing the site more in compliance with the overlay district and parking requirements.

**General Information:**

10000 Pineville-Matthews Road is zoned B-3 (General Business).

Parking required:	1 per 300 square feet
Building size:	7,200
Required Parking:	24 spaces
Parking Provided:	20 spaces

Staff notes the plan is not a sealed survey. It appears there might be some property line overlap or inconsistencies with adjacent properties. Also, Northern vehicular shortcut path to N. Polk street through former Carolina Rental Car property does not have easement that I am aware of.

Below are the related ordinance sections

From **Section 2.8.2 Nonconforming Zoning Uses:**

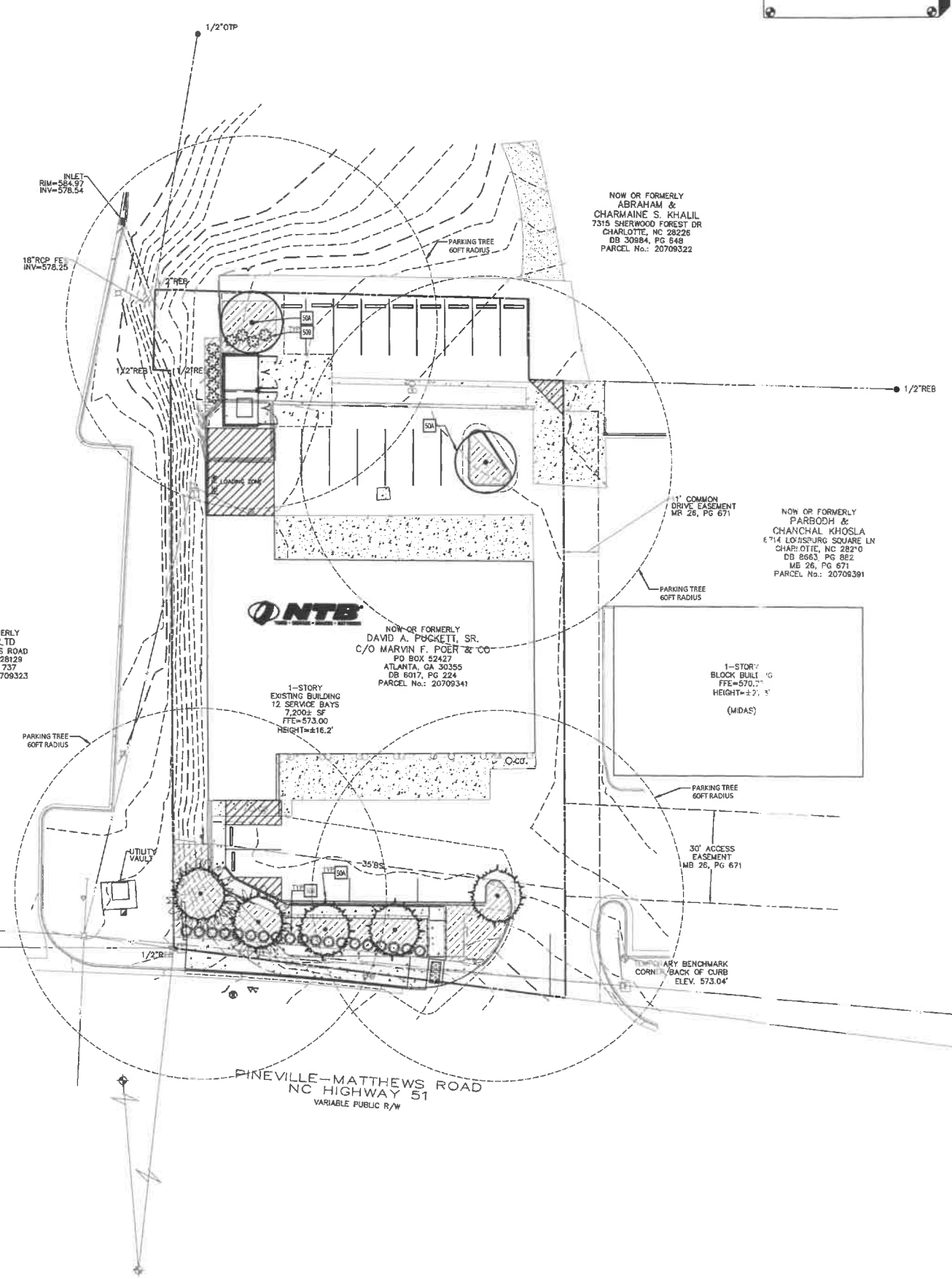
- D) If a nonconforming use is discontinued, ceased, closed, or similar for ninety (90) days or more, the use shall not be allowed to re-establish. All new uses established thereafter shall be conforming.

Per the **Zoning Table of Use**, "Automobile Servicing and Installation" is allowed in the B-3 Zoning District as "Conditional with Special Regulations" and references **Section 6.5.07** of the Pineville Zoning Ordinance.

**Section 6.5.7 Automobile Servicing and Body Shop**

- A) If located adjacent to a Residential (R) use, the hours of operation may be from 7:00 A.M. to 9:00 P.M. only. This shall not apply in the case of lots containing this use, which are separated from such R-zoned lots by a major or minor thoroughfare.
- B) All work including vehicle servicing and inspections must take place indoors.
- C) Unless structures and site design meet current zoning and overlay district requirements; the use shall not be permitted.
- D) Must meet overlay façade requirements, be all brick store front type design, and no street facing service bay doors or utility elements.
- E) Façade must be at least 75% of width of primary street front.
- F) Approved primary building materials must be used within 200 feet of any street.
- G) Elevated vehicle platforms or displays are prohibited.
- H) Site and Parking lot lighting will be limited to a maximum height of 35 feet and equipped with full cut-off fixtures. Site and Parking lot lighting may not shine on adjacent properties.



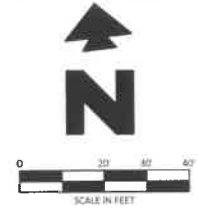


**SITE BENCHMARK**  
 Benchmark #1: TEMPORARY BENCHMARK  
 CORNER BACK OF CURB  
 ELEV. 573.04'



**Know what's below.  
 Call before you dig.**

USE ONE CALL UTILITY SYSTEM: DIAL 1-800-344-8377, 48 HOURS BEFORE YOU DIG. FOR CITY OF PLUGERVILLE WATER AND WASTEWATER UTILITY LOCATES, CALL 512-990-6400



NOTE: SEE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF PORCHES, RAMPS, VESTIBULE, SLOPED PAVING, TRUCK DOCKS, BUILDING UTILITY ENTRANCE LOCATIONS AND PRECISE BUILDING DIMENSIONS.



**Vicinity Map**  
 Not to Scale

**EXISTING LEGEND**

PROPERTY LINE	TELEPHONE PEDESTAL
ADJACENT PROPERTY LINE	WATER VALVE
EASEMENT LINE	WATER METER
FENCE LINE	WATER MANHOLE
BUILDING SETBACK LINE	ELECTRIC METER
EXISTING CONTOUR LINE	DROP INLET
OVERHEAD POWER LINE	CLEANOUT
OVERHEAD TELEPHONE LINE	BOLLARD
OVERHEAD POWER & TEL	SIGN
STORM SEWER LINE	MAILBOX
IRON PIN FOUND (AS NOTED)	SPOT ELEVATION
CONCRETE MONUMENT FOUND	STREET ADDRESS
NAIL FOUND	ASPHALT
GEODETIC MONUMENT FOUND	CONCRETE
UTILITY POLE/GUY WIRE	GRAVEL
LIGHT POLE	

**PROPOSED**

PROPERTY LINE/RIGHT OF WAY LINE

**LANDSCAPE DETAILS**

SOA TREE PLANTING  
 SOB SHRUB PLANTING  
 SOQ STEEL EDGING

**PLANT SCHEDULE**

TREES	QTY	BOTANICAL / COMMON NAME	SIZE	DETAIL	
	2	Pistacia chinensis / Chinese Pistache	2" Cal		
	5	Zelkova serrata 'JFS-KW1' TM / City Sprite Zelkova	2" Cal		
SHRUBS	QTY	BOTANICAL / COMMON NAME	SIZE	DETAIL	
	9	Buxus microphylla 'Compacta' / Dwarf Littleleaf Boxwood	5 gal		
	19	Juniperus chinensis procumbens 'Nana' / Dwarf Japanese Juniper	5 gal		
GROUND COVERS	QTY	BOTANICAL / COMMON NAME	TYPE	DETAIL	SPACING
	2,169 sf	Poa pratensis / Kentucky Bluegrass	sod		



Engineering of North Carolina, Inc.



**NTB TIRE & SERVICE CENTER**  
**PROTO: 12 BAYS**  
**10000 PINEVILLE-MATTHEWS RD**  
**PINEVILLE, NORTH CAROLINA**

TBC CORPORATION  
 4300 TBC WAY  
 PALM BEACH GARDENS, FL 33410

CORPORATE COA: C-3788  
 DATE: 12/12/19  
 SHEET TITLE: LANDSCAPE PLAN

SHEET NUMBER: C4

ENGINEERS PLANNERS SURVEYORS  
 LANDSCAPE ARCHITECTS DESIGNERS

3105 S.W. REGENCY PARKWAY, SUITE 2  
 RENOUILLE, AR 72712  
 DWG NAME: 312101P  
 REVISION: REV-0

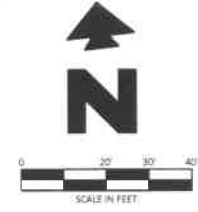
DATE: 3/2/20  
 JOB NO: 31210

**SITE BENCHMARK**  
 Benchmark #1: TEMPORARY BENCHMARK  
 CORNER BACK OF CURB  
 ELEV. 573.04'

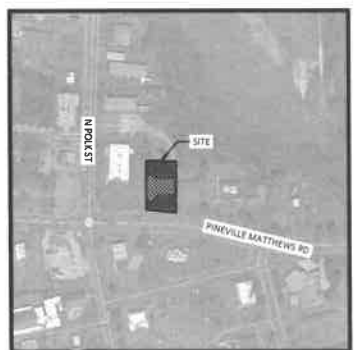


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**Vicinity Map**  
 Not to Scale



**NTB CORPORATION**  
 4300 TBC WAY  
 PALM BEACH GARDENS, FL 33410

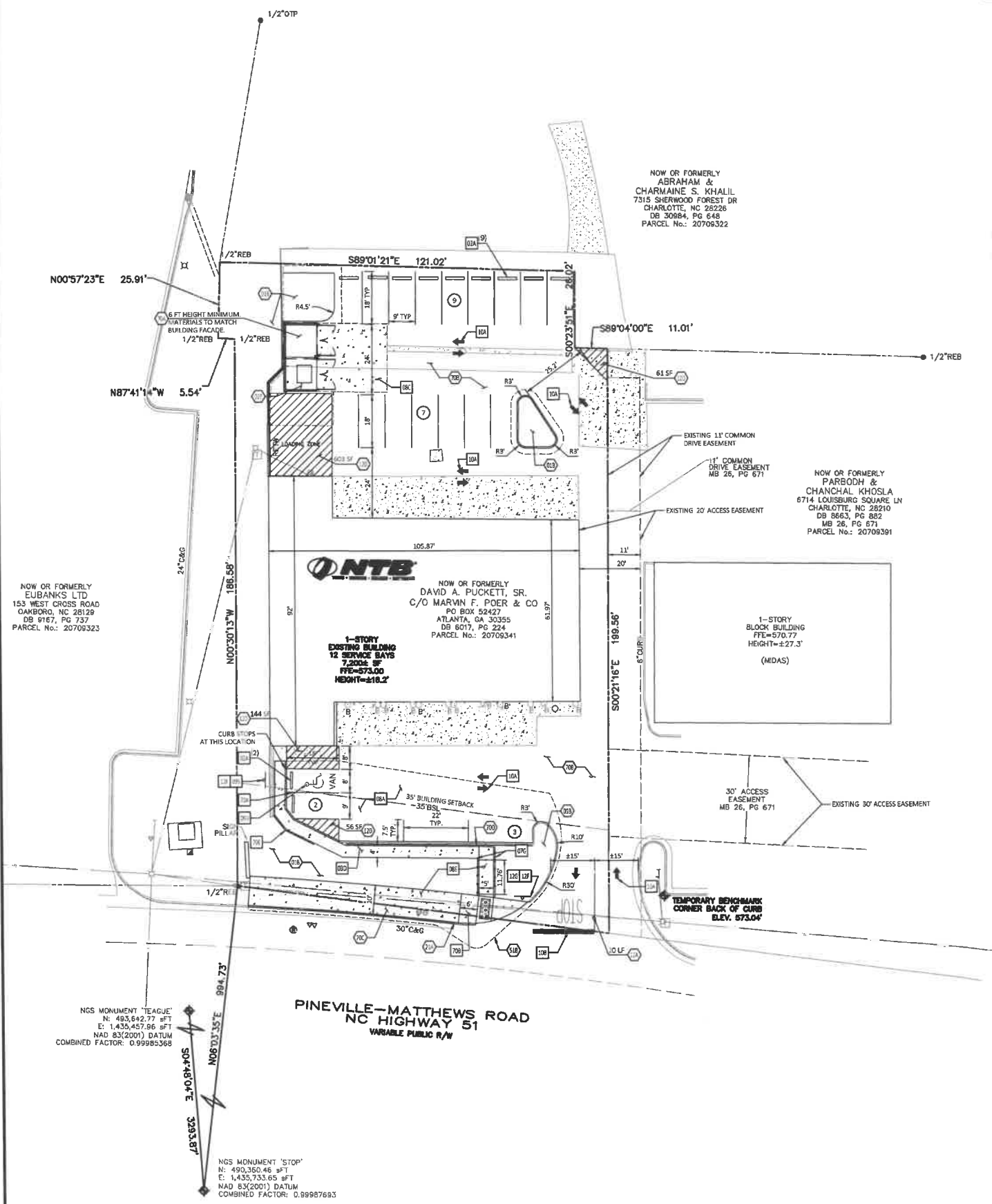
**Engineering of North Carolina, Inc.**  
 ENGINEERS • PLANNERS • SURVEYORS  
 LANDSCAPE ARCHITECTS • DESIGNERS  
 3108 S.W. REGENCY PARKWAY, SUITE 2  
 BENTONVILLE, AR 72712  
 (479) 273-8472  
 (479) 273-8844  
 JOB NO.: 31210  
 DATE: 12/12/19



**NTB TIRE & SERVICE CENTER**  
**PROTO: 12 BAYS**  
**10000 PINEVILLE-MATTHEWS RD**  
**PINEVILLE, NORTH CAROLINA**

CORPORATE COA: C-3788  
 DATE: 12/12/19  
 REVISION: REV-0  
 SHEET TITLE: **SITE PLAN**

SHEET NUMBER: **C2**



**GENERAL SITE NOTES**

- A. ALL DIMENSIONS SHOWN ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.
- B. ALL CURB RETURN RADII SHALL BE 5' OR 10', AS SHOWN TYPICAL ON THIS PLAN, UNLESS OTHERWISE NOTED.
- C. UNLESS OTHERWISE SHOWN, CALLED OUT OR SPECIFIED HEREON OR WITHIN THE SPECIFICATIONS: ALL CURB AND GUTTER ADJACENT TO ASPHALT PAVING SHALL BE INSTALLED PER DETAIL 02A. ALL CURBING ADJACENT TO CONCRETE PAVING SHALL BE INSTALLED PER DETAIL 01B. PAVEMENT SHALL BE INSTALLED IN ACCORDANCE WITH DETAIL 03A OVER THE ENTIRE PARKING LOT AREA AND ALL APPROACH DRIVES. ALL PARKING LOT STRIPING INCLUDING ACCESSIBLE AND VAN ACCESSIBLE SPACES SHALL BE PAINTED PER DETAIL 70A.
- D. ALL PARKING LOT SIGN BASE SUPPORTS SHALL BE INSTALLED PER DETAIL 12F.
- E. ALL ACCESSIBLE PARKING STALLS SHALL HAVE SIGNAGE INSTALLED PER DETAIL 095.

SITE DATA TABLE		
	REQUIRED	
ZONING	B-3 (GENERAL BUSINESS)	
PROPOSED USE	AUTOMOBILE REPAIR	
SITE AREA	27,642 SF / 0.63 ACRES	
EXISTING BUILDING AREA	7,200 SF	
EXISTING BUILDING HEIGHT	1 STORY / 16.2'	
BUILDING PARKING RATIO	1 SPACE PER 300 SF OF BUILDING	
FRONT YARD (BUILDING SETBACK)	50'	35'
PROPOSED STANDARD PARKING SPACES	20	
PROPOSED ADA PARKING SPACES	1	
EXISTING SERVICE BAYS	12	
TOTAL OFF-STREET PARKING PROVIDED	33	24

**EXISTING LEGEND**

PROPERTY LINE	TELEPHONE PEDESTAL
ADJACENT PROPERTY LINE	WATER VALVE
EASEMENT LINE	WATER METER
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GEODETIC MONUMENT FOUND	GRAVEL
UTILITY POLE/GUY WIRE	
LIGHT POLE	

**PROPOSED**

CONCRETE CURB AND GUTTER
PROPOSED PARKING SPACES
LIMITS OF CONCRETE & SIDEWALKS

**SITE NOTES**

- 01B LANDSCAPE AREA. SEE LANDSCAPE PLAN.
- 02E TRASH DUMPSTER ENCLOSURE (PER ARCH. PLANS).
- 12A 4 INCH TRAFFIC YELLOW LANE STRIPE (SEE LENGTH INDICATED AT SYMBOL).
- 12D 4 INCH WIDE PAINTED YELLOW STRIPES, 2.0 FOOT O.C. @ 45 DEGREES (SEE SIZE INDICATED AT SYMBOL).
- 21A TAPER CURB TO MATCH EXISTING CURB.
- 51B LIMITS OF SAWCUT AND PAVEMENT REMOVAL.
- 70A OUTSIDE USED TIRE RECYCLING AREA.
- 70B EXISTING PAVEMENT TO BE SEAL COATED.
- 70C 10 FOOT WIDE CONCRETE TRAIL PER CITY OF PINEVILLE STANDARDS.
- 70D RETAINING MODULAR WALL (8 FT IN HEIGHT MAXIMUM).

**SITE DETAILS**

- 02A PRECAST CONCRETE WHEEL STOP
- 03D CONCRETE SIDEWALK
- 07C HAND RAIL
- 08A STANDARD DUTY ASPHALT PAVING
- 08C HEAVY DUTY CONCRETE PAVING
- 08E STANDARD DUTY CONCRETE PAVING
- 095 ACCESSIBLE / VAN ACCESSIBLE PARKING SIGN
- 09U ACCESSIBLE PARKING SYMBOL
- 10A TRAFFIC FLOW ARROW
- 10B STOP BAR
- 13F SIGN BASE
- 12E STOP SIGN
- 70A 90 DEGREE ACCESSIBLE, VAN ACCESSIBLE, AND PARKING SPACE STRIPING
- 70B ADA RAMP - TYPE 1 (NCDOT)
- 70C CURB AND SIDEWALK DETAIL (24" IN HEIGHT)

NOW OR FORMERLY  
 EUBANKS LTD  
 153 WEST CROSS ROAD  
 OAKBORO, NC 28129  
 DB 8167, PG 737  
 PARCEL No.: 20709323

NOW OR FORMERLY  
 DAVID A. PUCKETT, SR.  
 C/O MARVIN F. POER & CO  
 PO BOX 52427  
 ATLANTA, GA 30355  
 DB 6017, PG 224  
 PARCEL No.: 20709341

NOW OR FORMERLY  
 PARBODH &  
 CHANCHAL KHOSLA  
 674 LOUISBURG SQUARE LN  
 CHARLOTTE, NC 28210  
 DB 8663, PG 882  
 MB 26, PG 671  
 PARCEL No.: 20709391

1-STORY  
 BLOCK BUILDING  
 FFE=570.77  
 HEIGHT=±27.3'  
 (MEDAS)

**PINEVILLE-MATTHEWS ROAD**  
**NC HIGHWAY 51**  
 VARIABLE PUBLIC R/W

NGS MONUMENT 'EAGLE'  
 N: 493,642.77 ±FT  
 E: 1,435,457.96 ±FT  
 NAD 83(2001) DATUM  
 COMBINED FACTOR: 0.99995368

NGS MONUMENT 'STOP'  
 N: 490,360.46 ±FT  
 E: 1,435,733.65 ±FT  
 NAD 83(2001) DATUM  
 COMBINED FACTOR: 0.99987693



# Memorandum



**To:** Mayor and Town Council

**From:** Ryan Spitzer

**Date:** 1/17/2020

**Re:** MOU with Mecklenburg County

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## **Overview:**

The Town and County have agreed to enter in to an MOU for the construction and lease of the Town Hall building that will be built. The MOU will be on the County's February 18<sup>th</sup> Agenda to be voted on. The Town will vote on the MOU at the following Council Meeting. Currently I am working with Library and County officials to incorporate the final changes in to the current draft. We will have a final call before the County's Agenda is set on January 24, 2020 to finalize the draft.

Some of the important points of the contract as they are currently (these could change) are:

1. There will be two separate heating, air, gas and electric systems in the building
2. A CIP fund will be set up in year for future maintenance
3. The County will be responsible for maintenance and upkeep on their systems and the town on our systems
4. Town and County will share in the expenses associated with common areas and the outside. A true up will likely happen at the end of each FY.
5. The County will pay back their portion of construction costs over the life of our loan. At the end of the loan, they will pay \$1 a year for the remainder of the lease term.
6. The Town will be responsible for constructing walls, floor and electrical service as part of the construction and this will be part of the lease.
7. The County will install furnishing and fixtures after construction is complete at their costs

## **Attachments:**

Draft Development Agreement  
Draft Interlocal Agreement

PROJECT DEVELOPMENT AGREEMENT

This Project Development Agreement (this "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date") by and among **TOWN OF PINEVILLE**, a North Carolina municipal corporation (the "Town") **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (the "County"), and **THE PUBLIC LIBRARY OF CHARLOTTE AND MECKLENBURG COUNTY**, a body corporate created by the North Carolina General Assembly (the "Library"), and collectively with Town and County, each a "Party" and collectively, the "Parties").

RECITALS:

A. Town owns a tract of land containing approximately 7.141 acres, located at 315 Jack Hughes Lane in Pineville, North Carolina, and currently identified as Mecklenburg County Tax Parcel No. 22105115 (the "Project Site"), and more particularly shown outlined on Exhibit A attached hereto (the "Map"). The existing Pineville police station is currently located and in operation on the Project Site, as generally shown on the Map.

B. Town now wishes to construct a new two-story mixed-use building (consisting of approximately 40,000 total square feet) (the "New Building") and related improvements, including surface parking, on the Project Site, all as shown on the site plan attached hereto as Exhibit B (the "Site Plan") (collectively, the "Project").

C. Following completion of the Project, Town will construct and lease to Library the entire first floor (consisting of approximately 20,000 square feet) of the New Building (the "Leased Premises") for the operation of a public library (the "Jack Hughes Library"). Town shall occupy and operate the second floor of the New Building (the "Town Space") as the new Pineville town hall.

D. The Parties have agreed upon the terms and conditions upon which (i) the Project will be designed, constructed, operated, and financed, and (ii) the Leased Premises will be leased to and used by Library.

NOW, THEREFORE, in consideration of the covenants and representations contained herein, the Parties agree as follows:

TERMS AND CONDITIONS:

1. Design of Project.

- (a) Town agrees to procure the architectural and engineering services of qualified professionals necessary to design the Project (except with respect to the Minimum Requirements [as defined herein], which shall be the responsibility of Library).
- (b) The New Building will be a Class A facility, and an illustrative rendering thereof is attached hereto as Exhibit C for the limited purpose of showing the type and quality of the proposed New Building. The exterior of the New Building and the parking areas will be attractively landscaped, and will provide for safe and convenient access and use.
- (c) The Leased Premises will consist of the entire first floor of the New Building. Library's minimum program requirements are set forth at Exhibit D attached hereto (the "Minimum Requirements"). The Project will include surface parking spaces sufficient to serve the reasonably anticipated demand for both the Town Space and the Leased Premises (as mutually agreed upon by Town and Library), including automobile parking spaces for employees, agents, visitors and invitees

and parking and maneuvering areas for buses and other oversized vehicles.

(d) The design professionals engaged by Town will prepare Schematic Design Documents, Design Development Documents and Construction Documents (as those terms are defined among traditional AIA forms) for the Project. These documents (collectively, the "Design Documents"), as they relate to the Leased Premises, the exterior of the New Building, and the Project parking facilities, will be subject to approval by each of the Parties, such approval not to be unreasonably withheld, conditioned or delayed. Following approval of the Design Documents by all Parties, any subsequent modifications and/or adjustments thereto shall be at the expense of the requesting Party. Town and County agree to participate in design (and construction) meetings with respect to the Project.

(e) Town shall be responsible for the costs and expenses of designing the Project.

## 2. Construction of Project.

(a) Upon completion and approval of the Construction Documents, Town will cause permitting and construction of the Project to be commenced and thereafter completed in a good and workmanlike manner, in accordance with the Construction Documents and in compliance with all applicable laws, ordinances, regulations and code (including applicable provisions of the Americans with Disabilities Act). Town shall also (i) repair or replace the sidewalks and paved parking areas serving the occupants of the New Building, and (ii) complete closures of any existing roads on the Project Site necessary to accommodate the Project.

(b) Construction of the Project will include the components and finishes necessary for the creation of the occupiable Leased Premises and the Town Space, including (but not limited to) the demising walls, ceilings, flooring, doors, lighting, windows, and mechanical, electrical, plumbing, security, telecommunication, and heating and air conditioning systems (the "Town's Work"). The New Building shall be constructed, to the extent reasonably feasible, such that the Leased Premises and the Town Space shall be independent from one another, as separate and fully-functional units within the New Building, but equally sharing use of and responsibility for the Common Areas (as defined in the Lease [as defined below]).

(c) Town estimates that the time required to design the Project and complete Town's Work will be twenty-four (24) months from the Effective Date. Town agrees to use commercially reasonable efforts to meet that schedule.

(d) Town shall be responsible for the costs and expenses of constructing the Project.

## 3. Delivery of Leased Premises: Lease.

(a) Upon (x) substantial completion of Town's Work conforming to the requirements hereof, and (y) Town's receipt of a permanent certificate of occupancy for the New Building, and subject to final inspection by County and Library representatives:

(i) Town shall deliver the Leased Premises to Library in a clean, turnkey condition, with all utilities and building systems installed and available for use; and

(ii) Town, as landlord, and Library, as tenant, shall enter into a lease of the Leased Premises substantially in the form attached hereto at Exhibit E (the "Lease").

(b) Notwithstanding the foregoing, Library and County staff may enter the Leased Premises



prior to delivery thereof by Town, to facilitate the design and installation of the Library Improvements (as defined herein), provided that such entry shall not unreasonably delay or otherwise interfere with the completion of construction of the Project.

(c) County and Library shall examine the Leased Premises prior to Library's accepting delivery thereof, which action shall be presumptive evidence that the Leased Premises is in good order and of satisfactory condition, except for latent defects and such matters as may be agreed upon by the parties prior thereto.

4. Library Upfit.

(a) Upon execution hereof, Library shall cause to be designed, developed, procured, fabricated and installed the exhibits, furniture, fixtures, equipment, and signage and signage content required for its intended use in operating the Jack Hughes Library (the "Library Improvements"). As part of the Library Improvements, Library shall develop initial educational programming and acquire related supplies, manipulatives, and equipment consummate to operating a state-of-the-art public library.

(b) The Library Improvements shall be of high-quality design and construction, and shall include exhibits consistent with those located in other public libraries in Mecklenburg County, North Carolina.

(c) Library shall be responsible for the costs and expenses of the Library Improvements.

5. Library Opening.

(a) Library estimates that the time required to design, procure and install the Library Improvements and open the Jack Hughes Library to the public will be eight (8) months from the date on which Town's Work shall have been completed and the Leased Premises shall have been delivered to Library. Library agrees to use commercially reasonable efforts to meet that schedule.

(b) Library shall develop and execute a marketing campaign and on-site events related to community awareness and education, public announcements, events, and planning of the Jack Hughes Library in the Leased Premises (the "Public Launch").

(c) Library shall be responsible for the costs and expenses of the Public Launch.

(d) As of the date the Library opens to the general public in accordance with this Agreement, Town shall transfer and assign to Library any and all of Town's right, title and interest in and to all Library Improvements (except improvements that are components of or fixtures to the New Building), free and clear of all encumbrances.

(e) Library shall be responsible for all Library signage within the Leased Premises. Town shall be responsible for all directional signage within Town's municipal boundaries for which Town has governmental authority, in accordance with Library's design content and specifications. Town shall also provide directional signage from major roadways and other transportation corridors to the Library.

6. Intellectual Property.

(a) All Intellectual Property (as defined herein) of Library, and all Intellectual Property discovered or co-developed by Library (implicitly or explicitly) related to the Library Improvements or the ongoing operations of the Jack Hughes Library, shall perpetually, irrevocably, and unconditionally remain the sole and exclusive property of Library. All drawings, renderings, and designs of the New Building, Project Site, and grounds shall perpetually, irrevocably and unconditionally remain the sole and

exclusive property of Town.

(b) As used herein this Agreement, the term "Intellectual Property" shall mean any ideas, concepts, information, exhibits, materials, documents, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works and techniques, and all Intellectual Property Rights (as defined herein) therein. The term "Intellectual Property Rights" means all trade secrets, copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any country. The provisions of this paragraph will survive termination of this Agreement.

7. Confidential Information.

(a) Subject to any applicable public records or open meetings laws, Town agrees that during the term of this Agreement and thereafter, except as expressly authorized in writing by Library, Town (i) will not use or permit the use of Confidential Information (as defined herein) in any manner or for any purpose not expressly set forth in this Agreement, (ii) will not disclose, lecture upon, publish, or permit others to disclose, lecture upon, or publish any such Confidential Information to any third party without first obtaining Library's express written consent on a case-by-case basis, (iii) will limit access to Confidential Information to Town's personnel who need to know such information in connection with their work with Library, and (iv) will not remove any tangible embodiment of any Confidential Information from the Leased Premises without Library's prior written consent.

(b) As used in this Agreement, "Confidential Information" means all information related to Library's business and its actual or anticipated research and development, including without limitation (i) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs, and techniques, (ii) information regarding products or plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, suppliers, and customers, (iii) information regarding the skills and compensation of Library's employees, contractors, and subcontractors thereof, (iv) the existence of any business discussions, negotiations, or agreements between Library and any third party, and (v) all such information related to any third party that is disclosed to Library or Town during the course of Library's business. Confidential Information does not include information that is generally known in the trade or industry, information that is not gained as a result of a breach of this Agreement, and Town's own skill, knowledge, know-how and experience.

8. Notices.

Any notice required or permitted to be given under this Agreement shall be in writing and shall deem to have been given when (a) deposited in the United States Mail, registered or certified mail, postage prepaid, (b) deposited with any reputable, national, "next day" delivery service, such as Federal Express or United Parcel Service, or (c) hand delivered addressed as follows:

If to Town:	Town of Pineville P.O. Box 249 Pineville, North Carolina 28134 Attention: Town Administrator
If to Library:	The Public Library of Charlotte and Mecklenburg County 310 North Tryon Street Charlotte, North Carolina 28202 Attention: David Dillard
If to County:	Mecklenburg County Asset and Facility Management

3205 Freedom Drive, Suite 101  
Charlotte, North Carolina 28208  
Attention: Jacqueline McNeil

With a copy to: David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune L.L.P.  
831 East Morehead Street, Suite 560  
Charlotte, North Carolina 28202  
Office: (704) 377-1634 x 101  
E-mail: [ddwyer@rbcwb.com](mailto:ddwyer@rbcwb.com)

Either party may, by notice as herein provided, designate a different address to which notices may be sent.

9. Governing Law: Venue.

This Agreement shall be governed by and interpreted under the laws of the State of North Carolina, and the sole venue for the litigation of any disputes between the parties shall be Mecklenburg County, North Carolina.

10. Miscellaneous.

Headings are for convenience only and are not to be construed as parts of the particular paragraph to which they refer. Any separate or attached sketch, drawing plan, specification, rider, or schedule shall be deemed an original part of this Agreement and shall be initialed by the parties. Failure of either party to insist upon strict performance of any of the covenants or conditions of this Agreement or exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenant, condition, or option, but the same shall remain in full force and effect.

11. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

12. Time of the Essence: Force Majeure.

Time is of the essence of this Agreement and the performance of all obligations hereunder. However, except with respect to the payment of money, the time allowed to any of the Parties for performing its obligations under this Agreement shall be extended by the number of days of delays resulting from Force Majeure (as defined herein).

(b) As used in this Agreement, "Force Majeure" means, with respect to delays affecting the performance of any Party, (i) unreasonable interference by any other Party or a separate contractor employed by any other Party, or (ii) acts of God, governmental restrictions, war or enemy action or invasion, terrorism, civil commotion, insurrection, malicious mischief, sabotage, labor disputes, fire or other casualty, condemnation, unusual adverse weather, or other causes beyond the control of the delayed Party.

(c) If a Party intends to claim entitlement to an extension, that Party must give notice to the other Parties within thirty (30) days after the later of (i) the occurrence of the Force Majeure event, or (ii) the date on which the claiming Party first recognizes the Force Majeure condition giving rise to the claimed extension. The notice shall include an estimate of the probable effect and extent of the delay caused by the Force Majeure event. If unusual adverse weather conditions are the basis for a claimed

extension, the claim must ultimately be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled performance.

13. Brokers.

Each Party represents and warrants to the other Parties that the former has not engaged any person, firm or entity to serve or act as a broker, agent, or finder, with respect to this Agreement. Each Party agrees to defend, indemnify and hold harmless the other Parties from and against any claim, damage, loss or expense resulting from the breach of the representations and warranty set forth in this Paragraph.

14. Survival.

All of the obligations and liabilities incurred by the Parties on or before any termination of this Agreement, including the continuing obligations imposed under paragraph 6 and 7 of under of this Agreement, shall survive such termination.

15. Conflict Resolution.

Except for matters where a written notice of termination of this Agreement has been received, all other conflicts and differences that may arise between the Parties with respect to this Agreement will be resolved in accordance with the conflict resolution procedures set forth below.

Step 1: The first step in resolving a conflict will be for the aggrieved Party to present the issue in writing to the other Parties (the "Conflict Notice"). Each Party shall be entitled to submit a Conflict Notice to the others, and each Conflict Notice shall be dated as of the date it is mailed (or e-mailed) to the others. In the event all Parties submit a Conflict Notice relating to the same conflict, the time periods set forth in this Section 15 shall run from the date of the earliest Conflict Notice. Upon receipt of a Conflict Notice, the receiving Parties will promptly meet with the aggrieved Party and, recognizing the Parties' mutual interests, attempt in good faith to reach a just and equitable solution acceptable to each.

Step 2: If the Parties cannot resolve the conflict to the satisfaction of all within seven (7) days after the date of the Conflict Notice, then the \_\_\_\_\_ of Library ("Library CEO") (or his/her designee), County's Director of Asset and Facility Management (or his/her designee), and the \_\_\_\_\_ of Town ("Town Representative") (or his/her designee) shall attempt to resolve the matter. Each such individual will be responsible for providing all necessary background information relative to his/her firm or municipality to the other individuals. The group will promptly consult, negotiate, and attempt in good faith to reach a just and equitable solution acceptable to all Parties.

Step 3: If the individuals designated in Step 2 above cannot resolve the conflict to the satisfaction of all Parties within fourteen (14) days after the date of the Conflict Notice, then Library CEO, Town Representative, and the Mecklenburg County Manager shall attempt to resolve the matter. Each such individual will be responsible for providing all necessary background information relative to his/her firm or municipality to the other individuals. The group will promptly consult, negotiate, and attempt in good faith to reach a just and equitable solution acceptable to all Parties.

Step 4: If the individuals designated in Step 3 above cannot resolve the conflict within twenty-one (21) days after the date of the original Conflict Notice, then (i) Library CEO shall inform Library's board of directors, (ii) County Manager shall inform the Board of County Commissioners, and (iii) Town Representative shall inform the Board of Town Commissioners, of the conflict and the Parties' inability to resolve the conflict. Each board, at its option, shall have sixty (60) days from its receipt of notice of the conflict to submit the same for mediation with the American Arbitration Association ("AAA"), with

copy of such submission to the other Parties. The mediation request will contain a brief statement of the nature of the conflict, and the name and telephone numbers of at least two (2) contact persons for each of the other Parties. The mediation will be administered by AAA under its Commercial Mediation Rules, with the following exceptions:

(a) Selection of Mediator. Rule 4 of the Commercial Mediation Rules is revised as follows: The mediator shall be selected by a listing process. Upon receipt of a request for mediation, AAA shall provide each Party with a list of proposed neutral, third-party mediators who have the background and experience necessary to understand the issues relevant to the conflict. Each Party will then be given seven (7) days from the receipt of such list to strike all names deemed unacceptable, number the remaining names in order of preference, and return the list to AAA. AAA will promptly select a mediator from the names remaining on the list, in the designated order of mutual preference and mediator availability. Every effort will be made by the Parties and AAA to conduct the mediation within ten (10) days after selection of a mediator.

(b) Written Memorandum. Despite Rule 9 of the Commercial Mediation Rules, no Party shall be required to submit a written memorandum to the mediator prior to mediation. Each Party shall be entitled to submit a memorandum if it so desires. The Parties will be expected to bring to each mediation session all information reasonably required for the mediator to understand the issues presented. The mediator may require any Party to supplement its information if the mediator reasonably deems such supplemental information to be necessary or desirable for purposes of resolving the conflict.

(c) Authority of Mediator. Rule 10 of the Commercial Mediation Rules is revised as follows: The mediator does not have the authority to impose a settlement on the Parties, but will attempt to help them reach a satisfactory resolution of the conflict. The mediator is authorized to conduct joint and separate meetings with the Parties, and to make oral recommendations to them regarding settlement. The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the conflict among the Parties. In the event mediation is terminated without resolution of the conflict, the mediator will prepare and submit to the parties a brief written report setting forth: (i) a summary of the final position of each Party with regard to the conflict; and (ii) a proposed resolution which in the mediator's judgment best serves the needs of all Parties.

(d) Representatives at Mediation. Each Party shall be entitled to have up to eight (8) representatives at the mediation.

(e) Time is of the Essence. The Parties acknowledge that time is of the essence in resolving conflicts relating to the Agreement. Accordingly, each Party agrees to use its best efforts and cooperate in good faith to conduct the mediation of all such conflicts as expeditiously as possible.

(f) In the event the Parties are able to find and mutually agree upon a mediator on their own without going through AAA, they shall be entitled to do so. In such event, the mediation shall be governed by AAA's Commercial Mediation Rules (excluding all references to AAA), with the exceptions set forth above.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, pursuant to authority duly given, as of the Effective Date.

TOWN:

**TOWN OF PINEVILLE,**  
a North Carolina municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved by Town Attorney:  
\_\_\_\_\_

LIBRARY:

**THE PUBLIC LIBRARY OF CHARLOTTE AND  
MECKLENBURG COUNTY,** a body corporate  
created by the North Carolina General Assembly

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COUNTY:

**MECKLENBURG COUNTY,**  
a political subdivision of the State of North Carolina

By: \_\_\_\_\_  
Name: Dena R. Diorio  
Title: County Manager

Approved as to Form:  
\_\_\_\_\_

David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune LLP  
Counsel for Mecklenburg County



Exhibit A

[Map of Project Site]

DRAFT

Exhibit B

[Site Plan]

DRAFT

Exhibit C

[Illustrative Rendering of New Building]

DRAFT

Exhibit D

[Minimum Requirements]

DRAFT

Exhibit E

[Form of Lease]

LEASE AGREEMENT

This Lease Agreement (this "Lease") is made this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the "Effective Date"), by and between the **TOWN OF PINEVILLE**, a North Carolina municipal corporation ("Landlord"), and **THE PUBLIC LIBRARY OF CHARLOTTE AND MECKLENBURG COUNTY**, a body corporate created by the North Carolina General Assembly ("Tenant"), and together with Landlord, each a "Party" and collectively, the "Parties").

RECITALS:

A. Landlord has constructed a mixed-use building (the "Building") and related improvements, including surface parking, on a tract of land containing approximately 0.934 acres, located at 315 Jack Hughes Lane in Pineville, North Carolina, and more particularly shown and described on Exhibit A attached hereto (the "Project Site").

B. Landlord, in its governmental capacity, wishes to include in the Building a public library, and has agreed to lease to Tenant the entire first floor in the Building (the "Premises") for that purpose. Landlord shall open and operate the new Pineville town hall in the second floor of the Building (the "Town Space")

C. Tenant wishes to operate a public library, and has agreed to lease the Premises for that purpose.

D. The Parties have agreed on the terms and conditions on which Landlord will lease the Premises to Tenant and Tenant will lease the Premises from Landlord and operate a public library therein.

NOW, THEREFORE, in consideration of the covenants and representations contained herein, the Parties agree as follows:

LEASE OF LEASED PREMISES:

Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, together with a non-exclusive right and license, for the benefit of Tenant and its employees, guests and invitees, to use the Common Areas (as defined below) of the Project Site, upon the terms and conditions set forth in this Lease.

TERMS AND CONDITIONS:

1. Terms of Lease.

This Lease term shall commence on the Effective Date, and shall expire at midnight on the date that is fifty (50) years from the Effective Date (the "Expiration Date"), unless sooner terminated or subsequently extended as hereinafter provided.

2. Intentionally omitted.

3. Rent.

(a) The base rent for the term of this Lease (the "Base Rent") is payable in monthly installments on the 1<sup>st</sup> day of each month in accordance with the following schedule:

<u>Months</u>	<u>Base Rent</u>
1-12	\$ _____
13-24	\$ _____

25-36	\$ _____
37-48	\$ _____
49-60	\$ _____
61-72	\$ _____
73-84	\$ _____
85-96	\$ _____
97-108	\$ _____
109-120	\$ _____
121-132	\$ _____
133-144	\$ _____
145-156	\$ _____
157-168	\$ _____
169-180	\$ _____

Thereafter, for the duration of the remainder of this Lease, Tenant shall pay Landlord, in advance, Base Rent in the amount of One Dollar (\$1.00) per year.

(b) In addition to Base Rent, Tenant shall pay monthly to Landlord, as "Additional Rent", the "Common Area Maintenance Charge", which shall be an amount equal to Tenant's Proportionate Share (as hereinafter defined) of the Common Area Expenses (as hereinafter defined). The Common Area Maintenance Charge for the first Lease year (or for any partial Lease year which precedes the first Lease year) shall be an amount estimated by Landlord and provided to Tenant on or before the Effective Date. The Common Area Maintenance Charge for each succeeding Lease year or partial Lease year shall be reasonably estimated by Landlord at the beginning of each such year based on such estimated Common Area Expenses. For purposes hereof, "Tenant's Proportionate Share" shall be fifty percent (50%).

If the actual Common Area Expenses in any Lease year or partial Lease year exceed the estimates for the applicable year, Tenant shall, within thirty (30) days after receipt of a statement from Landlord certifying the actual Common Area Expenses for the certified year and Tenant's Proportionate Share thereof, pay to Landlord a lump sum in an amount which will effect the necessary adjustment. Landlord shall determine such amount within a reasonable period of time after the end of any Lease year or partial Lease year. If the Common Area Maintenance Charge paid by Tenant in any Lease year or partial Lease year exceeds Tenant's Proportionate Share of the Common Area Expenses for that period, Landlord shall credit any excess payments made by Tenant against future installments of Common Area Maintenance Charges payable by Tenant hereunder (or during the last Lease year, Landlord will refund such excess to Tenant within a reasonable period of time following the expiration of the term of this Lease, provided Tenant is not then in default of any of its obligations under this Lease).

The term "Common Area Expenses" shall mean and include the total cost and expense paid or incurred by Landlord in operating, managing and maintaining the Common Areas, including but not limited to landscaping, parking lot repair, security, painting, lighting, removal of snow, pest control, refuse, lights, payment for utilities, water, electricity and gas, taxes, non-hazardous medical waste collection services, Common Area maintenance and security personnel payroll, operation of maintenance equipment and supplies, services (if any) furnished by Landlord for the non-exclusive use of all tenants, as well as administrative costs equal to fifteen percent (15%) of the total cost of operating and maintaining the Common Area.

4. Use of the Premises.

(a) Tenant shall use the Premises for the purpose of operating a state-of-the-art, first-class public library (the "Library") and for purposes related to the operation thereof, including fund raising and promotional events. Tenant shall, at its expense, be responsible for operating the Library in the Premises continuously for the entire term of the Lease, except as interrupted for necessary repairs, maintenance, exhibition changes and upgrades, and any Force Majeure (as defined below) event(s).

(b) Tenant agrees that the Library will be operated and open to the public for at least five (5) days a week, during reasonable operating hours appropriate to its targeted users, except for major holidays and any of the interruptions described in paragraph 4(a) above.

(c) Subject to Tenant's prior right to use the Premises for its own purposes, Tenant shall, in good faith, consider requests from Landlord, in its governmental capacity, for occasional use of the Premises for events



conducted or sponsored by Landlord that do not (i) interfere with the operation of the Library, or (ii) conflict with Tenant's legal requirements or governmental guidelines. For such use, Landlord shall not be charged any rental or other usage fee, but shall be responsible for providing and paying for all expenses attributable to such use including, but not limited to, the cost of catering, Library staff services and any repairs or replacements incurred by such use.

(d) This Lease is or may be considered a sale of property to an entity carrying out a public purpose under Section 160A-279 of the North Carolina General Statutes. Accordingly, the Premises shall not be used in any manner inconsistent with the public purpose provisions of that statutory provision; however, the parties agree that incidental rental of the Premises for private functions shall not be considered inconsistent with the statutory public purpose provision. The Premises shall be used without discrimination in violation of any applicable law, subject to such reasonable and non-discriminatory rules and regulations as may be adopted from time to time by Tenant.

5. Common Areas.

(a) Tenant shall be entitled to use, in common with others, those areas of the Project Site designated or manifestly intended for the common use or benefit of tenants and other occupants of the and their invitees, including parking spaces, walkways, lobbies, plazas, elevators, driveways, corridors, chases, loading docks, electrical and telecommunication closets and chases (the "Common Areas").

(b) Such use shall be subject to such reasonable and non-discriminatory rules and regulations as may be promulgated and published from time to time by owners of the Project Site. The Common Areas shall at all times be subject to the exclusive control and management of Landlord and may be expanded, contracted or changed by Landlord from time to time, provided that such changes shall not diminish or otherwise materially, adversely affect the Premises for their intended use. Common Areas will be made available to Tenant, and its employees, agents, customers and invitees, without charge, for reasonable non-exclusive use in common with other tenants and their employees, agents, customers and invitees.

6. Parking.

Landlord shall, during the term of this Lease, provide (without charge) parking spaces on attractively landscaped, paved surfaces on or adjacent to the Project Site, sufficient to accommodate the reasonably expected parking needs of the Premises' occupants, specifically their employees, agents, customers, and invitees, and also sufficient to accommodate buses and other oversized vehicles.

7. Landlord's Installation, Repair and Maintenance Obligations.

(a) Landlord, at its expense, shall be responsible for the installation, repair or replacement, maintenance, and operation of the heating, ventilating, and air conditioning (HVAC) systems servicing the Building; the structural and permanent partitioning elements of the Building; all electrical and plumbing systems servicing the Building (except such specialized electrical elements as may be installed for particular library exhibits and not of general usage); elevators, escalators, landscaping and grounds; parking facilities; basic wall paintings and coverings and floor surfacing (but excluding specialized painting and coverage unique to Tenant's exhibits and facilities, such as specialized carpets in certain play areas and wall paintings for particular exhibits); maintenance of the exterior of the Building; electrical, gas, water and sewer systems servicing the Building; communication systems servicing the Building (including, but not limited to, telephone, internet, cable, and radio services); facility service lighting, including fixtures and bulbs for both general building lighting and work lighting (except such specialized lighting for particular library exhibits); fire suppression and smoke detector systems servicing the Building; and security systems servicing the Building. Notwithstanding the foregoing, any of the aforementioned systems which solely and specifically service the Premises (and not the Town Space or Common Areas) shall be the responsibility of Tenant, at its sole cost and expense.

Major capital expenses and/or major improvements to the Building and/or Project Site, which for purposes hereof shall be any single expense or improvement (a) (i) costing in excess of \$\_\_\_\_\_, or (ii) listed at Exhibit C to this Lease, and (b) not specifically servicing the Premises (and thus the responsibility of Tenant) or the Town Space (and thus the responsibility of Landlord) (each, a "Major Capital Expenditure"), shall be shared equally by Landlord and Tenant. Upon its execution of this Lease, Landlord shall create and maintain a capital reserve account for future Major Capital Expenditures (the "Reserve Account"). On the Effective Date and on each annual anniversary thereof during the term of this Lease, each of Landlord and Tenant shall deposit the sum of \$\_\_\_\_\_ (i.e., \$\_\_\_\_ per square foot of the Building) into the Reserve Account. On each annual anniversary of the Effective Date during the

term of this Lease, Landlord shall conduct an annual facility condition assessment of the Building and Project Site, and prepare a capital reserve request for submittal to Tenant for any planned Major Capital Expenditure(s). Tenant shall consider such request(s) as part of Tenant's capital reserve prioritization process. Tenant reserves the right to not fund such capital reserve requests based on prioritization and the amount of available funding. Landlord shall provide the plans for any proposed Major Capital Expenditure for review and approval by Tenant (not to be unreasonably withheld, conditioned, or delayed) not less than thirty (30) days prior to the commencement of any work, which shall be (i) performed and completed in an good and workmanlike manner, and in accordance with all applicable building codes, and (ii) properly permitted by Landlord prior to commencement.

(b) Notwithstanding anything in this Section 7 to the contrary, Tenant shall be responsible for the cost of repairs or damage resulting from the negligent, unlawful, or willful acts or omissions of its employees or representatives except for loss or damage insurable under the property coverage required of Landlord under this lease.

(c) Landlord shall not be liable to Tenant for failure to make repairs or perform maintenance required of Landlord unless written notice of the necessity thereof has been given by Tenant to Landlord, specifying the reasonable detail the repairs required, and Landlord shall not have made such repairs within a reasonable period of time sufficient to accomplish such repairs after receipt of such notice, due allowances being made for delays beyond control of Landlord. Landlord's sole obligation for failure to make repairs shall be the actual cost of the repairs and Landlord shall under no circumstances be responsible for any consequential damages suffer by Tenant. If Landlord shall have failed to perform required repairs within such reasonable period of time, Tenant may perform such repairs and shall be entitled to reimbursement from Landlord for the costs thereof promptly following submission of an itemized bill and reasonable supporting documentation.

#### 8. Tenant's Repair, Maintenance and Alteration Obligations.

(a) In addition to its maintenance obligations set forth in Section 7 above, Tenant, at its own expense, shall be responsible for all exhibition maintenance and upgrades, all licensing requirements related thereto, and similar expenses relating to the Premises.

(b) Tenant shall not make any structural alterations to the initial build-out of the Premises without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Such structural alterations shall be made only at Tenant's expense unless Landlord and Tenant mutually agree that alterations are for the benefit of both parties and both parties agree to a cost sharing agreement. If Landlord consents to such alterations before commencement of any such work or delivery of materials into the Premises or the building, Tenant shall furnish to Landlord for approval: architectural plans and specifications, names and addresses of all contractors, contracts, necessary permits and licenses, certificates of insurance and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all as may be satisfactory to Landlord. All such alterations shall be subject to the reasonable approval of Landlord's architect and Tenant shall be responsible for any costs incurred by Landlord to such architect. Notwithstanding anything herein contained, nothing herein shall be deemed to require Landlord's consent for decorative alterations such as installation of wall coverings, hanging, paintings, prints or other wall hangings, painting of walls or similar alterations affecting only the interior of the Premises, nor shall anything herein be deemed to require Landlord's consent for the installation from time to time of Tenant's exhibits and removable facilities, including any necessary temporary walls associated with temporary exhibits.

(c) With respect to any improvements by Tenant within the Premises, Tenant shall, upon request, provide Landlord with reasonably satisfactory evidence of Tenant's ability to pay for such work and materials in full and Tenant shall not permit any contractors or material liens to attach to the building or the Premises or shall within ten (10) days cause the same to be bonded or otherwise discharged. Tenant will hold Landlord, and its respective officers, agents, and employees harmless against all claims and liabilities of every kind, nature, and description which may arise out of, or in any way be connected with such work. All such work shall comply with all applicable legal, governmental and quasi- governmental requirements, ordinances and rules, and all requirements of applicable insurance companies. Such work will be done in a good and workmanlike manner with the use of good grades of materials equivalent to those initially used throughout the building. Tenant shall permit Landlord reasonable rights of inspection to assure compliance with this paragraph.

#### 9. Utilities and Services.

With respect to the Premises, Tenant shall be responsible for providing and paying for water, sewer, natural gas and electric utility service; security service; facility service lighting and fixture and bulb replacement cost and installation; daily porter service (during operating hours) and custodial service (after hours), including all supplies related to this service; waste removal service; and pest control service. Landlord shall furnish heating and air conditioning to the Premises comparable to that provided in other Class A buildings.

10. Taxes.

Landlord shall be responsible for and shall pay, prior to delinquency, any ad valorem taxes and assessments for the building and Premises. Tenant shall pay, prior to delinquency, all taxes and assessments of every kind or nature imposed or assessed with respect to furnishings, fixtures, equipment, and other property of the Tenant placed in the Premises.

11. Insurance.

(a) Landlord will keep the building and the Premises (except as hereinafter provided) insured against loss or damage by fire and other casualties insurable under an "all risk" policy in an amount determined by Landlord, but which shall be reasonably calculated to repair or replace the building and Premises in the event of such casualty loss. Nevertheless, if such insurance proves to be insufficient, Landlord shall not be required to use or appropriate funds in excess of the amount of insurance to affect any necessary repairs or replacements.

(b) Landlord shall obtain and maintain adequate public liability insurance for any losses, damages or claims occurring within and outside the building Premises. Such insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per incident.

(c) Tenant shall obtain and maintain insurance against any casualty losses to furniture, fixtures, equipment, inventory, and exhibits. The amount of such insurance shall be reasonably calculated to effect repair or replacement thereof in the event of loss, so that Tenant shall be able to resume its normal operations in a timely manner. Nevertheless, if such insurance proves to be insufficient, Tenant shall not be required to use or appropriate funds in excess of the amount of insurance to affect any necessary repairs or replacements.

(d) Tenant shall maintain public liability insurance against losses and claims occurring within the Premises, insuring both Landlord and Tenant, in an amount of not less than One Million Dollars (\$1,000,000.00) per incident.

(e) All property insurance coverage required of Landlord or Tenant under this Lease shall contain waivers of subrogation against Landlord and Tenant and their employees and agents.

(f) Policies required hereunder of either Landlord or Tenant may be obtained under blanket policies, and in the case of Landlord, under a risk management facility for municipalities.

12. Damage by Fire or Another Casualty.

(a) If the Premises is damaged by fire or other casualty, but is not rendered substantially untenable, then Landlord shall diligently proceed to repair and restore the damaged portions thereof, other than the leasehold improvements installed by Tenant, to substantially the same condition as existed immediately prior to such fire or casualty. In such event, this Lease shall continue in full force and effect.

(b) If the Premises are rendered substantially untenable by fire or other casualty, but the damage is such that can be reasonably repaired or restored to its condition prior to the casualty within a period of nine (9) months from the date of the casualty loss, then Landlord shall undertake to make such repairs and restoration to the extent that casualty insurance maintained by it is available for such repair or restoration and this Lease shall continue in effect.

(c) If the Premises is rendered substantially untenable by fire or other casualty so that it cannot reasonably be restored within a period of nine (9) months from the date of the casualty, then either party, by written notice to the other giving not more than ninety (90) days following the date of the casualty, may elect to terminate this Lease. If not so terminated, Landlord will proceed to restore the building and the Premises to the condition as existed immediately prior to the casualty, to the extent that the casualty insurance maintained by it is available for

such repair or restoration.

(d) Notwithstanding anything herein contained, if during the last two (2) years of an existing term, the Premises are damaged to the extent of more than twenty five percent (25%) of the reasonable value of the improvements, Landlord shall be under no obligation to repair and replace said Premises.

(e) If all or any part of the Premises are damaged by fire or other casualty and this Lease is not terminated, Tenant shall promptly and with due diligence repair and restore its leasehold improvements, personal property, furniture, fixtures, and equipment and exhibits for the continued operation of the facility pursuant to this Lease.

13. Tenant's Property.

All exhibits, furniture, fixtures, equipment, and signage in the Premises, which are supplied or installed at the sole expense of Tenant, shall remain Tenant's property. Tenant may remove these items prior to the expiration or termination of this Agreement; provided that Tenant shall immediately repair or reimburse Landlord for the costs of repairing damage or defacement caused by such removal. Otherwise, such items shall become Landlord's property. Tenant shall be and remain the sole owner of all trademarks and service marks used by Tenant to identify the Library.

14. Eminent Domain.

In the event of the whole of the Premises (or such a substantial part thereof that they are rendered unsuitable for Tenant's usage), shall be taken by any public authority under the power of eminent domain or like power, this Lease shall terminate as of the date possession thereof shall be required to be delivered to the appropriate party. In the event of only a partial taking under such power, which does not materially render the Premises unsuitable for Tenant's usage, this Lease shall not terminate. Landlord shall be entitled to any awards for damages under the power of eminent domain for the taking of the Premises; Tenant shall be entitled to such awards for damages as may be allowed for taking of any of the furniture, fixtures, or equipment that may result therefrom.

15. Entry of Landlord for Inspections.

Landlord may, at all reasonable times and in any reasonable manner with prior notification to Tenant, enter the Premises to inspect and protect the Premises or any of its equipment thereon, effect compliance with any law, order, or regulation of any lawful authority, make and supervise repairs, alterations and additions, and, during the last six (6) months prior to the expiration of the term of the Lease (or such earlier time in the event of Tenant default) show the Premises to others and affix to any suitable part of the Premises notice of the availability of the Premises. Notwithstanding in the exercise of its rights hereunder, Landlord shall not interfere with Tenant's operations in the Premises.

16. Tenant Default: Remedies.

If Tenant fails to pay any rent or other amount due hereunder and such failure shall continue for ten (10) days after Tenant is given written notice of such failure; fails to observe or perform any of the other covenants or conditions of this Lease to be observed or performed by Tenant and fails to cure such default within thirty (30) days after Tenant is given written notice of such failure, is adjudicated bankrupt or insolvent according to law or makes any assignment for the benefit of creditors, or vacates or abandons the Premises, then Landlord may:

(a) terminate this lease and Tenant's right of possession of the Premises, and recover all damages to which Landlord is entitled under law;

(b) terminate Tenant's right of possession of the Premises without terminating this Lease, in which event Landlord may, but shall not be obligated to, relent all or part of the Premises for the account of Tenant, for such rent and term and upon such terms and conditions as are acceptable to Landlord; or

(c) exercise such other rights and remedies as may be available by law or in equity.

17. Landlord Defaults: Remedies.

If Landlord fails to observe or perform any of the covenants or conditions of this Lease to be observed or performed by Landlord and fails to cure such default within thirty (30) days after Landlord is given written notice of such failure, then Tenant may:

- (a) cure the default and recover from Landlord the reasonable and necessary costs thereof;
- (b) terminate this Lease; or
- (c) exercise such other rights and remedies as may be available by law or in equity.

18. Intentionally omitted.

19. Signage.

(a) Tenant shall be responsible for all costs of maintenance, content changes, and installations of any signage within the Library after the initial installation of signage in the build-out of the Premises.

(b) Landlord shall provide appropriate signage, with Tenant's prior approval, within its municipal boundaries for which it has governmental authority, designating the location of the Library. Landlord will further provide directional signage from major roadways and other transportation corridors to the Library continuously for the entire term of this Lease.

20. Indemnity.

Tenant agrees to defend, indemnify, and hold harmless Landlord, its officers, employees and agents, from and against any and all liabilities, claims, demands, costs, and expenses, of every kind and nature (including attorney's fees) arising from any injury or damage to any person (including death), property, or business:

- (a) sustained in the Premises; or
- (b) resulting from the negligence or willful act of Tenant, its employees, agents, servants, invitees, licensee or sub-tenants.

If any action or proceeding brought against Landlord, its employees, officers, or respective agents, by reason of any such claim, upon written notice from Landlord, Tenant covenants and agrees to defend such action or proceeding using counsel reasonably satisfactory to Landlord. Notwithstanding anything to the contrary contained in the foregoing, Tenant shall not be obligated to defend, indemnify, or hold harmless Landlord from or against any liability, demand, cost, or expense caused by Landlord's negligence, willful misconduct, or breach of this Lease.

21. Quiet Possession.

Tenant shall pay the rent and perform and observe all of the other covenants and conditions to be performed by Tenant hereunder, Tenant shall at all times during the term hereof have the peaceable and quiet enjoyment of the Premises without interference of Landlord or any person claiming through Landlord, subject, however, to the terms of this Lease and any mortgage or deeds of trust as provided hereafter.

22. Notices.

Any notice required or permitted to be given under this Lease shall be in writing and shall deem to have been given when deposited in the United States Mail, registered or certified mail, postage prepaid, by deposit with any reputable, national, "next day" delivery service, such as Federal Express or United Parcel Service, or by hand delivery - addressed as follows:

If to Landlord:	Town of Pineville P.O. Box 249 Pineville, North Carolina 28134 Attention: Town Administrator
If to Tenant:	The Public Library of Charlotte and Mecklenburg County 310 North Tryon Street

Charlotte, North Carolina 28202  
Attention: David Dillard

Either Party may, by notice as herein provided, designate a different address to which notices may be sent.

23. Assignment and Subletting.

Tenant shall not assign this Lease nor sublet all or any portion of the Premises, or otherwise transfer any right or interest hereunder without Landlord's prior written consent which shall not be unreasonably withheld, and any such approval shall be effective only for the particular instances described in the consent. In the event of any such assignment or subletting, Tenant shall nevertheless remain liable for the performance of all covenants and conditions of this Lease. Notwithstanding the foregoing, Landlord acknowledges that Tenant intends to create another entity to occupy the Premises and operate the Library therein. Landlord herewith consents to such assignment to the related entity to be created, provided that Tenant remains liable for the performance of all covenants and conditions of this Lease.

24. Governing Law: Venue.

This Lease shall be governed by and interpreted under the laws of the State of North Carolina, and the sole venue for the litigation of any disputes between the parties shall be Mecklenburg County, North Carolina.

25. Miscellaneous.

Headings are for convenience only and are not to be construed as parts of the particular paragraph to which they refer. Any separate or attached sketch, drawing plan, specification, rider, or schedule shall be deemed an original part of this Lease and shall be initialed by the parties. Failure of either party to insist upon strict performance of any of the covenants or conditions of this Lease or exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenant, condition, or option, but the same shall remain in full force and effect.

26. Successors.

This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, except as otherwise provided in this Lease.

27. Joint Efforts.

Landlord and Tenant will cooperate in joint efforts to assure the successful opening and ongoing operations of the Library. The Parties will establish a working executive team with representatives from each party to meet on a periodic basis to assist in the implementation of the Library. The Parties will attempt to address and make recommendations for the resolution of any problems that arise during the construction, opening, or operation of the Library. To this end:

- (a) Landlord will:
  - (i) use its resources, representatives, officers, agents, and employees as reasonably permissible and practicable to support Tenant in seeking separate operating support from organizations and entities that provide such support to public libraries; and
  - (ii) assist Tenant in realizing and maintaining a constructive, working relationship with the community.
- (b) Tenant will:
  - (i) use its best efforts to raise adequate capital to continually operate a first-class, state-of-the-art public library in accordance with this Lease;
  - (ii) plan, implement, and manage day-to-day operations of the Library in the Premises in accordance with this Lease; and



(iii) be responsible for ongoing marketing and promotion of the Library in the Premises in accordance with this Lease.

28. Time of the Essence: Force Majeure.

(a) Time is of the essence of this Lease and the performance of all obligations hereunder. However, except with respect to the payment of money, the time allowed to either party for performing its obligations under this Lease shall be extended by the number of days of delays resulting from Force Majeure (as defined below).

(b) As used in this Lease, "Force Majeure" means with respect to delays affecting the performance of one party (a) unreasonable interference by the other party or a separate contractor employed by the other party, or (b) acts of God, governmental restrictions, war or enemy action or invasion, terrorism, civil commotion insurrection, malicious mischief, sabotage, labor disputes, fire or other casualty, unusual adverse weather, condemnation, or other causes beyond the control of the delayed party.

(c) If a party intends to claim entitlement to an extension, that party must give notice to the other party within thirty (30) days after the later of (i) the occurrence of the Force Majeure event, or (ii) the date on which the claiming party first recognizes the Force Majeure condition giving rise to the claimed extension. The notice shall include an estimate of the probable effect and extent of the delay caused by the Force Majeure event. If adverse weather conditions are the basis for a claimed extension, the claim must ultimately be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled performance.

29. Brokers.

Each party represents and warrants to the other party that has not engaged any person, firm or entity to serve or act as a broker, agent, or finder, with respect to this Lease. Each party agrees to defend, indemnify, and hold harmless the other party from and against any claim, damage, loss, or expense resulting from the breach of the representations and warranty set forth in this paragraph.

30. Short Form Lease.

The parties shall execute and file a memorandum or short form of this Lease, in substantially the form attached hereto as Exhibit C, which shall include such provisions hereof as either party may wish to be incorporated or which are required by law for notice.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed effective the date first above written.

LANDLORD:

**TOWN OF PINEVILLE,**  
a North Carolina municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved by Town Attorney:

\_\_\_\_\_

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

\_\_\_\_\_  
Director of Finance

TENANT:

**THE PUBLIC LIBRARY OF CHARLOTTE AND MECKLENBURG COUNTY,** a body corporate created by the North Carolina General Assembly

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A to Lease

[Map of Project Site]

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Exhibit B to Lease

[Form of Lease Memorandum]

Drawn by: Ruff, Bond, Cobb, Wade & Bethune LLP  
Mail to: R.O.D. Box 24

MEMORANDUM OF LEASE

This Memorandum of Lease is made this \_\_\_ day of \_\_\_\_\_, 202\_\_\_, by and between the **TOWN OF PINEVILLE**, a North Carolina municipal corporation ("Landlord"), and **THE PUBLIC LIBRARY OF CHARLOTTE AND MECKLENBURG COUNTY**, a body corporate created by the North Carolina General Assembly ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated as of \_\_\_\_\_, 202\_\_\_, for the lease of certain space within a building constructed by Landlord (the "Lease"); and

WHEREAS, the Lease requires that a memorandum of lease be executed by Landlord and Tenant specifying the commencement date and expiration date of the lease, and further providing such other terms as are required for record notice of the Lease.

NOW, THEREFORE, Landlord and Tenant confirm the following with respect to the Lease:

1. Term. The initial term of the Lease commenced on \_\_\_\_\_ (the "Commencement Date") and expires on the date that is fifty (50) years therefrom.
2. Leased Premises. The leased premises consists of the entirety of the first floor of that building constructed and owned by Landlord and located at 315 Jack Hughes Lane in Pineville, North Carolina.
3. Incorporation of Lease Term. The terms of the Lease are incorporated herein by reference in as full a manner as though set forth herein.

This Memorandum of Lease is executed by the Landlord and Tenant as of the date set for above.

**LANDLORD:**

**TOWN OF PINEVILLE,**  
a North Carolina municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved by Town Attorney:  
\_\_\_\_\_

**TENANT:**

**THE PUBLIC LIBRARY OF CHARLOTTE AND  
MECKLENBURG COUNTY,** a body corporate created by  
the North Carolina General Assembly

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, personally came before me \_\_\_\_\_,  
who being by me duly sworn, says that he is \_\_\_\_\_ of the Town of Pineville, a North Carolina  
municipal corporation, and that said writing was signed by him on behalf of said corporation by its authority duly  
given, on behalf of the corporation, and the said \_\_\_\_\_ acknowledged the said writing to be the act and deed of  
the said corporation.

(Seal/Stamp)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(printed name)

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, personally came before me \_\_\_\_\_,  
who being by me duly sworn, says that he is \_\_\_\_\_ of The Public Library of Charlotte and  
Mecklenburg County, a body corporate created by the North Carolina General Assembly, and that said writing was  
signed by him on behalf of said entity by its authority duly given, on behalf of the entity, and the said \_\_\_\_\_  
acknowledged the said writing to be the act and deed of the said entity.

(Seal/Stamp)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(printed name)

My Commission Expires: \_\_\_\_\_

Exhibit C

[List of Major Capital Expenditures]

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INTERLOCAL COOPERATION AGREEMENT

(Jack Hughes Lane [Pineville] Library)

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement") is made this \_\_\_ day of \_\_\_\_\_, 2020, by and among **TOWN OF PINEVILLE**, a North Carolina municipal corporation (the "Town") **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina (the "County"), and **THE PUBLIC LIBRARY OF CHARLOTTE AND MECKLENBURG COUNTY**, a body corporate created by the North Carolina General Assembly (the "Library"), and collectively with Town and County, each a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes (as amended), cities and counties are authorized to jointly enter into interlocal cooperation undertakings for the contractual exercise by one unit of local government, on behalf of the other unit of local government, of any power, function, public enterprise, right, privilege, or immunity of local government;

WHEREAS, Town owns a tract of land containing approximately 7.141 acres, located at 315 Jack Hughes Lane in Pineville, North Carolina and currently identified as Mecklenburg County Tax Parcel No. 22105115 (the "Project Site"), and more particularly shown outlined on Exhibit A attached hereto (the "Map"). The existing Pineville police station is currently located and in operation on the Project Site, as generally shown on the Map.

WHEREAS, Town now wishes to construct a new two-story mixed-use building (consisting of approximately 40,000 total square feet) (the "New Building") and related improvements, including surface parking, on the Project Site (collectively, the "Project"), as substantially shown on the site plan attached hereto as Exhibit B (the "Site Plan");

WHEREAS, following completion of the Project, Town will lease to Library the entire first floor (consisting of approximately 20,000 square feet) of the New Building (the "Leased Premises") for the operation of a public library (the "Jack Hughes Library"). Town shall occupy and operate the second floor of the New Building (the "Town Space") as the new Pineville town hall; and

WHEREAS, pursuant to that certain Project Development Agreement by and among the Parties and dated on or about the date hereof (the "Development Agreement"), the Parties have agreed upon the terms and conditions upon which (i) the Project will be designed, constructed, and operated, and (ii) the Leased Premises will be leased (the "Lease") to and used by Library (subitems [i] and [ii] collectively, the "Transaction");

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, the mutual covenants and conditions hereinafter set forth, the Parties agree for themselves, their successors and assigns, as follows:

1. Purpose. The purpose of this Agreement is to define the Parties' rights, liabilities, and obligations with respect to the Transaction.
2. Right and Obligations of the Parties.
  - a. Town (which currently owns the Project Site) shall fund and contract for the design, permitting and construction for the New Building. Construction shall include (but not be limited to) walls, ceilings, flooring, doors, windows, lighting, mechanical, electrical, plumbing, heating and air conditioning systems, security systems, telecommunication infrastructure, and signage. The New Building shall be constructed, to the extent reasonably feasible, such that the Leases

Premised and the Town Space shall be independent from one another, as separate and fully-functional units within the New Building, but equally sharing use of and responsibility for the Common Areas (as defined in the Lease).

- b. The Project will include surface parking spaces sufficient to serve the reasonably anticipated demand for both the Town Space and the Leased Premises (as mutually agreed upon by Town and Library), including automobile parking spaces for employees, agents, and visitors.
- c. Town shall procure the necessary architect and engineering professionals needed to deliver the Project. The design professionals engaged by Town will validate the New Building space program, and prepare schematic design documents and construction documents. These documents will be subject to approval by each of the Parties, and following final approval thereof by all Parties, any subsequent modifications shall be at the expense of the requesting Party.
- d. Town and County agree to participate in design (and construction) meetings with respect to the Project.
- e. Library and County staff may enter the Leased Premises, prior to delivery thereof by Town, to facilitate the design and installation of the Library Improvements (as defined below).
- f. County and Library staff shall examine the Leased Premises, prior to accepting delivery thereof, to address any latent defects and post-construction matters as may be agreed upon by the Parties.
- g. Upon substantial completion of construction of the New Building in accordance with the terms of the Development Agreement, Town (as landlord) and Library (as tenant) shall execute the Lease in substantially the form attached as Exhibit E to the Development Agreement.
- h. Upon execution of the Lease, Library shall cause to be designed, developed, procured, fabricated and installed the exhibits, furniture, fixtures, equipment, and signage and signage content required to operate the Jack Hughes Library (the "Library Improvements"). As part of the Library Improvements, Library shall develop initial educational programming and acquire related supplies, manipulatives, and equipment consummate to operating a state-of-the-art public library. Library's minimum program requirements are set forth in the Lease.

3. Terms of Lease. The major terms of the Lease are as follows:

a. Term: Fifty (50) years.

b. Rent:

Months	Base Rent
1-12	\$ _____
13-24	\$ _____
25-36	\$ _____
37-48	\$ _____
49-60	\$ _____
61-72	\$ _____
73-84	\$ _____
85-96	\$ _____
97-108	\$ _____
109-120	\$ _____
121-132	\$ _____
133-144	\$ _____

145-156 \$ \_\_\_\_\_  
157-168 \$ \_\_\_\_\_  
169-180 \$ \_\_\_\_\_

Thereafter, for the duration of the Lease, Library shall pay Town base rent in the amount of One Dollar (\$1.00) per year. In addition to base rent, Library shall also pay to Town, on a monthly basis, fifty percent (50%) of Common Area Expenses (as defined in the Lease) with respect to the New Building.

- c. Maintenance and Capital Repairs: Town shall be responsible for repair and maintenance of all New Building systems, except those specifically and solely servicing the Leased Premises (which shall be the responsibility of Library). A reserve fund to address certain future major capital expenses shall be established, into which Town and Library shall make equal and annual monetary contributions.
  - d. Ownership of improvements: all improvements constructed within the Leased Premises shall be the property of Library.
4. Meetings. The Parties agree to take such other and further steps as may be reasonably necessary to accomplish the purposes of this Agreement.
5. Force Majeure. Neither Party shall be deemed in default with respect to any of the terms, covenants and conditions of this Agreement if such party fails to perform and its failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal, and except for such events which are caused by that Party's own employees), civil disorder, inability to procure material, failure of power, restrictive governmental laws and regulations, riots, insurrections, war or civil strife, fuel shortages, accidents, casualties, Acts of God, acts caused directly or indirectly by the other Party (or the other Party's agents, employees or invitees), or any other cause beyond the commercially reasonable control of the non-performing Party.
6. Amendment/Termination. This Agreement may be assigned, amended or terminated only by written agreement authorized by the governing bodies of each Party and signed by authorized representatives of each Party. This Agreement may also be terminated by court order upon the finding that there has been substantial breach of this Agreement by the non-complaining party so as to entitle the complaining party to be relieved of its obligations hereunder.
7. Notices. All notices required or permitted to be given hereunder shall be deemed given if e-mailed or hand-delivered, or mailed in a sealed wrapper and deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, properly addressed as follows:

If to Town: Town of Pineville  
P.O. Box 249  
Pineville, North Carolina 28134  
Attention: Town Administrator

If to Library: The Public Library of Charlotte and Mecklenburg County  
310 North Tryon Street  
Charlotte, North Carolina 28202  
Attention: David Dillard

If to County: Mecklenburg County Asset and Facility Management  
3205 Freedom Drive, Suite 101  
Charlotte, North Carolina 28208  
Attention: Jacqueline McNeil

With a copy to: David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune L.L.P.  
831 East Morehead Street, Suite 560  
Charlotte, North Carolina 28202

Either Party may change its notice address by giving written notice of the change to the other Party in the manner specified above no less than ten (10) days prior to the effective date of such change.

8. Conflict Resolution. Conflict resolution is addressed in Section 15 of the Development Agreement.

9. Applicable Law. This Agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

10. Enforcement of Agreement. The Parties agree that the remedy of specific performance would be an appropriate remedy, among others, for the enforcement of this Agreement.

11. Entire Agreement. Except for the Development Agreement and the Lease (the terms of which will control in the event of conflict herewith), this Agreement contains the entire agreement between the Parties with respect to the Transaction.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written, by authority duly granted by their respective governing bodies.

TOWN:

**TOWN OF PINEVILLE,**  
a North Carolina municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved by Town Attorney:

\_\_\_\_\_

LIBRARY:

**THE PUBLIC LIBRARY OF CHARLOTTE AND  
MECKLENBURG COUNTY,** a body corporate  
created by the North Carolina General Assembly

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COUNTY:

**MECKLENBURG COUNTY,** a political subdivision  
of the State of North Carolina

By: \_\_\_\_\_  
Name: Dena R. Diorio  
Title: County Manager

Approved as to Form:

\_\_\_\_\_  
David C. Dwyer, Esq.  
Ruff, Bond, Cobb, Wade & Bethune LLP  
Counsel for Mecklenburg County

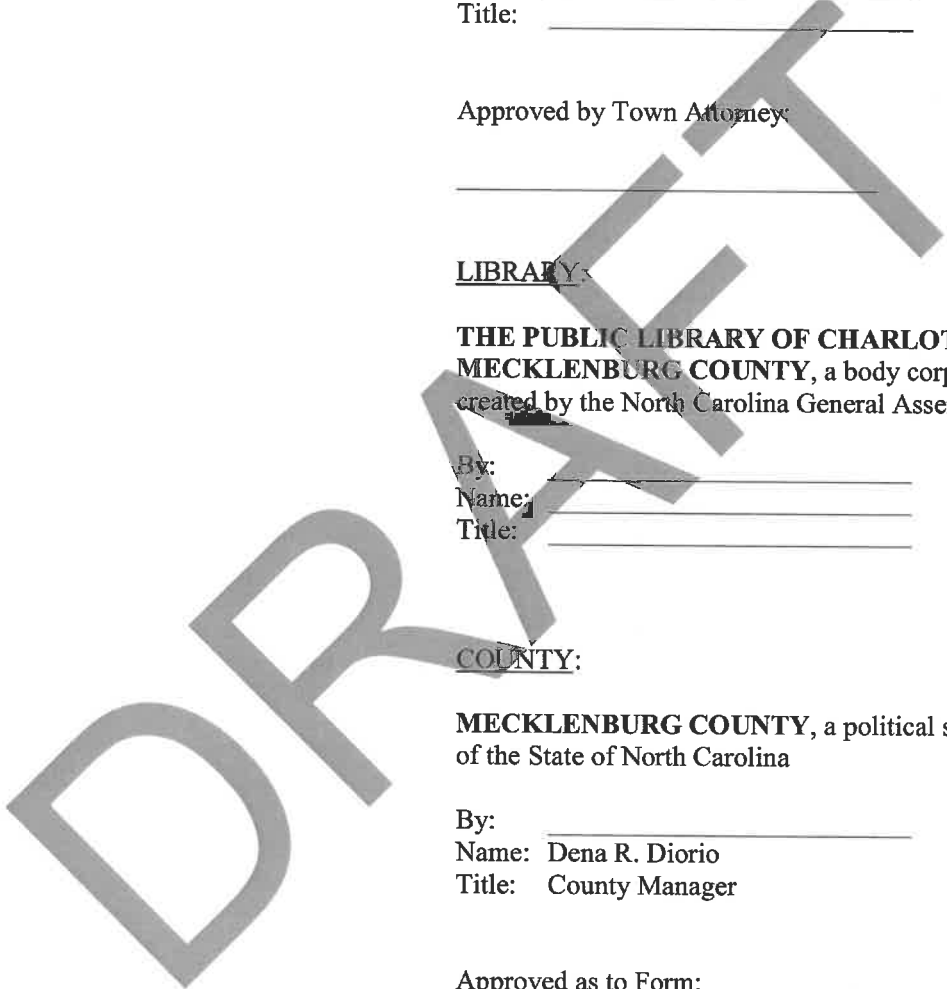


Exhibit A  
[Map of Project Site]

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Exhibit B

[Site Plan]

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# Memorandum



**To:** Mayor and Town Council

**From:** Ryan Spitzer

**Date:** 1/17/2020

**Re:** Time Clocks

## Overview:

At previous Work Sessions Council has asked staff to investigate the use of time clocks instead of paper for managing staff work hours. There are two options; 1) employees will clock in on a device located within their building, 2) employees will login on a computer

## Time Clock Comparison

### Option with Device

System	Year 1	Year 2	Year 3	Total
TimeClock Plus	\$29,101.44	\$5,773.44	\$5,773.44	<b>\$40,648.32</b>
Kronos	\$29,310.80	\$6,816.00	\$6,816.00	<b>\$42,942.80</b>

### Web Based Option

System	Year 1	Year 2	Year 3	Total
TimeClock Plus	\$6,800.00	\$3,600.00	\$3,600.00	<b>\$14,000.00</b>
Kronos	\$6,036.00	\$4,536.00	\$4,536.00	<b>\$15,108.00</b>

## Attachments:

Kronos Options  
TimeClock Plus Options





Quote#: Q-40162  
Expires: 12/27/2019  
Sales Executive: Patrick Friel

ORDER FORM  
Order Type: Quote  
Date: 12/17/2019

**Bill To Contact:**  
  
**Bill To:** TOWN OF PINEVILLE  
200 DOVER ST  
PINEVILLE, NC 28134-8596 USA

**Ship To Contact:**Richard Dixon  
  
**Ship To:** TOWN OF PINEVILLE  
200 DOVER ST  
PINEVILLE, NC 28134-8596 USA

**Ship to Phone:**704-889-1722  
**Contact:**Richard Dixon  
**Email:**rdixon@pinevillenc.gov

**Currency:** USD  
**Customer PO Number:**  
**Solution ID:** 6167699  
**Initial Term:**36 months  
**Billing Start Date:** 90 Days from Execution of  
Order Form  
**Data Center Location:**

**FOB:** Shipping Point  
**Ship Method:**  
**Freight Term:** Prepay & Add  
**Renewal Term:**12 months  
**Payment Term:** Net 30 Days

**Order Notes:**

- This order entered into between the Customer and Kronos SaaS, Inc. is subject to the terms and conditions of the Master Agreement Reference #18221 dated March 18th, 2019 between the Lead Agency (acting as "Owner") and Kronos SaaS, Inc. (as the "Contractor"), as amended (collectively referred to as the "US Communities Agreement #18221").

The Professional Services Engagement Overview is attached to this Order Form as a summary for the implementation services to be provided by Kronos for the Workforce Ready Setup Fees set forth on this Order Form.

**SaaS Services**

Billing Frequency: Monthly in Arrears

Product Name	Quantity	PEPM	Monthly Price
WORKFORCE READY TIME KEEPING	100	USD 3.78	USD 378.00

Product Name	Quantity	PEPM	Monthly Price
WORKFORCE READY INTEGRATION HUB	1	USD 0.00	USD 0.00
<b>Total</b>			<b>USD 378.00</b>

## One Time Setup Fees

Billing Frequency: Fixed Fee 100% at signing

Item	Total Price
One Time Setup Fees	USD 1,500.00

## Quote Summary

Item	Total Price
Minimum Monthly SaaS Service & Equipment Rental Fee	USD 378.00

Item	Total Price
Minimum Annual SaaS Service & Equipment Rental Fee	USD 4,536.00

	Total Price
Total One Time Fees	USD 1,500.00

**TOWN OF PINEVILLE**

**Kronos SaaSr, Inc.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Invoice amount will reflect deposit received. All professional services are billed as delivered with a payment term of Net Upon Receipt. Unless otherwise indicated above, this order is subject to the attached terms and conditions which the customer acknowledges have been read. THIS ORDER IS SUBJECT TO APPLICABLE TAXES. THE ACTUAL TAX AMOUNT TO BE PAID BY CUSTOMER WILL BE SHOWN ON CUSTOMER'S INVOICE. Shipping and handling charges will be reflected on the final invoice. The Monthly Price on this Order Form has been rounded to two decimal places for display purposes. As many as eight decimal places may be present in the actual price. Due to the rounding calculations, the actual price may not display as expected when displayed on your Order Form. Nonetheless, the actual price on your invoice is the true and binding total for this order for purposes of amounts owed for the term. If you are tax exempt; please provide a copy of your "Tax Exempt Certificate" with your signed quote.



## Professional Services Engagement Overview

### Purpose and Overview of Engagement

This Professional Services Engagement Overview outlines the scope of services to be provided by Kronos for the Setup Fees indicated on the applicable Order Form, to TOWN OF PINEVILLE("Customer") related to the Core Modules, Value-add Modules, and/or Optional Services contained in the document. Our Professional Services engagements are designed to help our Customers successfully implement your Core Modules, as well as enable you to easily layer Value-add Modules and functionality over time based on your priorities, schedule, and resources.

The Kronos® Workforce Ready® (WFR) Professional Services engagement described herein is fixed price based and is subject to the terms and conditions governing your Kronos Workforce Ready – Software as a Service (the "Agreement"). Unless otherwise defined herein, words and expressions defined in the Agreement shall have the same meaning in this Professional Services Engagement Overview

### Your Workforce Ready SaaS Solution

TOWN OF PINEVILLE and Kronos are deploying the following WFR modules with 1 location(s) and 0 collective bargaining agreements(s).

Core Modules	Employees	Deployments	Estimated Duration
WORKFORCE READY TIME KEEPING	100	1	75 Days

### TOWN OF PINEVILLE and Kronos Collaboration

A successful Professional Services Engagement will require close collaboration between TOWN OF PINEVILLE and Kronos. The Kronos Professional Services team is equipped to help keep you on target for meeting project milestones and requirements, as well as to assist you in configuring and deploying the Kronos Workforce Ready solution that meets your organization's specific requirements. Your organizations participation and commitment to the project goals and timeline are critical to help ensure success. Please see the Kronos Workforce Ready Professional Services Engagement Guidelines at

<https://www.kronos.com/kronos-workforce-ready-implementation-guidelines> to review both parties' responsibilities

The Estimated Duration stated above is an estimate based upon our experience with our customers and products. Depending upon the preparation and engagement of your organization, there may be opportunity to accelerate the completion of this engagement. However, the Estimated Duration may be exceeded based on the level of preparedness, bandwidth, and skill level of your available resources. Other examples that may extend the Estimated Duration include: separate deployments of the solution, having a unionized workforce, and policies that vary across employee groups.

### Core Functionality Deliverables

Working in close collaboration, TOWN OF PINEVILLE and Kronos will deploy the following core modules and functionality in 75 estimated days from project kick-off:

WFR Core	Kronos Delivered Value
Time Keeping Module	WFR Time Keeping deployment gets you started with the ability to accept punches and pay employees accurately through these core components: <ul style="list-style-type: none"> <li>• Total Cost Centers</li> <li>• Profiles                             <ul style="list-style-type: none"> <li>• Timesheet</li> <li>• Time Off Request</li> <li>• Pay Calculations</li> <li>• Pay Prep</li> <li>• Accruals</li> <li>• Security</li> <li>• Points</li> </ul> </li> <li>• Tables                             <ul style="list-style-type: none"> <li>• Rate</li> <li>• Holiday</li> </ul> </li> <li>• Manager Levels</li> <li>• Employee Perspective Scorecards</li> <li>• Workflows                             <ul style="list-style-type: none"> <li>• Time Off Requests</li> <li>• Timesheet Change Requests</li> </ul> </li> <li>• Schedules                             <ul style="list-style-type: none"> <li>• Daily Rules</li> </ul> </li> </ul>



## Workforce Ready Proposal

Date: 11/7/2019 Customer PO #:   
 Version #: 0 Salesperson: Patrick Friel   
 Expires: 12/27/2019

Bill To: Attn: Richard Dixon Ship To: Attn: Richard Dixon   
 Town of Pineville Town of Pineville   
 200 Dover St. 200 Dover St.   
 Pineville, NC 28134 Pineville, NC 28134

FOB: Shipping Point Solution ID:   
 Shipping Method: FedEx Ground   
 Currency: USD Email Contact: rdixon@pinevilenc.gov   
 Payment Terms: N30 Phone #: 704-889-1722

### SaaS Services

Item	License/Qty	Unit Price	Price
Workforce Ready Time Keeping	100	\$3.78	\$378.00
Workforce Ready Integration Hub	1	\$0.00	\$0.00
<b>Minimum Monthly Total:</b>			<b>\$378.00</b>

### Equipment - Purchase

Item	Qty	Unit Price	Total Price
Kronos InTouch 9100 H4, Standard, KR B/C	8	\$2,624.35	\$20,994.80
<b>Total Price:</b>			<b>\$20,994.80</b>

### Equipment - Purchase Support

Item	Duration	Total Price
DEPOT EXCHANGE SUPPORT SERVICE	1 YR	\$2,280.00
<b>Total Price:</b>		<b>\$2,280.00</b>

### Accessories

Item	Qty	Unit Price	Total Price
NORTH AMERICA POWER KIT FOR EXTERNAL OUTLET, INTOUCH STD	8	\$0.00	\$0.00
<b>Total Price:</b>			<b>\$0.00</b>

### Setup Fees

Item	Total Price
Workforce Ready Setup Fee	\$1,500.00
<b>Total Price:</b>	<b>\$1,500.00</b>

### Quote Summary

Item	Total Price
Minimum Monthly Fee	\$378.00
One Time Setup Fees	\$1,500.00
<b>Total Equipment Purchase and Accessories Fee</b>	<b>\$23,274.80</b>

Kronos | Time & Attendance • Scheduling • Absence Management • HR & Payroll • Hiring • Labor Analytics

Kronos SaaS, Inc 3040 Route 22 West, Suite 200 Branchburg, NJ 08876 (800) 225-1561 www.kronos.com/kronossaashr

**TimeClock Plus v7 OnDemand TCP Cloud Hosted Solution  
Estimated Proposal - Town of Pineville**

TCP v7 OnDemand TCP Cloud Software Licensing						
Item Description	Quantity	Monthly Calculated Unit cost	First Year Cost	Second Year Cost	Third Year Cost	Total Three Year System Cost
<b>v7 Professional OnDemand, Clockable Employee License</b>	100	\$3.00	\$3,600.00	\$3,600.00	\$3,600.00	\$10,800.00
Unlimited Administrative Users / Timekeepers	included	included	included	included	included	\$0.00
Unlimited Workstation Licenses	included	included	included	included	included	\$0.00
Unlimited Employee Self Service Users	included	included	included	included	included	\$0.00
All future version upgrades (with Cloud Subscription)	included	included	included	included	included	\$0.00
Flat File Interface and Modules	1	\$500.00	\$500.00	\$0.00	\$0.00	\$500.00
<b>Total TCP v7 OnDemand Cloud/SaaS Licensing</b>			<b>\$4,100.00</b>	<b>\$3,600.00</b>	<b>\$3,600.00</b>	<b>\$11,300.00</b>

**TCP RDTg Clocking Terminals**

TCP RDTg Clocking Terminals						
Item Description	Quantity	Monthly Calculated Unit cost	First Year Cost	Second Year Cost	Third Year Cost	Total Three Year System Cost
<b>Onsite or Remote Implementation &amp; Training (hours)</b>	12	\$225.00	\$2,700.00	\$0.00	\$0.00	\$2,700.00
<b>Total Implementation and Training</b>			<b>\$2,700.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,700.00</b>
<b>Total Proposed Investment</b>			<b>\$6,800.00</b>	<b>\$3,600.00</b>	<b>\$3,600.00</b>	<b>\$14,000.00</b>

**Optional Clocking Terminals and Accessories**

RDT Touch 400 Pin Entry	\$1,698.00
RDT Touch 400 Magnetic Badge Terminal	\$1,853.00
RDT Touch 400 Barcode Badge Terminal	\$2,007.00
RDT Touch 400 HID Proximity Badge Terminal	\$2,316.00
BIO RDT Touch 400 Fingerprint Entry Terminal	\$2,522.00
MobileClock Kiosk License (per device i.e., iPad, iPhone)	\$,399.00
Battery Backup Option Per Clock	\$208.00
Power over Ethernet Option Per Clock	\$200.00
WiFi 80211 b/g/n Adaptor	\$103.00
Camera Option Per Clock	\$206.00

**TimeClock Plus v7 OnDemand TCP Cloud Hosted Solution  
Estimated Proposal - Town of Pineville**

TCP v7 OnDemand TCP Cloud Software Licensing						
Item Description	Quantity	Monthly Calculated Unit cost	First Year Cost	Second Year Cost	Third Year Cost	Total Three Year System Cost
V7 Professional OnDemand, Clockable Employee License	100	\$3.00	\$3,600.00	\$3,600.00	\$3,600.00	\$10,800.00
Unlimited Administrative Users / Timekeepers	Included	Included	Included	Included	Included	\$0.00
Unlimited Workstation Licenses	Included	Included	Included	Included	Included	\$0.00
Unlimited Employee Self Services Users	Included	Included	Included	Included	Included	\$0.00
All future version upgrades (with Cloud Subscription)	Included	Included	Included	Included	Included	\$0.00
Flat Fee Interface and Modules	1	\$500.00	\$500.00	\$0.00	\$0.00	\$500.00
<b>Total TCP v7 OnDemand Cloud/SaaS Licensing</b>			<b>\$4,100.00</b>	<b>\$3,600.00</b>	<b>\$3,600.00</b>	<b>\$11,300.00</b>
<b>TCP RDTg Clocking Terminals</b>						
RDT Touch 400	8	\$1,698.00	\$13,584.00	\$0.00	\$0.00	\$13,584.00
<b>Total RDTg Hardware</b>			<b>\$13,584.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$13,584.00</b>
<b>TCP Hardware and Software Maintenance and Support</b>						
Annual Hardware Maintenance and Support - Expedited Depot Repair (16% of Hdwe)	1	\$2,173.44	\$2,173.44	\$2,173.44	\$2,173.44	\$6,520.32
Premium Software Maintenance & Support Version Upgrades Included	1	Included	Included	Included	Included	\$0.00
Shipping and Handling UPS - TBD						
<b>Total Hardware Maintenance &amp; Support</b>			<b>\$2,173.44</b>	<b>\$2,173.44</b>	<b>\$2,173.44</b>	<b>\$6,520.32</b>
<b>Professional Services &amp; Training</b>						
Onsite or Remote Implementation & Training (hours)	12	\$225.00	\$2,700.00	\$0.00	\$0.00	\$2,700.00
<b>Total Implementation and Training</b>			<b>\$2,700.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$2,700.00</b>
<b>Total Proposed Investment</b>			<b>\$22,557.44</b>	<b>\$5,773.44</b>	<b>\$5,773.44</b>	<b>\$34,104.32</b>
<b>Optional Clocking Terminals and Accessories</b>						
RDT Touch 400 Magnetic Badge Terminal	\$1,853.00					
RDT Touch 400 Barcode Badge Terminal	\$2,007.00					
RDT Touch 400 HID Proximity Badge Terminal	\$2,316.00					
BIO RDT Touch 400 Fingerprint Entry Terminal	\$2,522.00					
MobileClock Kiosk License (per device i.e. iPad, iPhone)	\$399.00					
Battery Backup Option Per Clock	\$206.00					
Power over Ethernet Option Per Clock	\$200.00					
WiFi 80211 b/g/n Adaptor	\$103.00					
Camera Option Per Clock	\$206.00					

# Memorandum



**To:** Mayor and Town Council

**From:** Ryan Spitzer

**Date:** 1/17/2020

**Re:** emPerform Employee Performance System

---

## **Overview:**

The Town is considering moving away from the paper based performance evaluation system that we currently to a web based system. This system will allow staff and managers more flexibility with evaluations and more real time analysis by allowing employees and managers to create journal entries throughout the year and having more frequent check-ins.

Some of the features of the new system are:

1. The Town can create a hybrid of core competencies and goals as an evaluation metric for each job category
2. The system will automatically assign merit increases based on ratings and money allocated to departments
3. Employee Action Plans can be created
4. Real-time performance logs through journal entries
5. Employee Evaluations can be tracked throughout year

## **Estimated Costs:**

Year 1: \$9,900

Year 2: \$4,000

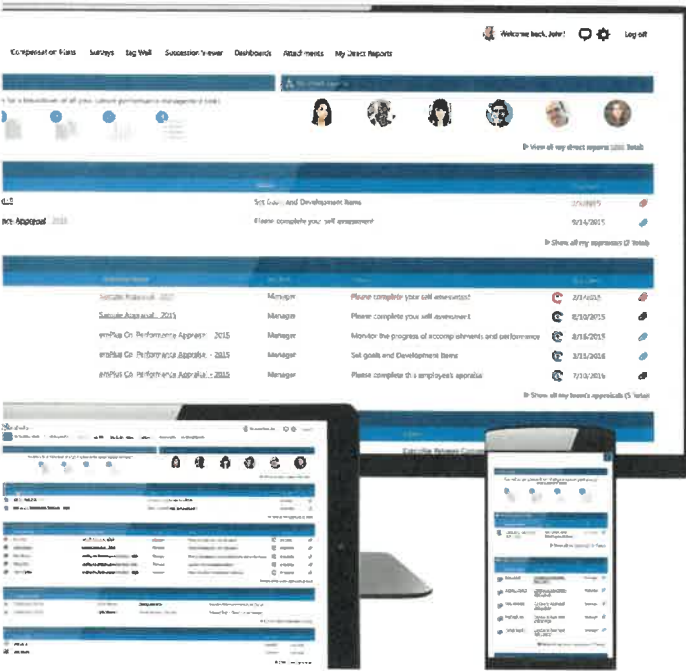
Year 3: \$4,000.

## **Attachments:**

Contract

emPerform Capabilities





Welcome!

## emPerform Overview & Demonstration

Award-Winning Employee Performance Management Software



## About emPerform

Since 2004, we have been lucky enough to work with some of the most amazing HR and corporate professionals across the globe to automate and re-tool performance management.

Our focus: Enable **simple & affordable** performance management to help **Align, Develop, Reward & Retain** a world-class workforce.



All-Inclusive



Configurable



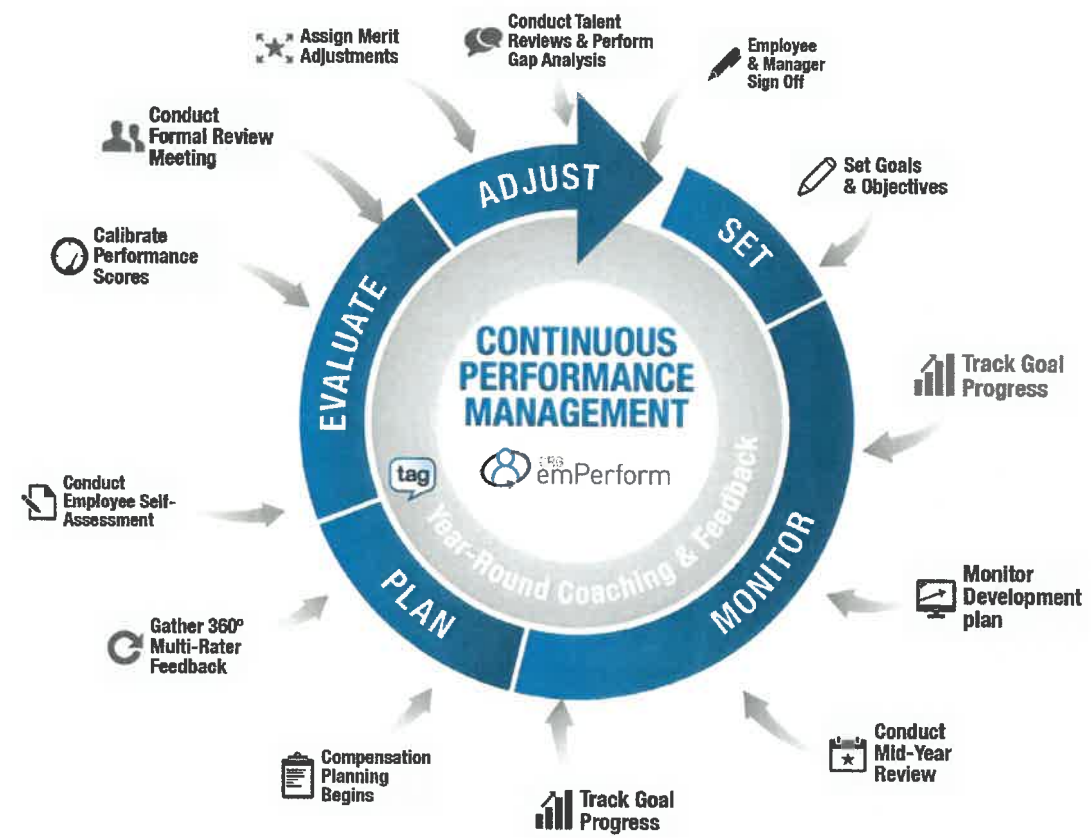
Affordable



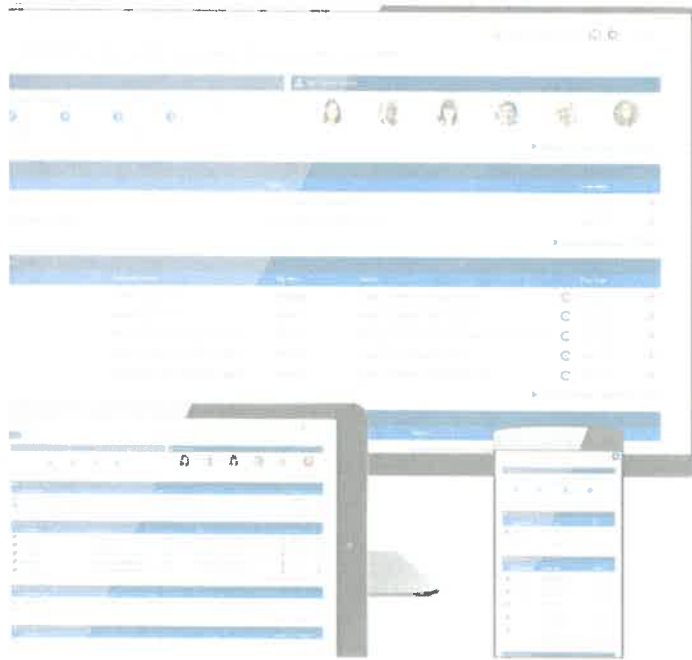
Intuitive & Easy-to-Use

Is once a year  
enough?





Everything is included in emPerform – for one great price!



#### Online Reviews

- ✓ 100% flexible to your needs, templates available
- ✓ SMART Goals, Competencies, Development Planning, Values
- ✓ Any review type needed! Annual, quarterly, anniversary etc.!
- ✓ Custom rating scales & content
- ✓ Unlimited workflow steps & notifications
- ✓ On-demand/Ad-hoc forms (PIPs, project assessments, probationary reviews)



#### Ongoing feedback & journaling

- ✓ Year-round feedback
- ✓ Easy performance logs



#### Integrated 360° reviews

- ✓ Company-wide peer feedback
- ✓ Customization options



#### Online surveys

- ✓ New hire surveys
- ✓ Pulse & engagement surveys
- ✓ 360° questionnaires



#### Notifications & Alerts

- ✓ Automated email alerts and notices
- ✓ Status tracking



#### Content libraries

- ✓ Competency library
- ✓ Review templates
- ✓ Writing & rating assistant tools



#### Nine-Box Matrix

- ✓ Succession planning
- ✓ Talent identification



#### Compensation Planning

- ✓ Suggested increases
- ✓ Budget management
- ✓ Approval routing



#### Reporting & Analytics

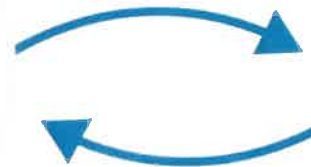
- ✓ 100 out-of-the box reports
- ✓ Manager dashboards
- ✓ Ad-hoc reports & scheduling



## Integration with existing HR systems



Your existing  
HR System

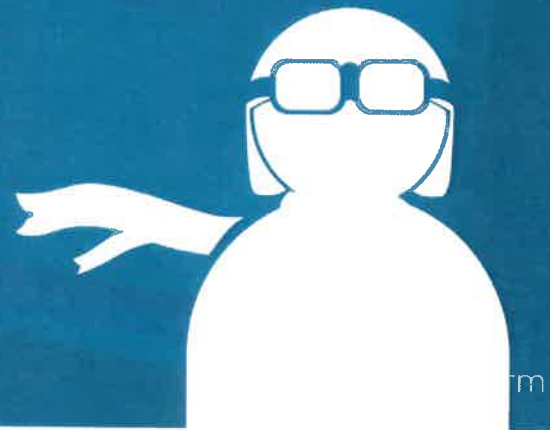


 **emPerform**

## Meet Your Dedicated emPerform Expert

We work closely with you at every stage to help ensure a smooth launch!

- Custom setup and training based on your needs
- Administrator training (hands on approach so you know your system)
- Change management communication
- Pilot testing and end-user training videos
- Complete technical support



™

## Ongoing commitment to your success!



### Frequent Check-Ins:

As part of our ongoing commitment to your success, you are assigned a dedicated Account Manager who will check in frequently to make sure you are getting the most from emPerform.



### Training & Resources at Your Fingertips

Administrators have 24/7 access to user guides & video tutorials. Custom end-user training guides and/or videos are provided. Administrators are given hand-on training to manage and maintain emPerform.



### Free Support

That's right! Business & technical support is included in your license fees. Live support is available Monday-Friday 9-5. We are always here to help!





# The Implementation Process



1. Kick-Off Call  
30 mins (remote)



2. Discovery & Requirements Analysis  
2-4 hours (remote)



3. Setup & Administrator Training  
up to 4 days (on-site or remote)



4. Testing & End-User Training  
(remote)



5. GO LIVE!



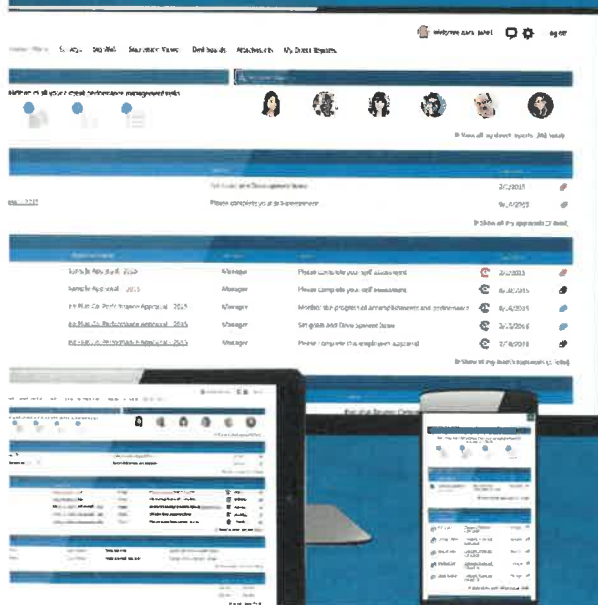
7. Reporting Review  
1 hour (remote)



Ongoing Support & Personal Account Management

# Next Steps?

Contact me anytime:  
Natalie Trudel  
ntrudel@crgroup.com  
1.877.711.0367 x:252

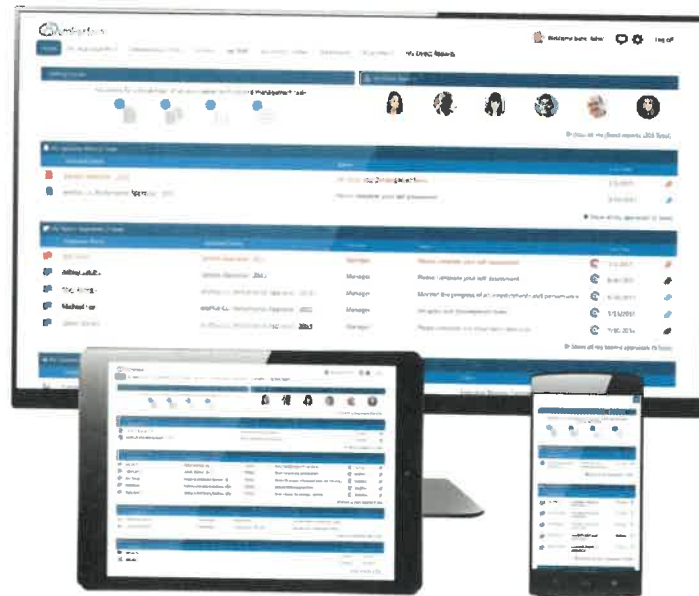




**CRG EMPERFORM SAAS CONTRACT AGREEMENT  
EMPLOYEE PERFORMANCE MANAGEMENT SOFTWARE**

Presented to:

**TOWN OF PINEVILLE  
200 Dover Street, P.O Box 249, Pineville, NC, 28134  
(704) 889-2362**



**Statement of Confidentiality**

Due to the nature of the material contained herein, Corporate Renaissance Group (CRGroup) requests that this document and its contents not be discussed, disclosed or divulged to third parties without the written consent of CRGroup.

Notice or inquiries regarding this document should be directed to:

Corporate Renaissance Group  
6 Antares Drive, Phase I, Suite 200 Ottawa, Ontario Canada K2E 8A9  
613-232-4295 E-Mail: [info@employee-performance.com](mailto:info@employee-performance.com)

CRG emPerform  
6 Antares Drive | Phase I, Suite 200 | Ottawa, ON | K2E 8A9 Canada  
Tel: 613-232-4295 | Fax: 613-232-7274 | Email: [info@employee-performance.com](mailto:info@employee-performance.com)

[www.employee-performance.com](http://www.employee-performance.com)

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## 1. INTRODUCTION

CRG emPerform (referred to as emPerform) is an employee performance and talent management software solution. The software is wholly-owned by Corporate Renaissance Group (**CRGROU**P).

This Agreement sets forth with terms and conditions governing the deployment of emPerform software, professional services being provided to train emPerform system administrators and post-implementation protocols related to software updates and additional support.

## 2. SOLUTION OVERVIEW

CRGROU P covenants that emPerform (a) is a collaborative, web-based software solution that facilitates the employee performance and talent management process, and (b) provides functionality that allows organizations to develop and deploy employee performance appraisals, performance journals and feedback, surveys, 360° multi-rater feedback questionnaires, 360° enabled performance appraisals, succession planning, compensation management and reporting.

The system administrator function deals with the administration of the solution and can be used by the Human Resources support group which will be responsible for the administration of the solution following the formal training provided as part of the implementation package described in **Appendix C**.

Administration of the solution includes, but is not limited to functions such as: maintaining all employee profiles, reporting relationships and data; creating, assigning and updating all performance and/or compensation criteria including rating scales, content definitions (example: Competency statements), compa-ratios and any other data that forms part of the TOWN OF PINEVILLE data requirements; assignment of content to individuals or groups; assignment of employees to applicable performance or compensation forms; adjustments of changes to workflow; reporting and analysis.

**All administrative and users can access the software from one of the following web browsers: Internet Explorer v11+, Chrome v33.0+, Mozilla v28.0+, Safari v5.1.7+**

## 3. SOFTWARE LICENSING OPTION

### 3.1.1 SOFTWARE AS A SERVICE (SAAS) SUBSCRIPTION

For an annual subscription license fee TOWN OF PINEVILLE agrees to subscribe to the emPerform software for a series of annual periods. The software will be hosted by CRGROU P (either by itself or through a third-party web hosting service). One (1) production site is included with this Agreement.

The annual subscription license fee includes the right to use emPerform and any upgrades that are released during the period of the subscription (to be installed by CRGROU P). The customer will be notified of the latest support packs and releases as soon as they are commercially released. Any support pack and release updates will be scheduled and approved by the customer in advance. In addition, the customer will receive notice of the subscription renewal date and the cost of renewal (based on the current Agreement).

Upon completion of the agreed upon term, CRGROU P reserves the right to calculate the annual subscription license fee price based on current pricing in effect at the time of renewal. The customer will be given reasonable notice of any such changes before they occur. Reasonable notice is considered sixty (60) days prior to the completion of the agreed upon term.

Under this arrangement, CRGROU P reserves the right to pass on Service Level Agreements ("SLAs") to TOWN OF PINEVILLE, including but not limited to SLAs between CRGROU P and TOWN OF PINEVILLE and SLAs between CRGROU P and any third-party web hosting service that it chooses as its hosting provider. The Software as a Service (SAAS) Service Level Agreement related to this option is provided in **Appendix D**.

A lapsed subscription license fee constitutes discontinuation of the use of the software and termination of this Agreement. CRGROU P will ensure that reasonable notice is provided in writing prior to the termination of this Agreement. Reasonable notice is considered thirty (30) days prior to the anniversary date of the contract execution.

The actual Software License Agreement is enclosed in **Appendix A**.

#### 4. SERVICES: IMPLEMENTATION/INSTALLATION

Implementation and training packages are available with all emPerform deployments. The packages offered vary in length and duration and the time required to successfully implement the solution depends on several factors that include but are not limited to: the readiness of the organization, availability and quality of information, support from IT personnel, and efforts and experience and involvement of the customer's staff. The costs of these services will depend on the level of efforts required by the emPerform team and will be discussed and approved prior to the start of the implementation timelines.

During the implementation process, the emPerform Business Solution Consultant(s) will work with designated staff from TOWN OF PINEVILLE to ensure that all agreed upon project deliverables and milestones are met to mutual satisfaction.

The implementation shall be considered complete unless a formal rejection of the implemented solution is provided within ten (10) business days of the last scheduled day of implementation. If the solution is rejected, a valid reason must be provided stating which previously discussed business requirement was not met.

**Appendix B** provides the Standard Terms and Conditions for these services as well as any other services that may be asked for and provided by CRGROUP.

Further detail on the implementation package selected by TOWN OF PINEVILLE is detailed in **Appendix C**.

#### 5. POST-IMPLEMENTATION SUPPORT

Following completion of the implementation, as defined in Section 4 of this Agreement, customer post-implementation support is provided by our Consulting Team and Technical Support Team. Post-implementation support is defined as either Technical Support, Business Support, or Professional Services and is governed by our Post Implementation Support Service Level Agreement.

##### 5.1.1 POST-IMPLEMENTATION TECHNICAL SUPPORT

CRGROUP shall provide support for technical issues related to emPerform, technical issues related to emPerform upgrades (version, not platform) and any technical error messages received by the customer. It does not cover "Business Support" (see section 5.1.2 below). Post-implementation technical support is included at no additional charge to customers that are considered active on their chosen licensing plan.

Cases considered technical in nature are not billed to the Customer.

##### 5.1.2 POST-IMPLEMENTATION BUSINESS SUPPORT

CRGROUP shall provide business support including but not limited to dealing with "how-to" questions related to emPerform or process functionality; providing an outline of steps needed to resolve the Customer's issue, providing references to areas in the emPerform Help Guide which will help the Customer to solve their issues, etc. Support of this nature commences on the date the implementation as described in this proposal has been completed (per Section 4 of this Agreement).

Business Support is included as part of the Customer's active subscription fee or enhancement fee and is not billed to the Customer.

##### 5.1.3 POST-IMPLEMENTATION PROFESSIONAL SERVICES

Professional Services include, but is not limited to, additional administrator or end-user training, custom report writing, data integration, time spent configuring or reviewing the Customer setup in emPerform, evaluation and compensation modelling assistance, etc. Professional services are considered billable.

Post-Implementation Professional Services outside the scope of the implementation and not included as part of a Professional Services Package are billed at \$165 hourly as incurred. Professional Services Packages are outlined in **Appendix F**.

#### **5.1.4 POST IMPLEMENTATION SUPPORT SERVICE LEVEL AGREEMENT:**

The CRGROU Service Level Agreement for post implementation support guarantees response times by the CRGROU support team members via both electronic and telephone support, based on severity level.

Response times are not guaranteed during Canadian statutory holidays, special company events and weather-related closures. CRGROU guaranteed support hours are from 9:00am – 5:00pm Eastern Standard Time (EST), Monday to Friday.

**Email:** Support requests and related questions may be emailed directly to **support@employee-performance.com**. Email support requests submitted outside of regular support hours will be answered the next business day. The guaranteed response time begins from the start of new business hours.

**Telephone:** The support team may also be accessed through **1.877.711.0367** where callers will be directed to one of CRGROU's product specific Support Team members.

**Guaranteed Response Time:** Guarantees are met when the emPerform support team responds to your support request within the guarantee period determined by the severity level of your problem (see below). A response is defined as the team representative beginning to work on the issue; a guaranteed response time is not a guarantee of a resolution. CRGROU cannot guarantee resolutions to questions within the guarantee period, only responses to initial support requests.

**Low severity** problem requests have an eight business-hour response time (includes usability questions, i.e. How do I do this?); impact only 1 or 2 users; may be an error message which does not prevent normal work from occurring but is a source of annoyance; etc.).

**High severity** problem requests have a four business-hour response time (includes system-down situations as well as situations where an operation vital to success cannot be performed).

**6. PRICING AND TERM:**

**TOWN OF PINEVILLE has selected the emPerform Software as a Service (SAAS) Subscription License arrangement. Under this arrangement, pricing is as follows:**

**6.1.1 SUBSCRIPTION TERM**

The subscription term is three (3) years or thirty-six (36) months.

The subscription commences on the date of contract execution. The date of contract execution is defined as the date of Customer acceptance to this Agreement, as defined in Section 7. Subscription fees are billed in three (3) annual installments during the subscription period.

**6.1.2 TOTAL FIRST YEAR BILLING**

ITEM	DESCRIPTION	COST
Software	100 emPerform Subscription Licenses @\$40.00 license/year	\$4,000
Implementation	emPerform Implementation & Training (as outlined in Appendix C)	\$5,949
Technical Integration	None selected.	-
<b>Total First-Year Billing:</b>		<b>\$9,949</b>

**6.1.3 TOTAL SUBSCRIPTION & ONGOING COSTS**

ITEM	COST
Total Subscription Costs	\$4,000
Annual Billing Fee	\$4,000
Total Contract Commitment (3-year term)	\$17,949

**6.1.4 PRICING NOTES**

- Prices are stated in US dollars and do not include any applicable taxes.
- Travel & other out-of-pocket expenses will be billed to the customer at incurred cost on a monthly basis.
- Additional users can be added at any time in increments of 25 subject to current pricing in effect at the date of purchase.
- emPerform Licenses and Implementation Services are billed upon receipt of the executed contract.
- On-going annual costs are billed on the anniversary date of contract execution and are billed in advance for the year that follows. These items are non-refundable once billed.
- Professional Services performed outside the original implementation and scope of regular business and technical support is billed at \$165 per hour as incurred. See **Appendix F** for an overview of the Professional Services Packages available.
- Invoices are considered due on receipt.



**6.1.5 CONSENT TO ANNOUNCE**

CRGROU**P** has the option to announce that TOWN OF PINEVILLE has chosen emPerform. In addition, within one (1) year of post implementation CRGROU**P** has the option to create a case study at its own expense. In any scenario where TOWN OF PINEVILLE is mentioned or marketed as a customer of emPerform, formal written approval must be granted by authorized personnel at TOWN OF PINEVILLE.

**7. ACCEPTANCE**

This Agreement may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this Agreement executed in ink by both parties. The parties acknowledge that they have read this Agreement, understand it and agree to be bound by its terms, and the person signing on behalf of each has been authorized to do so. If the person signing below as customer is entering into this Agreement on behalf of a company or other legal entity, such person represents that he or she has the authority to bind such entity and its affiliates to these terms and conditions.

Accepted by:

**CORPORATE RENAISSANCE GROUP**

**TOWN OF PINEVILLE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Natalie Trudel  
\_\_\_\_\_  
Name

\_\_\_\_\_  
Name (please print)

Solutions Specialist  
\_\_\_\_\_  
Position

\_\_\_\_\_  
Position (please print)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Billing Contact details:**

\_\_\_\_\_  
Billing contact Name:

\_\_\_\_\_  
Billing contact Email:

**8. Appendix:**

**APPENDIX A: CRG EMPERFORM SUBSCRIPTION SERVICES AGREEMENT**

This CRG EMPERFORM SUBSCRIPTION SERVICES AGREEMENT ("Subscription Agreement" or "Agreement") is a legal agreement between TOWN OF PINEVILLE (referred to interchangeably as the Customer or You; hereafter) and Corporate Renaissance Group (CRGROU). By installing and/or using emPerform (also referred to as SOFTWARE; hereafter), You agree to be bound by the terms of this License Agreement. If You do not agree to the terms of this License Agreement, discontinue the use of the software and accompanying items (including printed materials and binders or other containers) and promptly return all related material to CRGROU.

**Software License**

1. **SUBSCRIPTION SERVICE:** Subject to the terms and conditions of this Agreement and during the Term, CRGROU shall make the emPerform service available to Customer to be used by Customer's and its Affiliates' Users solely for the internal business operations of Customer or such Affiliate (as the case may be). The terms of this Agreement shall also apply to updates, and upgrades subsequently provided by CRGROU to Customer for the Service. CRGROU is responsible for hosting the Service and may update the functionality, user interface, usability and other user documentation, training and educational information of, and relating to the Service from time to time in its sole discretion and in accordance with this Agreement as part of its ongoing mission to improve the Service and customers' use of the Service.
2. **TERM:** The term of this Agreement shall commence on the Contract Execution Date and shall continue for the length of time referenced in Section 6.1.1 (the "Term"). The initial subscription term of the Service procured by Customer shall continue for the term specified in Section 6.1.1. Thereafter, the subscription term for the applicable Service and Users shall be automatically renewed for successive Renewal Terms of one (1) year each, unless either party provides written notice of non-renewal to the other at least thirty (30) days before such expiration.
3. **FEES and PAYMENT:** The Subscription Services Agreement is non-cancellable and all fees are non-refundable. All fees payable are due within thirty (30) days from the invoice date.
4. **COPYRIGHT:** The emPerform SOFTWARE that is the basis of this subscription service (including any images, "applets", photographs, animations, video, audio, music, and text incorporated into the SOFTWARE) is owned by CRGROU or its partners and is protected by United States, Canadian and United Kingdom copyright laws and international treaty provisions. You may not copy the printed materials accompanying the SOFTWARE, nor print copies of any user documentation provided in "online" or electronic form.

a) You agree that the SOFTWARE contains proprietary information, including trade secrets, know-how and confidential information, that is the exclusive property of CRGROU. During the period this Agreement is in effect and at all times after its termination, the Customer and its employees and agents shall maintain the confidentiality of this information and not sell, license, publish, display, distribute, disclose or otherwise make available this information to any third Party nor use such information except as authorized by this License Agreement.

b) The Customer shall not disassemble, unassemble, or decode any portion of the SOFTWARE. The Customer shall not modify any portion of the SOFTWARE, or merge or embed the SOFTWARE in another computer program.

5. **OWNERSHIP OF DATA:** CRGROU claims no right to any data entered into or added to the SOFTWARE at any point during or after expiration or termination of this Agreement. The Customer retains 100% ownership of its data.

a) **TERMINATION:** In case of a termination of this Agreement Customer will receive a copy of the data (in whatever format requested) and all copies of Customer data, including backups, shall be destroyed and a certificate of destruction will be provided to the Customer.

**Limited Warranty**

1. **LIMITED WARRANTY.** Corporate Renaissance Group warrants that (a) the SOFTWARE will perform substantially in accordance with the accompanying printed materials for the subscription term.
2. **NO OTHER WARRANTIES.** To the maximum extent permitted by applicable law, CRGROU disclaims all other warranties, either express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to the SOFTWARE, the accompanying written materials, and any accompanying hardware. This limited warranty gives You specific legal rights. You may have others, which vary from state/jurisdiction to state/jurisdiction.
3. **NO LIABILITY FOR CONSEQUENTIAL DAMAGES.** To the maximum extent permitted by law, in no event shall either party or its affiliates have any liability to the other party arising out of or in connection with this Agreement for any lost profits or revenue or for incidental, consequential, punitive, cover, special, reliance and exemplary damages, or indirect damages of any type or kind however caused, whether from breach or repudiation of contract, breach of warranty, negligence, or otherwise (and whether or not the party has been advised of the possibility of such damages). Certain states and/or jurisdictions do not allow the exclusion of incidental or

consequential damages, in which case such damages shall be subject to the limitations set forth in Section 4 below.

4. The maximum aggregate liability of either party and its affiliates arising out of or in connection with this Agreement, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, negligence, or otherwise, shall not exceed the total subscription fees paid for the service giving rise to the liability during the twelve (12) month period immediately preceding the event out of which the liability arose.

**U.S. Government Restricted Rights**

1. The SOFTWARE and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Corporate Renaissance Group at 6 Antares Dr., Phase 1, Suite 200, Ottawa ON K2E 8A9 Canada.

**Trademarks**

1. This License Agreement is governed by the laws of the Province of Ontario, Canada.
2. If this product was acquired outside the United States or Canada, then local law may apply.
3. Should You have any questions concerning this License Agreement, or if You desire to contact CRGROU for any reason, please contact or write: **Corporate Renaissance Group at 6 Antares Dr., Phase 1, Suite 200, Ottawa ON K2E 8A9 Canada.**

**Entire Agreement**

This Subscription Agreement together with the Standard Terms and Conditions, Professional Services and Proposal constitutes the complete and exclusive statement of agreement between the parties relating to the subject-matter of this Agreement and supersedes all proposals, written or oral, and all other communications between the parties relating to subject-matter of this Agreement. The Parties agree that this Agreement may be modified from time to time only by an instrument in writing signed by an authorized representative or representatives of both parties.

**APPENDIX B: STANDARD TERMS AND CONDITIONS, PROFESSIONAL SERVICES**

The following Standard Terms and Conditions apply to all professional services provided by Corporate Renaissance Group Inc. ("CRGROU"). In the event of any conflict between these Standard Terms and Conditions and the specific Engagement Letter or Proposal to which these Standard Terms and Conditions are attached, the provisions of these Standard Terms and Conditions shall prevail unless specific reference to the conflicting

provision is made in the Engagement Letter or Proposal. For the purpose of these Standard Terms and Conditions, the term CRGROU shall include its officers, directors, partners, employees and its associated and affiliated partnerships, corporations and other entities. The term Agreement shall refer to these Standard Terms and Conditions together with the applicable Proposal (as defined below).

1. **Services.** CRGROU agrees to provide to you (the "Customer") with the Services (the "Services") set forth in the Letter of Engagement or Proposal ("Proposal") to which these Standard Terms and Conditions are attached, and any statement of work or other form of project plan agreed to by the parties. It is understood and agreed that the Services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, Customer. Nothing in these Standard Terms and Conditions shall be construed as precluding or limiting in any way the right of CRGROU to provide consulting or other Services of any kind or nature whatsoever to any person or entity as CRGROU in its sole discretion deems appropriate.

2. **Expenses/Taxes/Payment of Invoices.** All fees and other charges do not include any applicable federal, provincial, or other goods and Services or sales taxes, or any other taxes or duties whether presently in force or imposed in the future. Any such taxes or duties shall be assumed and paid by Customer without deduction from the fees and charges hereunder.

CRGROU will bill for all reasonable expenses including travel, meals, and accommodations.

Invoices are considered due within thirty (30) days upon receipt. Without limiting its rights or remedies, CRGROU shall have the right to halt its performance of Services until payment is received on past due invoices, except where Customer has notified CRGROU that it disputes an amount set forth in such invoices. Upon notification of a dispute, the parties shall negotiate in good faith to settle such dispute in a timely manner.

3. **Ownership.**

- a) Ownership of CRGROU Property. To the extent that CRGROU utilizes any of its property (including, without limitation, CRGROU Technology or any hardware or software of CRGROU) in connection with the performance of Services hereunder, such property shall remain the property of CRGROU and, except for the licenses expressly granted herein, the Customer shall acquire no right or interest in such property. In addition, and notwithstanding anything in these Standard Terms and Conditions or Proposal to the contrary, the parties acknowledge and agree that (a) CRGROU will own all right, title, and interest,

including, without limitation, all rights under all copyright, patent, trademark, trade name and other intellectual property laws, in and to CRGROU Technology and (b) CRGROU may employ, modify, disclose, and otherwise exploit CRGROU Technology (including, without limitation, providing Services or creating programming or materials for other customers).

- b) Ownership of Customer Property. To the extent that Customer provides CRGROU with any information, data, materials or technology for use in the performance of the Services, Customer retains all right, title and interest in such information, data, materials and technology, and grants CRGROU a limited, non-exclusive license to use such data, information, materials and technology for the sole purpose of providing the Services.
- c) Ownership of Deliverables associated with implementation services. Except as provided below, upon full and final payment to CRGROU hereunder, the tangible items specified as deliverables or work product in the Proposal to which these Standard Terms and Conditions are attached (the "Deliverables") will become the property of Customer. To the extent that any CRGROU Property is contained in any of the Deliverables, CRGROU shall notify Customer of same and hereby grants Customer, upon full and final payment to CRGROU hereunder, a royalty-free paid-up, worldwide, non-exclusive license to use such CRGROU Property for Customer's own internal purposes in connection with the Deliverables and Licensing Agreement.

**4. Limitation on Warranties for Services and Limitation of Liability.** CRGROU warrants that the Services provided under this Agreement will be performed in a professional manner in conformity with generally accepted practices in the field of information management and technology. CRGROU further warrants that any deliverables shall conform to the specifications set forth in the applicable Proposal or any statements of work or specification documents agreed to by the parties in the course of carrying out the Services. Any and all other warranties either express or implied are expressly disclaimed by CRGROU. Any of the Customer's recoverable damages in relation to the Services provided by CRGROU shall in all cases be limited to actual direct damages and shall in no case exceed the amount actually paid or payable by the Customer under the terms of this Agreement for Services except in the case of CRGROU's negligence or willful misconduct. Notwithstanding anything to the contrary stated herein, CRGROU represents and warrants that it is the owner of, or otherwise has the right to use and distribute and grant the Customer the right to use, all material and methodologies used in connection with providing the Services contemplated in this Agreement. CRGROU further warrants that the Services, Deliverables and any materials used by CRGROU in providing the Services do not now and

will not infringe upon any copyright, patent, trade secret, contract right or other third party right.

- 5. Limitation of Warranties for Software and Limitation of Liability.** The parties agree that CRGROU's exclusive warranty with respect to any software provided under this Agreement is limited to any warranty provided by the manufacturer thereof, or as specified in the applicable software license Agreement. Any and all other warranties either express or implied are expressly disclaimed by CRGROU. Any of the Customer's recoverable damages in relation to any software provided by CRGROU shall in all cases be limited to actual direct damages and shall in no case exceed the amount actually paid or payable by the Customer under the terms of this Agreement for the software, except in the case of CRGROU's negligence or willful misconduct.
- 6. Limitation of Liability for Manufacturer's Defaults.** Other than the limited warranties with respect to Services, Deliverables and software set out in this Agreement, CRGROU makes no other express or implied warranties, and it is understood that any equipment or other materials are being provided by CRGROU on an as-is basis, except that any such items being provided shall meet their respective manufacturer's specifications. Any claims by the Customer, and CRGROU's responsibility with respect to any equipment or materials provided hereunder which do not meet manufacturers specifications, are expressly limited to the following:
  - (a) A claim under the manufacturer's warranties, which CRGROU may require that the Customer pursue directly with the manufacturers;
  - (b) Refund of Customer's purchase price for such items (without interest); or
  - (c) Repair and/or replacement of such items, at CRGROU's choice.

The remedy chosen by CRGROU shall be exclusive and in lieu of all other remedies. CRGROU will not be liable for personal injury or property damage except that caused by CRGROU's negligence and CRGROU will in no event be responsible for, or have any obligations or liabilities for, direct, indirect, consequential or incidental damage.

**7. Limitation on Liability.** Neither of the parties shall be liable to the other for any actions, damages, claims, liabilities, costs expenses, or losses in any way arising out of or relating to the Services performed hereunder for an aggregate amount in excess of Professional Services of Implementation fees paid by Customer to CRGROU under this engagement except as otherwise provided herein. On a multi-phase engagement, CRGROU's liability shall be based on the Professional Services or Implementation fees actually paid to CRGROU for the particular phase that gives rise to the liability.

- 8. Indemnity.** Notwithstanding anything herein to the contrary, in the event of a claim by a third party relating to the Services performed, or Deliverables delivered, or confidential information inadvertently disclosed, hereunder, CRGROU shall indemnify and hold Customer and its respective officers, directors, members, employees and agents from all liabilities, losses, damages, costs and expenses arising from such a claim, or the settlement thereof, including all reasonable legal costs and expenses.
- 9. Cooperation.** Customer shall cooperate with CRGROU in the performance by CRGROU of its Services hereunder, including, without limitation, providing CRGROU with reasonable facilities and timely access to all relevant data, information and personnel of Customer. Customer shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to CRGROU for purposes of the performance by CRGROU of its Services hereunder.
- 10. Site Preparation.** Other than the required Services, software and materials which CRGROU is required to supply under this Agreement, the customer shall be solely responsible for ensuring that its site is prepared, and that all necessary equipment and services are provided to enable CRGROU to fulfill its obligations under this Agreement. Any delay caused and costs incurred by CRGROU as a result of the customer's failure to properly prepare the site shall be the sole responsibility of the customer.
- 11. Force Majeure.** Whenever and to the extent CRGROU shall be unable to fulfill or shall be delayed or restricted in the fulfillment of any obligation imposed upon CRGROU under the terms of this Agreement in respect of the delivery, supply or provision of any hardware, software, materials, installation or other Services in whole or in part by reason of being unable to obtain, through no fault of CRGROU, the materials, goods, equipment, service, utility or labor required to enable CRGROU to fulfill any such obligation or by reason of any other cause beyond CRGROU's control whether of the foregoing character or not, including without limitation, acts of God, fires, strikes, riots, shortages, or war or unfavorable weather, but not the financial inability of CRGROU, CRGROU shall be relieved from the fulfillment of such obligation during the period of such delay without liability to the Customer for any losses, inconvenience, nuisance or other damages whatsoever.
- 12. Limitation on Actions.** Except for a demand or claim for indemnification pursuant to Section 8, no action, regardless of form, arising under or relating to this engagement, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought by a party not later than one year following the date of the last payment due to such party hereunder.
- 13. Independent Contractor.** It is understood and agreed that each of the parties hereto is an independent contractor and that neither party is, nor shall be considered to be, an agent, distributor or representative of the other. Neither party shall act or represent itself, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other.
- 14. Confidentiality.** Customer and CRGROU acknowledge and agree that all information communicated to either Customer or CRGROU by the other party in connection with the performance by a party under this engagement shall be received in confidence, shall be used only for purposes of this engagement, and no such confidential information shall be disclosed by the respective parties or their agents or personnel without the prior written consent of the other party. Except to the extent otherwise required by applicable law, the parties' obligations under this Paragraph do not apply to information that: (a) is or becomes generally available to the public other than as a result of disclosure by Customer or CRGROU, (b) was known to either Customer or CRGROU or had been previously possessed by Customer or CRGROU without restriction against disclosure at the time of receipt thereof by Customer or CRGROU, (c) was independently developed by Customer or CRGROU without violation of this Paragraph, or (d) Customer and CRGROU agree from time to time to disclose. Each party shall be deemed to have met its nondisclosure obligations under this Paragraph as long as it exercises the same level of care to protect the other's information as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement. CRGROU may retain, subject to the terms of this Paragraph, copies of Customer's confidential information required for compliance with applicable professional standards or internal policies. If either party receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the other party's confidential information, such party shall provide prompt written notice to the other party of such demand in order to permit such other party to, at its own expense, seek a protective order. So long as the notifying party gives notice as provided herein, the notifying party shall thereafter be entitled to comply with such demand to the extent permitted by law, subject to any protective order or the like that may have been entered in the matter.
- 15. Survival.** The provisions of Paragraphs 2, 4, 5, 6, 7, 8, 13, 14, 15, 16, 17, 19, 20 hereof shall survive the expiration or termination of this engagement.
- 16. Assignment.** Except as provided below, neither party may assign, transfer or delegate any of the rights or obligations hereunder without the prior written consent of the other party.
- 17. Severability.** In the event that any term or provision of these Standard Terms and Conditions or the

Engagement Letter or Proposal to which these Standard Terms and Conditions are attached shall be held to be invalid, void or unenforceable, then the remainder of the Standard Terms and Conditions and the Engagement Letter or Proposal, as the case may be, shall not be affected, impaired or invalidated, and each such term and provision of these Standard Terms and Conditions and the Engagement Letter or Proposal shall be valid and enforceable to the fullest extent permitted by law.

**18. Entire Agreement.** This Agreement constitutes the entire Agreement, inclusive of the Subscription Agreement, between CRGROU and the Customer and supersedes all prior agreements, undertakings, negotiations and discussions, whether oral or written of the parties to it, and there are no warranties, representations or other agreements between the parties except as specifically set out or referred to in this Agreement. No supplement, modification, waiver or termination of this Agreement shall be binding unless signed in writing by the parties hereto. No waiver of any other provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar) nor shall the waiver constitute a continuing waiver unless otherwise expressly provided.

**19. Governing Law.** These Standard Terms and Conditions and the Proposal to which these Standard Terms and Conditions are attached shall be governed by the laws of Province of Ontario, Canada. The parties hereby agree to submit themselves to the

personal jurisdiction of the courts of the Province of Ontario, Canada, which shall be the exclusive venue for any disputes relating to this Agreement.

**20.** At CRGROU, it is our goal to provide customers with Services that add value. As you can appreciate, our most valuable asset is our staff. Our firm invests a great deal of time and effort to train our staff, as well as substantial financial resources to attract and retain top professionals. Accordingly, the Customer will not attempt to employ our staff on either a part-time or full-time basis, directly or indirectly, either during the terms of this engagement or while the staff is CRGROU employee or within twelve (12) months after the employee leaves CRGROU except for CRGROU employees that respond to a general advertisement or voluntarily seek employment with Customer. If a member of our staff is hired by the Customer, the Customer agrees to pay CRGROU 30% of the individual's annualized compensation except for CRGROU employees hired by the Customer as permitted in the previous sentence. This fee is due upon commencement of employment or any contractual arrangement made between the customer or any of its affiliates and any members of CRGROU's staff.

**APPENDIX C: IMPLEMENTATION PLAN**

COLLABORATIVE IMPLEMENTATION PACKAGE

**Two Step Implementation:**

**A. Definition and Scope (Remote):**

Typical activities include:

- High level review of employee performance management framework and organizational structure
- Identifying the sources of import data
- Discuss and design the desired workflow and form layout options

**Deliverable:** *After this step, the client will have a clear idea of how the employee performance management framework will be operationalized with emPerform. The client will be provided with a list of items to prepare for the on-site implementation.*

**B. Model and Train (Remote Sessions):**

Typical activities include:

- Importing source data such as employee master information, content definitions, rating scales etc.
- Building one (1) emPerform performance appraisal and one (1) workflow.
- Building one (1) Compensation Manager model and one (1) workflow.
- Setup and training of tag and reporting
- Training the system administrator(s)
- Creation of custom end-user training videos (1 for employees and 1 for managers) delivered in .MP4 format.

**Convenient Online Sessions to Suit Your Schedule**

All emPerform Rapid training sessions are conducted remotely via an online GoToMeeting® meeting platform. Your implementation consultant will send all login details prior to the training session.

Multiple administrators can attend each session from different locations. A full list of administrators should be provided in advance of all sessions. To ensure you will be able to connect, please review the GoToMeeting System Requirements located here. [https://support.citrixonline.com/GoToMeeting/all\\_files/GTM010003](https://support.citrixonline.com/GoToMeeting/all_files/GTM010003)

**Sample Administrator Training Sessions:**

**Note:** All required data should be compiled before the start of training. A list of required client data has been provided in the **'Getting Started with emPerform Checklist'**.

**Total time for Appraisal Training: 11 hours + 2 hour Discovery Call**

**Total time for Compensation Training (if applicable): 4 hours + 1 hour Discovery Call**

If you have chosen a compensation template, the sessions listed below are in addition to the sessions required for appraisals.

**System & Appraisals**

Session	Topics	Expected Duration
Kick-Off	<ul style="list-style-type: none"> <li>Meet your implementation consultant</li> <li>Discuss projects steps</li> <li>Schedule requirements call</li> </ul>	30 minutes
Requirements	<ul style="list-style-type: none"> <li>Discuss needs and options</li> <li>Review samples and content needs</li> <li>Confirm data requirements and format</li> </ul>	2 hours
1	<ul style="list-style-type: none"> <li>Maintaining Employee Master records</li> <li>Configuring organizational levels</li> <li>Loading organizational level elements</li> <li>Loading content libraries (if required)</li> <li>Building rating scales</li> <li>Configuring company branding</li> <li>Configuring tag</li> </ul>	2 hours
2	<ul style="list-style-type: none"> <li>Building appraisal form and workflow</li> <li>Assigning content and permissions</li> <li>Testing forms</li> </ul>	3 hours
3	<ul style="list-style-type: none"> <li>Enabling 360 review sections and permissions (if applicable)</li> <li>Assigning employees to appraisal</li> <li>Assigning competencies and other library items to Positions or other levels</li> <li>Reviewing administrative tasks (adding employees, adding level elements, etc.)</li> </ul>	2 hours
4	<ul style="list-style-type: none"> <li>Nominating 360° raters (if applicable)</li> <li>Stepping through a full workflow cycle</li> <li>Reviewing end user training and training materials</li> <li>Review tag</li> <li>Prepare for go live</li> </ul>	2 hours
5	<ul style="list-style-type: none"> <li>Touch base, address additional questions and follow up</li> <li>Reporting review</li> </ul>	2 hours

**Compensation Training Sessions:**

**Note:** Session 1 for Compensation depends on the completion of Session 1 for Appraisals.

Session	Topics	Duration
Requirements	<ul style="list-style-type: none"> <li>Discuss needs and options</li> <li>Review samples and content needs</li> <li>Confirm data requirements and format</li> </ul>	1 hour
1	<ul style="list-style-type: none"> <li>Loading compensation data</li> <li>Loading compensation review roles</li> <li>Creating groups</li> <li>Loading group budgets</li> </ul>	2 hours
2	<ul style="list-style-type: none"> <li>Stepping through a full workflow cycle of compensation</li> <li>Reviewing end user training and training materials</li> <li>Prepare for go live</li> </ul>	2 hours



**Deliverable:** *After step B, the client will have a functioning employee performance appraisal, received training on product and product administration, and will be able to manage the appraisal process within emPerform.*

**Additional Notes:** Pricing for this package is identified in the accompanying agreement in the pricing section. If additional time is required, the price is \$165 per hour or a Professional Services package can be purchased. Please refer to the detailed terms and conditions of this agreement.

Integration with an external HRIS system is not included in this package.

End-user training: The implementation package includes the creation of two (2) custom end-user training videos (one for employees and one for managers). The video will be recorded in English and delivered in either MP4 or .wmv format. The Customer will be asked to sign-off on the script before the videos are recorded. If the Customer would like additional training for any other appraisal forms, the cost is \$850 per video.

The recommended steps, activities and deliverables in this package are based on CRGROU's experience in implementing emPerform. Our experience indicates that after this level of support, the assigned project manager can work independently with emPerform. However, our implementation manager will be happy to adjust the engagement plan to meet your specific needs, within the time available for implementation.

CRGROU anticipates that the client's performance management model will be completed by the end of this engagement. Timely completion depends on factors such as readiness of the organization, availability and quality of information, support from IT, and efforts by the client's staff, among other things. CRGROU reserves the right to reschedule implementation dates if the client has not completed pre-training items defined in the Definition and Scope phase.

CRGROU reserves the right to change professional service fees related to post-implementation support. The customer will be given reasonable notice of any such changes before they occur. Reasonable notice is considered 60 days prior to price change.

**APPENDIX D: SOFTWARE AS A SERVICE (SAAS) SERVICE LEVEL AGREEMENT**

The following Service Level Agreement solely applies to customers who have purchased a Software as a Service license. This Service Level Agreement is not applicable to Perpetual or Term Software License Agreements.

CRGROUPE understands the importance of application availability to our emPerform customers. We have developed the following service level terms and conditions to ensure maximum performance and uptime of both CRGROUPE's software application and the internet infrastructure, network, data center, operating system and hardware upon which it depends.

Please note the following:

- CRGROUPE relies upon Class A" data centers operated by third party hosting services (colocation provider) providers to provide bandwidth and content delivery. Currently our servers are hosted at "Class A" data center owned by Rogers Canada.
- Notwithstanding anything to the contrary contained herein, this CRG emPerform Service Level Agreement shall not apply to (i) delinquent customers; and, (ii) performance issues caused by factors outside of CRGROUPE's reasonable control; performance issues resulting from any customer or third party negligence or misconduct; or, performance issues resulting from any customer or third party equipment not under CRGROUPE's control or (iii) act of god (hurricane, earthquake, etc.).
- CRGROUPE reserves the right to seek a release from any Service Level Agreement entered into with a third-party web hosting service. In the event that CRGROUPE seeks such a release, Customer agrees to carry out the Service Level Agreement and be bound by its terms in all respects as it were the original party to the contract in place of CRGROUPE, and as such, CRGROUPE will seek a release on its behalf from the third-party web hosting service in respect of the Service Level Agreement.

Summarized information on Network and Data Center details is based on the details available on the web site from our current provider Rogers Data Canada.

This Service Level Agreement addresses eight key areas.

1. NETWORK
2. DATA CENTER
3. OPERATING SYSTEM and DATABASE
5. APPLICATION
6. SECURITY
7. DATA BACK-UP POLICY
8. CUSTOMER SUPPORT & MAINTENANCE SERVICES

**1. NETWORK**

Network Quality

CRGROUPE servers colocation provider, uses redundant network components to ensure uptime and eliminate any single point of failure. The Rogers Canada network is multi-homed through multiple redundant high-speed connections providing fast, reliable connectivity.

Network Uptime

CRGROUPE guarantees that the network will be available 99% of the time in a given month, excluding scheduled maintenance. CRGROUPE will refund one (1) day of the monthly fee paid by the customer for each twenty-four (24) hours of downtime up to 100% of CRGROUPE's monthly fee in case of unscheduled downtime.

Bandwidth Utilization

Rogers Canada provides up to 100 Mbps Ethernet connection with redundant 100 Mbps Ethernet connection to backup router.

## 2. DATA CENTER

**Physical Security:** The data center is accessible only to authorized personnel. Biometric security is enforced through an iris scanner. Guarded entrances have security cameras to scan and digitally record the interior and exterior of the facility twenty-four (24) hours a day.

**Conditioned Power:** The data center is backed up by 650 Kilowatt diesel generator. The generator is housed in a separate secure underground sound insulated bunker. All equipment in the internet Data Center server room is powered from UPS systems designed with redundant NuWare modular UPS.

**A Precision Environment:** The data centre server room has tonnes of redundant cooling delivered by Liebert systems, each unit with redundant compressors and AC units that are computer controlled to maintain temperature and humidity in the facility. Fire suppression capabilities are executed through FM-200 gas that extinguishes fire without water, to ensure no water damage to the IDC's equipment.

## 3. OPERATING SYSTEM and DATABASE

CRGROU shall install patches and service packs for the Microsoft Windows 2016 server operating systems and Microsoft SQL Server 2016 at its sole discretion. In case of emergency patches, CRGROU will send an email to the designated contact before applying the patch.

## 4. APPLICATION (CRG emPerform™)

CRGROU's skilled support technicians provide responsive, reliable support to help ensure that our applications are available and operating at peak performance.

Contacting Customer Support. CRGROU Support is based in Ottawa, Ontario, Canada.

Phone: Ottawa: 1-877-711-0367 E-Mail: support@employee-performance.com

Hours of Operation: Business Hours: 9 a.m. - 5 p.m. Eastern Standard Time – Monday to Friday (excluding common U.S. and Canadian recognized statutory holidays - New Year's Day, Christmas Day and Labor Day)

### Customer Support Structure

**Customer Support Representative: (CSR)** The CSR is your primary technical point of contact at CRGROU. The CSR is responsible for: gathering and confirming contact information, prioritizing, testing and resolving incidents submitted to Customer Support and providing you with regular incident updates. The CSR will remain your primary technical contact into CRGROU during the entire process, until closure of the incident. The CSR is responsible for verifying service satisfaction prior to closing an incident.

**Maximum Response Time:** CRGROU will respond and acknowledge all inquiries made within four (4) hours of receipt. CRGROU does not guarantee the resolution of the technical incident within this response time.

## 5. SECURITY

CRGROU is committed to ensuring the security of the server(s) that they use to store valuable and confidential customer data. CRGROU continues to look for ways to make its systems - and CRGROU's customer data - more secure. Data centre is protected with Intrusion Detection System (IDS) which monitors the network for any signs of malicious activity and takes appropriate counteraction.

**Managed Firewalls and Anti-virus:** CRGROU's emPerform customers receive the benefit of a managed firewall service and anti-virus protection which adds another layer of security for the customer.

**SSL Certificates:** CRGROU uses GoDaddy, one of the leading provider of Internet trust services, for SSL Certificates provide a fast and easy way to secure online transactions and the transmission of sensitive data.

## 6. DATA BACK-UP POLICY

The database will be backed up once every night. Backups of the database will be maintained for a period of 6 months. CRGROU does not guarantee to hold or restore any backup older than a period of six (6) months. At the Customer's request, CRGROU will provide a copy of the backup before it expires.

**7. CUSTOMER SUPPORT & MAINTENANCE SERVICES**

Features <sup>1</sup>	Standard Service
Technical Support Telephone Access <sup>2</sup>	9:00 a.m. – 5:00 p.m. EST, Monday – Friday
Extended Hours of Availability	No
Technical Incidents	Unlimited
Business Support Incidents	Unlimited

**APPENDIX E: DATA SECURITY**

emPerform's data security provisions are outlined below.

**DATA SECURITY****Data Security/Integrity/Control (for hosted clients)**

emPerform hosting is done through Rogers Data Canada, a SSAE 16 compliant provider.

Data integrity is managed by industry standard database engine SQL Server by Microsoft. All of the system data is saved in SQL Server databases without any exception. In a hosted environment, access to the server is restricted to specialized IT personnel.

- All hosted data is backed up daily and stored for six (6) months. Customer has full ownership of their data at all times.
- Within emPerform, administrators have full control over user accessibility of data.
- 99.9% Uptime
- Access to the database is very exclusive. Only the technical support team member would have access and only to resolve any technical issues. SSL Certificate is installed to ensure secure data transmission.
- For backup, emPerform snapshots machines and take daily/weekly/monthly backups (onsite and one copy is stored offsite).

**Encryption:** emPerform supports secured encrypted communication using HTTPS protocol.

**Termination:** In case of the expiration or any termination of this Agreement, Customer will receive a copy of the data (in whatever format requested) and all copies of Customer data, including backups, shall be destroyed and a certificate of destruction will be provided to the Customer.

**Security Incidents:** CRG GROUP shall take appropriate security measures typically used for electronic data storage to protect the hardware, software, network and data communication channels used to transmit and store the Customer information from unauthorized access, use, alteration or destruction, including the unauthorized disclosure of or access to Customer information (a "Security Incident").

In the event of a Security Incident not caused by the Customer, CRG GROUP shall (1) assist the Customer with any investigation, (2) cooperate in any litigation or claim relating to a third party, (3) use its best efforts to prevent the recurrence of any such Security Incident, and (4) indemnify and hold harmless the Customer from any loss, direct cost, actual damages or third party claim relating to such Security Incident. Any expenses that CRG GROUP may incur will be limited to the equivalent of one year's hosting fees paid by the Customer.

**APPENDIX F: PROFESSIONAL SERVICES PACKAGES**

At CRG GROUP, we are committed to delivering the personal and reliable support needed for customers to get the most out of their systems.

If a Customer's support case involves a significant amount of time, your Customer Services Representative (support desk) will provide an outline of what needs to be done and steps to be taken in emPerform to resolve the issue or address the question. This diagnosis is offered at no charge. If the Customer would instead like the emPerform Support team to complete the work outlines, it will be considered a 'Professional Service' that is considered billable at \$165/hour. An estimate of time needed will be provided to the Customer in such cases.

Customer can choose to purchase this time in bulk packages at a reduced rate as outlined below.

Name	Cost
<b>4 Hour Package</b> <i>Includes four (4) total professional services hours. These hours do not expire.</i>	\$550
<b>8 Hour Package</b> <i>Includes eight (8) total professional services hours. These hours do not expire.</i>	\$1,000
<b>20 Hour Package</b> <i>Includes twenty (20) total professional services hours. These hours do not expire.</i>	\$2,500

All technical and day-to-day business support cases are included in the annual license fee or enhancement fee.

Professional Services incurred without Support Packs is billed at \$165 US per hour.

**What are some examples of 'Professional Services'?**

- We need to completely rebuild our appraisal form and/or workflow
- We have decided we want to initiate an automated integration with our existing HR System
- We want to activate a module that we have not looked at before
- We would like additional training for end-users
- I would like you to set up and configure our annual compensation process.

Professional Services Packages can be purchased throughout the life of the Agreement and hours do not expire.

Professional Services Pricing is valid for the date of the Agreement. CRG GROUP reserves the right to change CRG emPerform Professional Services pricing at any time.

Questions about this Agreement? Email [info@employee-performance.com](mailto:info@employee-performance.com)