

# NORTH CAROLINA **CONSTRUCTION** NEWS

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SUMMER 2018, Volume 13 No.4

**NEW TECHNOLOGIES:**

**How will they redefine  
the architectural,  
engineering and  
construction community?**

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## Publisher's Viewpoint



Mark Buckshon, publisher

Years ago, when I was much younger, I had the opportunity to interview a man in his mid-seventies who had survived the World War II Holocaust in Hungary when he was (with several thousand others) saved by the Swedish diplomat Raoul Wallenberg. My task was to develop a public relations strategy for the commemoration of a new park in Wallenberg's name, and the elderly man proved to be the perfect example for what is known in the business as a "media hook". Suddenly, a long-distant and foreign heroic event had a real-life local story behind it, and (as I hoped) the story had legs. Local newspapers, radio and TV turned a minor park dedication into a major event.

But to me, the story about the person Wallenberg saved – a man named Andrew Fedor – was more about someone who had no intention to age into obscurity. His home was outfitted with then-state-of-the-art computerized typesetting equipment; and he was operating a service business you would more likely think someone in his 20s, rather than 70s, would be managing.

I thought about these attitudes as I attended the Tech+ Conference in New York City this spring and absorbed all I could about the impact of changing technologies on the architectural, engineering and construction industry. I had just officially become a senior citizen - though not quite as old as Fedor – and realized that I have no intention to be left behind as technology advances.

The question for you is, are you prepared for the rapid changes about to affect the industry – that will probably radically upset traditional supply chains and business practices?

There's one bit of good news if you are less than eager to face the changes. You don't need to give up all of the old to embrace the new. I expect the approaches I would have used in seeking publicity back in the early 1980s would be the same in 2018. These include uncovering a relevant local story, making it meaningful in the community, and putting a real person in front of the cameras (or, these days, on a live Internet feed.)

Accordingly, I welcome your stories, news and comments. You can reach me most easily by email at [buckshon@nconstructionnews.com](mailto:buckshon@nconstructionnews.com).

*Mark Buckshon is president of the Construction News and Report Group, which publishes North Carolina Construction News. He also publishes a daily blog at [www.constructionmarketingideas.com](http://www.constructionmarketingideas.com).*

## NORTH CAROLINA CONSTRUCTION NEWS

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NCCN is circulated on a controlled circulation list to qualified readers including members of most major construction associations in the Carolinas. The magazine is supplemented by a weekly e-letter which reaches more than 4,000 industry leaders each week.

# Winston-Salem State University unveils master plan for major \$556 million expansion

*North Carolina Construction News staff writer*

Winston-Salem State University (WSSU) has unveiled a new master plan for its 117-acre campus.

The master plan proposes 1.35-million sq. ft. of new construction. It includes four new academic buildings, renovation and expansion of Hall Patterson, R.J. Reynolds Center, Hauser Hall of Music and the Physical Plant, construction of two new residence halls and an expansion of Atkins and Martin-Schexnider residence halls.

The plan also includes a 6,000-seat football stadium, a 3,000-seat convocation center, and two multi-tiered parking garages that would support sustainable energy with rooftop solar panels and create more than 1,200 parking spaces.

In addition, the university will build a new student success center and a renovated library with a new café and social space spilling out to the Pegram Green.

The plan, which was unanimously approved by the board of trustees, was presented by Sasaki Associates. The plan projects future construction totaling \$556 million.

"The master plan for Winston-Salem State University's 117-acre campus will provide a roadmap for strategic long-term growth over the next 20 years," Constance Mallette, vice-chancellor of finance and administration for WSSU, said in a statement. "Guided by the 2016-21 Strategic Plan, this document supports the growth of academic programs and advances the living/learning concept, which focuses on creating facilities that support high-impact teaching practices and enhanced student learning."



**You can view and learn about the master plan here.**

For current WSSU projects available for design submissions and bidding, see "Construction and Design Solicitations" on this web page:

<https://www.wssu.edu/administration/finance-and-administration/facilities/design-and-construction/index.html>.



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# Time-saving changes for North Carolina general contractors

## NCCLBGC launches online license renewals: GCs - It is time to create your accounts now

*NCCN special feature*

In 1925 a dozen eggs cost about \$0.55, the average new single-family home was \$1,200, and Calvin Coolidge was president. That was also the year that the North Carolina General Assembly established the authority of the North Carolina Licensing Board for General Contractors (NCLBGC).

For the past 93 years, the NCLBGC has been processing general contractors' license renewals and applications every year the same sluggish way through the U.S. mail. Now that's changing.

The NCLBGC has announced the launch of NC Contractors Licensing Central (NCCLiC) - the online license renewal system.

The new online license renewal and application system is fast, easy and secure. Sending paper applications and waiting for comments and corrections to go back and forth through the mail is obsolete. NCCLiC is also built with state-of-the-art security so all information is protected. NCCLiC allows quick and easy updates to profile information, immediate access to current license certificates, and a simple, quick, se-



cure way to communicate with the NCLBGC.

General contractors will also receive relevant, timely information about things they need to know, such as new laws and regulations affecting general contractors in the state of North Carolina.

### Who needs a license?

In the state of North Carolina, by law general contractors must have a valid license if a project costs \$30,000 or more (GS 87-1). Licenses must be renewed each year.

All licensees will need to go to [NCCLIC.org](http://NCCLIC.org) to create their NCCLiC accounts now to receive information from the NCLBGC about the 2019 license renewal applications.

### What is a licensee?

A licensee is the legal name of the person, firm, corporation, limited liability company or partnership that holds the general contractors' license. After a licensee establishes their NCCLiC account in the license hub, they will then invite their qualifiers to create their own accounts.

### Features of NCCLiC's License Hub:

- Licensee creates account
- Access 2019 application beginning October 2018
- View qualifiers or invite qualifiers to create/register their accounts
- Update your profile information
- Access and print your license certificate
- Read updates from the NCLBGC

### What is a qualifier?

A qualifier is the individual with the qualifying credential (has passed the exam) that allows the license to exist for the person/firm/corporation/limited liability company/partnership.

### Both licensees and qualifiers are required for online license renewals.

For sole proprietorships, the licensee and qualifier are one and the same. For corporations, companies, or partnerships, there may be one or numerous qualifiers.



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*Features of NCCLiC's Qualifier Hub:*

- All qualifiers must register their NCCLiC accounts to enable their 2019 license renewal starting October 2018
- View current licenses
- Update profile information
- Read updates from the NCLBGC
- License renewal applications for 2019 will be delivered to NCCLiC accounts, and general contractors will complete the license renewal application online.

**What's next?**

General contractors should visit [NCCLiC.org](http://NCCLiC.org) to get started. Here's how:

- CLiC the orange button to begin
- CLiC to register your existing license number
- Enter the requested information:
  - your license number
  - a password of your choosing
  - confirm your password
  - provide an email address
  - confirm the email
  - tax ID for corporations/LLCs or Social Security number for sole proprietors

- CLiC "I agree" to confirm the terms
- CLiC "register"
- Look for an email to confirm your account
- CLiC the red button in the email

The NCLBGC safeguards life, health and property, and promotes public welfare for the citizens of North Carolina. The NCLBGC is committed to improving our service to you and are here to help. Contact us with questions at (919) 571-4183.

*The NCLBGC contributed this article.*



The advertisement features a background image of a yellow John Deere tracked loader on a construction site, dumping a load of brown earth. In the top left corner, the John Deere logo (a leaping deer) is shown above the text 'JOHN DEERE'. Below this, the James River Equipment logo (a stylized 'JR' in a blue square) is shown next to the text 'JAMES RIVER EQUIPMENT'. At the bottom, large yellow text reads 'CHECK OUT OUR CONSTRUCTION EQUIPMENT AT' followed by the website address 'www.JAMESRIVEREQUIPMENT.com' in white text.

# NEW TECHNOLOGIES: How will they redefine the architectural, engineering and construction community?

By Mark Buckshon  
North Carolina Construction Report staff writer

Is the U.S. design and construction industry about to experience a radical, transformative and critical technological revolution?

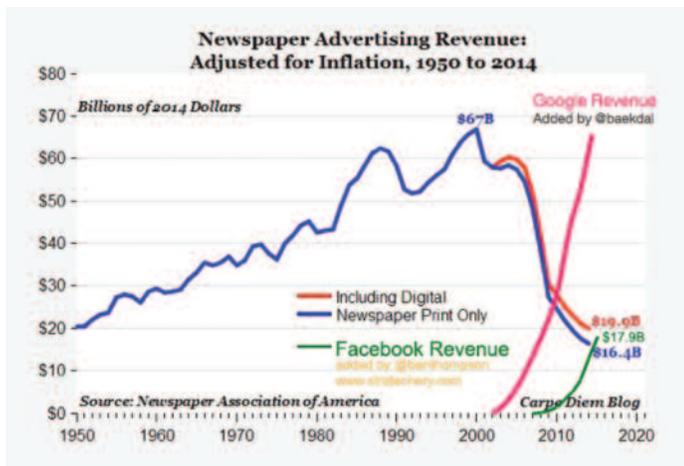
The answer, according to some industry leaders, is “yes” - as the industry’s inefficiencies and intermediary-loaded framework experiences stress as owners press for greater efficiencies and disruptive integrated organizations are changing the meanings of modular design-build to much more comprehensive and wide-scale applications.

To learn more about where the industry is heading, I accepted a media invitation to attend the TECH+ Conference in Manhattan in May, sponsored by the The Architect’s Newspaper.

During the day-long event, several speakers outlined critical issues, including collaboration/BIM, sustainability and visualization, as a variety of industry technology businesses demonstrated their products and services.

Several speakers observed that the AEC industry is near the bottom of the bell curve in technological adaptation, only slightly better than architecture.

Perhaps the biggest “wow” moment occurred for me when Chris Meyer, Boston-based general contractor Suffolk’s chief information officer, displayed a graph showing the sudden and dramatic market decline for newspaper advertising in the last decade. We’ve published stories about Suffolk’s multi-city Smart Lab concept, but I didn’t connect the dots until his speech that Meyer had previously been the Boston Globe’s publisher.



This graph shows the incredible and sudden decline in newspaper advertising revenue correlated with Google and Facebook’s rise. <https://charman-anderson.com/2016/09/28/us-newspapers-lost-advertising-revenue-found/>



Meyer displayed a graph that showed that, while the newspaper industry was well aware of the Internet’s rise and developed different models to cope with the change, it could not stop the steep and dramatic crash that started about the turn of the millennium, as Google and Facebook grabbed most of the advertising market. In fact, newspaper advertising revenue has declined by about four-fifths in the past decade, so advertising revenues are now even lower than they were in the 1950s. Newspaper digital sales have made the slightest gain; but the data is clear – the conventional newspaper industry has been pushed over the cliff, and in just a few years.

Meyer suggested that AEC, like the newspaper business, is an “intermediary” industry – that is, most practitioners are serving others in the value chain rather than end users - and he suggested this could create a situation where there will be major disruptions as new technologies capture market presence and share.

Will this happen anytime soon? That is the big question. And the AEC industry may be saved (or ultimately destroyed) by its current structure, where various professionals often work in their own silos.

Keynote speaker Dennis Sheldon, director of the Digital Building Laboratory (DBL) at the Georgia Institute of Technology, shared some insights into the challenges (and opportunities) that the technology creates for link-

ages and collaboration between the various AEC industries, including BIM, virtual and augmented reality.

Meanwhile, Phil Bernstein, the associate dean at the Yale School of Architecture, said current trends suggest big data, computational design and integrating machine learning could “eventually help architects design more optimized buildings and reduce the waste that comes when expectations don’t line up with how a building actually performs in the real world,” The Architect’s Newspaper reported.

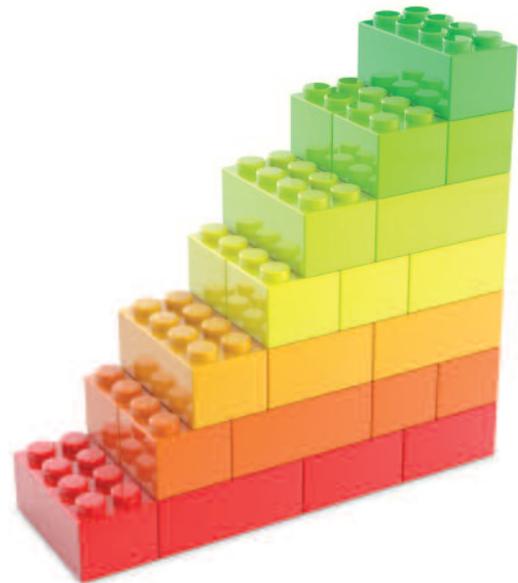
But BIM and virtual reality have been around for several years now, and while they have certainly influenced design and construction practices, they haven’t changed the universe, it seems. Something else needs to give – and the suggestion from some speakers is that it will come from highly capitalized new integrated industry organizations, and individual owners demanding greater technological adaptation and accountability.

The disruptors, such as Katerra, combine modular/factory building with a beginning-to-end design, engineering and construction collaboration process, meaning that the owner places the order, architects and engineers (often in remote locations), prepare the design, and the work is scheduled in factory settings, with modular components shipped to the actual construction site for rapid assembly.

If these services catch on – and billions of dollars in investment capital have been staked on the proposition – the traditional design and construction model will be up-

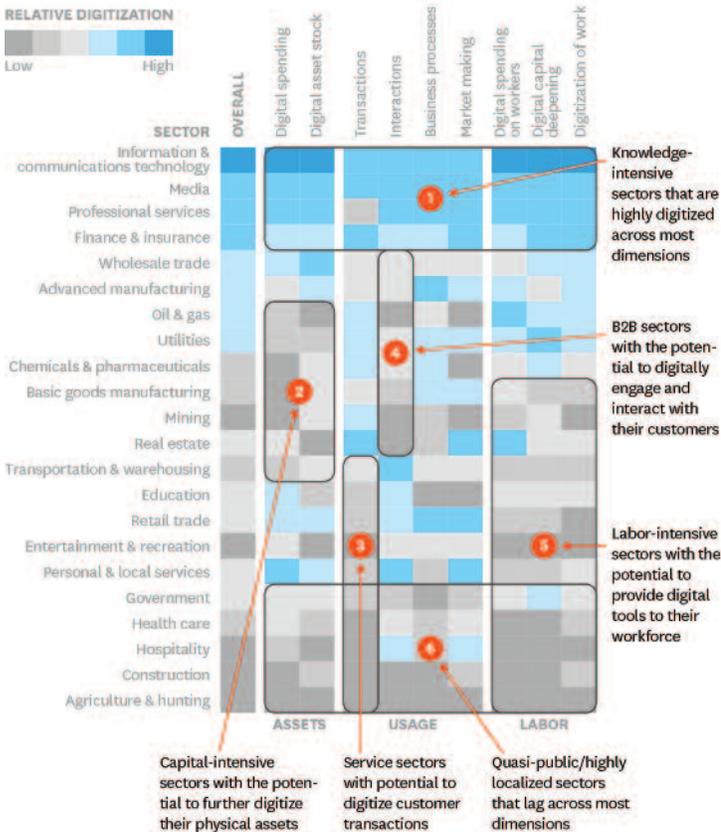
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Image of Google's massive new Sunnyvale, CA complex

ended as designers, contractors and subtrades either need to buy into the new competing mammoth building organizations or fight for a shrinking market share where traditional practices and relationships remain in place.

Another drive for change is happening at the ownership level. Jeremy Munn, a senior capital project manager for the design and construction department within the facilities division of Northeastern University in Boston, for example, described how the university is finally getting all the pieces together in a digital procurement/building cycle, but not by using a one-size fits all system, and with plenty of training and support to encourage compliance (and this progress is coming because the owner is driving the agenda, not the architects, engineers or contractors.)

Munn said his department manages 250 new projects a year, of varying size and complexity, from minor retrofits to multi-million dollar new structures.

His goal: Build an e-procurement and building system that has consistent templates, reporting dashboards, automated project delivery processes, and advanced document management capabilities.

There are different software packages that do some, but not all, of the tasks the university is seeking – but the solution is not to force everything into a single piece of software, but rather to integrate the different tools and software resources appropriate to the different stages in the design, construction and operation cycle.

He said the university had 206 active users in its e-management system in 2016; by 2018, the active users had increased to 660. “Most are consultants,” he said. As more capital projects have been managed by the system, he said the number of automated processes increased from nine in 2016 to 27 in 2018. There’ll be more changes including managing capital expenditures and operations, moving from a manual to automated deferred maintenance program, better BIM integrations, more robust and consistent laser scanning of existing conditions, and the introduction of virtual reality to present projects to senior leadership.

“Our value proposition is not to build faster and quicker,” he said. “It is to get students into classroom seats and researchers into labs so they can spend their NIH (National Institute of Health) grants.”

Meanwhile architect Jan Leenknecht of BIG hinted at how working as an architect for Google on a massive new million plus sq. ft. office complex in Sunnyvale is challenging traditional design practices with new technological resources. (I may be able to see the site firsthand this fall when the search-engine giant invites me to the northern California community for its annual Google Product Experts summit/meet-up. Leenknecht could only allude to the building’s design challenge because he, like most contractors and others with some direct access to Google staff, including me, are required to sign non-disclosure agreements.)

However, speaking generally, he explained how collaboration is pushing “interoperability across contractual boundaries” as the number of design tools is declining through consolidation, and documentation is becoming increasingly automated. He also said BIM is becoming increasingly important and is vital for complex architectural designs.

However, technology doesn’t replace the human element. Owners, designers and contractors need to “bring (software) tools to the teams and empower intelligent humans,” he said. “The tools are not the same for every project.” There needs to be training, standards and templates, annual BIM model audits, and feedback.

Can we draw any take-action conclusions from these observations? The answer, I think, is we need to be aware of the technology adaptation drivers/disruptors – namely forward-thinking owners and disruptive technology service/building companies and develop our own awareness on how to integrate and implement the new tools in a more collaborative environment. Otherwise, we might be caught in the newspaper industry trap, through which only a few nimble, creative and technologically astute businesses are surviving.

*Mark Buckshon is the president of the Construction News and Report Group of Companies, which publishes North Carolina Construction News and several other publications. See his blog at [www.constructionmarketingideas.com](http://www.constructionmarketingideas.com).*

See this video re digital take up by industry  
<https://hbr.org/video/4878016835001>

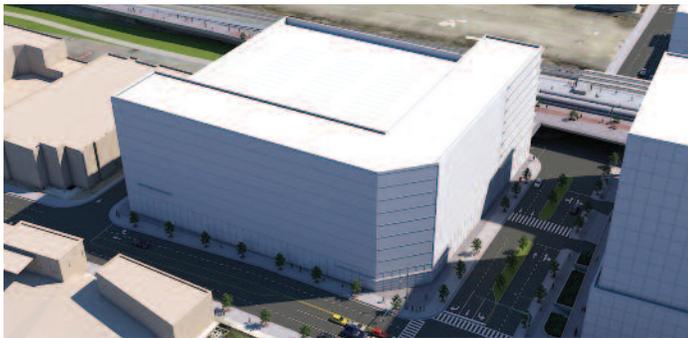


# NCDOT signs contract for new Charlotte railway station as major development gets under way

*North Carolina Construction News*

Crowder Construction Co. has inked a deal with the North Carolina Department of Transportation (NCDOT) for the \$48.6M Charlotte Gateway Station, the beginning of an overall multi-stage development with an as yet undetermined (but massive) construction value.

The current work includes construction of the platform, structures and roadbed for track to the planned station. The project was scheduled to begin July 9 and expected to be finished by April 2022, NCDOT officials said.



The hub will serve Amtrak, the Charlotte Area Transit System and intercity bus services, taxis and ride-sharing companies.

City crews will construct the station building under a separate contract to be issued later this year or early in 2019, with planned completion of the initial phase by 2022. Together, the station and infrastructure components have an estimated overall value of \$75 to \$80 million, but there are significant additional projects/developments in planning – which will depend on private sector participation to complete.

The overall multi-modal station will consolidate public transit and intercity transportation modes at Trade and Graham streets in Uptown Charlotte, the city says.

There are several elements to the overall plan including (as reported on Charlotte's website):

## **The Main Block**

The Main Block, at the intersection of South Graham and Trade streets, can accommodate the station building as well as large scale private development and represents the "focal point" of the Station District, featuring iconic architectural elements; and high-density mixed-use development integrated with the multi-modal station. Under existing zoning criteria, the Main Block could accommodate:

- 27,000 sq. ft. passenger rail building
- 850,000 sq. ft. private commercial development
- 900 parking spaces on four levels of subsurface parking (200 reserved for rail customers)
- Greenway access



## **The South Block**

The South Block is intended to accommodate local and intercity bus bays and services, integrated in a mixed-use development. Buses would enter the facility via Third St. and exit the facility onto Fourth St.

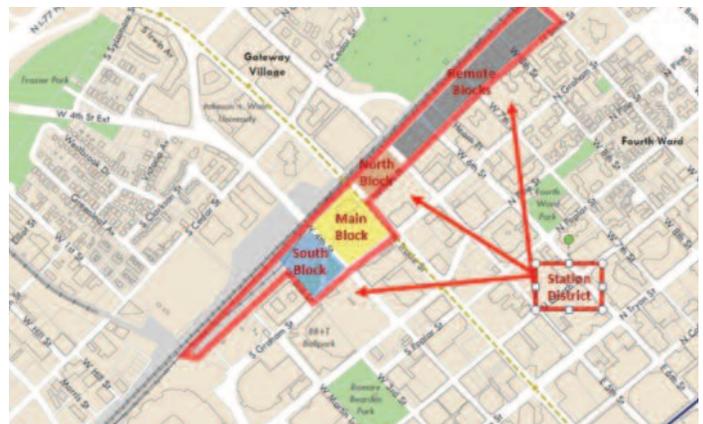
- 8,000 sq. ft. customer amenity area
- six to 10 bus bays
- 14,000 sq. ft. of potential retail space
- 200 residential units on levels two through eight
- 850-900 parking spaces on six levels of a parking deck
- Greenway access

## **The North Block**

The North Block is intended to accommodate a private development building, possibly a hotel with retail on the ground floor. Wilkes Place, located between Trade and Fifth streets, could serve as on-street drop-off lanes.

- 380,000 sq. ft. hotel (10-12 floors) with retail on the ground floor
- 400 parking spaces on three levels of subsurface or podium parking
- Greenway access

The city indicates it has started the process of seeking private sector partners for Main Block, North and South Blocks, and reminder of the district. It doesn't project the overall project value.



# NC masonry students sweep national SkillsUSA competition as others win state-level recognition

*North Carolina Construction News staff writer*

North Carolina had a sweep at the national SkillsUSA masonry competition in June in Louisville KY, winning both the secondary and post-secondary contests.

Ashton White, representing West Rowan High School, won the post-secondary division, one of the first women to ever win a national SkillsUSA masonry event, reports Ryan Shaver workforce development and training coordinator for the North Carolina Masonry Contractors Association (NCMCA).

Mason Saunders of Mount Pleasant High School won the high school event.

With Ashton and Mason's wins, North Carolina's SkillsUSA Masonry medal count now stands 36 Gold, 15 Silver, and two Bronze.

Among attendees at the SkillsUSA



*The final stages of the SillsUSA masonry competition*

National Conference were Shaver, who serves as national chairman for the masonry contest, NCMCA president Kent Huntley, Metrolina Chapter

vice-president Greg Huntley, West Rowan High School masonry instructor Rodney Harrington, Mount Pleasant High School masonry instructor Cody Alward, Daniel Furr of Carolina Stalite, and Todd Hartsell of Central Cabarrus High School, who serves as masonry expert for the USA World-Skills masonry team.

Christadore Cole of Connecticut finished in second and Rains Cole of Arizona finished third in the secondary division. Dean Bryce of Pennsylvania finished in second and Jake Freeman of Alabama finished third in the post-secondary division.

Earlier, in Charlotte, a Huntley Brothers Company apprentice won the North Carolina Masonry Contractors Association (NCMCA) Annual Samuel A. McGee Masonry Apprentice Skills Contest.

Eighteen-year-old Jamison "JK" Huntley defended his 2017 championship by repeating in 2018, taking home the "David R. Sigmon Award" for first place in a field of thirty-eight contestants from nine NCMCA member companies.



*Mason Saunders of Mount Pleasant High School and Ashton White representing West Rowan High School won the post-secondary division in the high school event.*

Adams, an Oldcastle company, co-hosted the May 19 event with NCMCA's Charlotte Metrolina Chapter.

The new champion is the son of Maria and Tim Huntley of Monroe and is number five of nine brothers. JK is the first of the brothers to win first place in the annual NCMCA contest. Now he has done it twice.

JK's brother Landon is his foreman at Huntley Brothers Company and father Tim says Landon felt like JK would win, that he is a very good team player and does a great job. (Tim added, "I can't believe Landon said that about his brother.")

JK's masonry instructor was his great-uncle Sam McGee for whom the contest is named. Mr. McGee was a founder of McGee Brothers Company, a firm based in Charlotte that is often listed as among the largest masonry contracting firms in the country.

McGee, who died in 2015, was recognized across the country as a leader and innovator in the industry. He was inducted into the national Masonry Hall of Fame in 2014. Jamison's was one of the last masonry classes that Sam ever taught.

Finishing second to fifth place respectively were Coner Hallman, McGee Brothers Company; Rex Huntley, Huntley Brothers Company; Zachery McGee, McGee Brothers Company; and Jesse Baker, Gates Construction Company. Each contestant had two hours to build a detailed four-ft. by three-ft. brick and block panel which was then judged in nine predetermined categories.

By earning the David R. Sigmon award for first place, JK won \$1,000 cash and a wheelbarrow full of tools. He also earns the right to represent North Carolina again at the Mason Contractors Association of America (MCAA) International Skills Challenge this coming January at Las Vegas. He won that competition in January earlier this year.

The North Carolina Masonry Contractors Association has approximately 136 member companies across the Carolinas. NCMCA promotes masonry as a preferred building system and as a great career opportunity.



Jamison ("JK") Huntley (photography by Carl Moser)

## Attention General Contractors

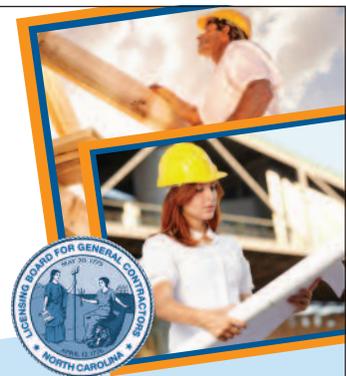
# Go Online Now

The NC Licensing Board for GC's announces NC Contractors Licensing Central (NCCLiC) for online license renewals.

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1. **CLiC** the orange button to begin
2. **CLiC** to register your existing license number
3. Enter the requested information:
  - your license number • a password of your choosing
  - confirm your password • an email address
  - confirm the email • tax ID for corporations/LLCs or Social Security number for sole proprietors
4. **CLiC** "I agree" to confirm the terms
5. **CLiC** "register"
6. Look for an email to confirm your account
7. **CLiC** the red button in the email



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**IMPORTANT: License renewal applications will not be mailed.**

## The General Agreement of Indemnity (GAI): A Surety's Best Friend, A Contractor's Worst Enemy

By Luke J. Farley, Sr.  
Special to North Carolina Construction News

### Bonding challenges

Surety and bonding requirements and consequences undoubtedly create some of the greatest business and legal liability for North Carolina contractors – and disputes relating to the bonding process certainly create plenty of work for specialist construction lawyers.

These two articles contributed by Brett Becker (*Nexsen Pruet*) and Luke Farley (*Conner Gwyn Schenck PLLC*) address some important but perhaps misunderstood risks and issues. We'll continue to cover surety challenges in future issues.

A general agreement of indemnity (GAI) can be a surety's best friend when a contractor starts to show signs of trouble on a project. For that same contractor, though, a GAI can be its worst enemy.

A general agreement of indemnity is a three-way contract between the surety, the bond principal (that is, the contractor), and (usually) the individual owners of the contracting company and their spouses. Under the GAI, the bond principal, the individual owners, and the spouses—together called "indemnitors"—agree to pay back the surety for any costs incurred as a result of issuing the bonds. Most contractors with a bonding line have probably signed a GAI at some point.

From "time immemorial"<sup>1</sup> sureties have enjoyed a basic, common law right to be reimbursed by their bond

principal.<sup>2</sup> A GAI expands those rights in two major ways.

First, a GAI will make the individual owners of the company and their spouses liable to the surety when they otherwise wouldn't be. At common law, the surety could only seek indemnification from its bond principal.<sup>3</sup> If the bond principal was a corporation, the owners of the company and their spouses were shielded from liability.<sup>4</sup> The surety can get around the corporate shield by requiring the individual owners and their spouses to agree to be directly liable to the surety as a condition of issuing the bond. If they don't sign the GAI, then they don't get the bond. Having both spouses sign a GAI has significant consequences. If the surety later files a lawsuit against them and wins, the surety can potentially seize and sell the family home to collect a judgment.<sup>5</sup> If you and your spouse sign a GAI, be sure you understand what you're putting on the line.

Second, the GAI gives the surety powerful legal tools for dealing with the risk created by an insolvent principal before the surety actually incurs liability to a bond claimant. These tools go beyond just indemnification and allow the surety to be proactive in mitigating risk. A recent case decided by a federal court in Virginia shows how a GAI can strengthen a surety's position when dealing with a principal who finds itself on shaky financial ground.

In the case of *Allegheny Casualty Co. v. River City Roofing, LLC*<sup>6</sup> the surety issued payment and performance bonds for three separate projects. The bond principal was a roofing contractor. As is common practice in the industry, the surety required both the bond principal and several individuals (presumably the owners of the roofing company and their spouses) to sign a GAI.



After issuing the bonds, the surety received two payment bond claims from suppliers and a performance bond claim. The surety paid roughly 60 percent of one of the payment bond claims. To address the performance bond claim, the surety paid an outside consultant about \$13,000 to investigate the project.

The surety eventually sued its principal and the individual indemnitors to enforce the terms of the GAI. In a testament to the power of a well-drafted GAI, the court found in favor of the surety without the need for a trial.

The GAI contained three key provisions often found in indemnity agreements which are meant to protect the surety from financial losses:

1. The indemnitors were required to pay back the surety for all expenses the surety incurred as a result of issuing the bonds or enforcing the terms of the GAI.
2. If the surety paid a claim in "good faith," then the surety was "entitled to charge" the indemnitors for that payment "whether or not such liability...existed."
3. The indemnitors agreed to deposit sufficient collateral with the surety "as soon as liability exists or is asserted" against the surety, regardless of whether the surety had made a payment on the indemnitors' behalf.

Understanding how the court interpreted the three key provisions of the GAI shows why a GAI is such an important part of the surety-principal relationship.

The indemnitors first tried to defend the lawsuit on the basis that the

surety shouldn't have paid one of the payment bond claims. Their argument was that the contractor had two separate contracts on the project and the surety only bonded one of them. According to the indemnitors, the unpaid supplier provided the materials under the non-bonded contract.

The court rejected this argument and determined that the indemnitors were liable to the surety for the full amount it had paid the supplier. It didn't matter to the court whether the supplier provided materials under the bonded or non-bonded contract, because the reimbursement provisions of the GAI didn't depend on the surety making payment under a bonded contract. Instead, as long as the surety made the payment in good faith—even if it later turned out it wasn't necessary—the surety still had a right to reimbursement. The GAI granted the surety wide latitude to settle claims as it saw fit and then look to the indemnitors for reimbursement.

The surety also sued to enforce requirement that the indemnitors post collateral "as soon as liability exists or is asserted" against the surety. This provision was meant to mitigate the surety's risk by having the indemnitors provide security for any debts they may owe the surety as soon as it became apparent that the surety might have to pay a claim.

The indemnitors refused to put up collateral on the basis that the surety had already determined there was no merit to the performance bond claim. While the surety spent about \$13,000 investigating the claim, it never made

a payment. If the surety hadn't paid the claim, why should the indemnitors have to post collateral? The court rejected this argument based on the plain language of the GAI which allowed the surety to demand collateral "as soon as liability exists or is asserted." The mere fact that bond claims were made was enough to allow the surety to seek collateral; there was no need for the surety to show those claims were valid.

As the *Allegheny Casualty* case shows, a comprehensive, well-drafted GAI can give the surety as close to a slam dunk case as you'll find in the law. Sureties assume substantial risk when issuing bonds and the GAI mitigates that risk by shifting some of it back to the contractor, its owners, and their spouses. Any one signing a GAI should understand the agreement has shifted much of the financial risk for a contractor's default onto the indemnitors. While that's a scary prospect, it also creates a strong incentive to keep the project on track, pay your bills, and finish on time.

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- 1 *Smith v. Mitsubishi Motors Credit of Am., Inc.*, 247 Conn. 342, 348, 721 A.2d 1187, 1190 (1998).
- 2 *City of Elgin v. Arch Ins. Co.*, 53 N.E.3d 31, 42 (Ill. App. Ct. 2016), *appeal denied*, 60 N.E.3d 871 (Ill. 2016); *Capstone Bldg. Corp. v. Am. Motorists Ins. Co.*, 308 Conn. 760, 792, 67 A.3d 961, 985 (2013); *Anderson v. Trueman*, 100 Fla. 727, 730, 130 So. 12, 13-14 (1930); *Non-Marine Underwriters at Lloyd's London v. Carrs Fork Coal Co.*, 421 S.W.2d 852, 853 (Ky. 1967); *Hartford Acc. & Indem. Co. v. Dahl*, 202 Minn. 410, 413, 278 N.W. 591, 593 (1938).
- 3 See Restatement (Third) of Suretyship & Guaranty § 22 (1996).
- 4 *Curci Investments, LLC v. Baldwin*, 14 Cal. App. 5th 214, 220, 221 Cal. Rptr. 3d 847, 851 (Ct. App. 2017) ("Ordinarily a corporation is considered a separate legal entity, distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. ... The same is true of a limited liability company (LLC) and its members and managers."); *cf. Fausse Riviere, L.L.C. v. Snyder*, 211 So. 3d 1188, 1192 (La. Ct. App. 2017).
- 5 *Marquette Bank v. Heartland Bank & Tr. Co.*, 41 N.E.3d 1007, 1010 (Ill. App. Ct. 2015) ("The protection afforded by tenancy by the entirety ownership depends on whether the debt is individual or joint. ... A property held as tenants by the entirety may be sold the same as if title was held in joint tenancy to enforce a joint debt."); *cf. Branch Banking & Tr. Co. v. ARK Dev./Oceanview, LLC*, 150 So. 3d 817, 821 (Fla. Dist. Ct. App. 2014).
- 6 1:17-CV-01108 (IDD), 2018 WL 1785478 (E.D. Va. Apr. 13, 2018).



# Are public payment bond rights assignable under North Carolina law? Maybe.

By Brett Becker  
Special to North Carolina Construction News

Contractors, like other businesses, often find it advantageous to assign their accounts in exchange for some other form of consideration from the assignee. What is different about a contractor's accounts, as compared to most other businesses, is that the amounts owed might be secured by payment bonds.

It should not be disputed that a contractor can assign its accounts to a third party so long as the proper procedures are followed. However, if the accounts relate to a project where the contractor would have a valid claim on a public payment bond, can this right be assigned along with the accounts?

Practically, the ability of a third party purchaser to make a bond claim would make the assignment of accounts more lucrative for the assignee and would provide some bargaining power for the contractor who wants to assign the accounts. However, once the accounts are assigned and the third party assignee goes to make a claim on the bond and enforce that claim in court, will a court dismiss the action right off the bat for lack of standing of this new claimant? In North Carolina, maybe.

Under the plain terms of North Carolina's Little Miller Act, claimants under payment bonds are discussed in terms of those "who have performed labor or furnished materials in the prosecution of work required by any contract" without any language expanding this to "or their assigns." A plain reading of North Carolina's Little Miller Act would support the argument that only those

parties who actually worked on the project would have standing to bring an action on the payment bond.

But not so fast – it does not appear North Carolina courts have addressed the issue of assignability of public payment bond claims and the resulting standing of the assignee under the Little Miller Act. If faced with the question, North Carolina courts should look to federal law interpreting the federal Miller Act "on which our corresponding state act is modeled . . . ."

*HSI NC, LLC v. Diversified Fire Protection of Wilmington, Inc.*, 169 N.C. App. 767, 771-72, 611 S.E.2d 224, 227 (2005); *McClure Estimating Co. v. H.G. Reynolds Co., Inc.*, 136 N.C. App. 176, 181, 523 S.E.2d 144, 147 (1999).

And in doing so, the North Carolina courts should see that "assignees of the claims of persons furnishing labor or material c(o)me within the protection of the (federal Miller Act)."

*U.S. for Benefit and on Behalf of Sherman v. Carter*, 53 U.S. 210, 219, 77 S.Ct. 793, 798 (1957) (rejecting surety's argument that claimant had not furnished labor or materials to the project); see *U.S. ex rel. Constructors, Inc. v. Gulf Ins. Co.*, 313 F. Supp. 2d 593, 597 (E.D. Va. 2004) (approving of the decisions in *Carter* and recognizing the ability of a "valid assignee [to] properly claim payment under a Miller Act bond").<sup>[1]</sup>

Furthermore, allowing an assignee to make a claim on a payment bond advances the very purposes of North Carolina's Little Miller Act. A payment bond is intended for the "protection of the persons furnishing materials or

performing labor . . . ." N.C.G.S. § 44A-26. Payment bonds "were designed for the protection of laborers and materialmen and are to be construed liberally for their benefit." *Symons Corp. v. Ins. Co. of N. Am.*, 94 N.C. App. 541, 544, 380 S.E.2d 550, 552 (1989). Under this context, it is beneficial to allow assignability.

For example, without the ability to assign payment bond claims, a contractor in need of cash flow in order to stay on and finish a project is less likely to find funding through factoring agreements. By ensuring credit will be readily extendable to contractors, contractors may be less likely to walk off of public projects before substantial completion. This, in turn, enhances the public's interest to prevent avoidable delays in a public construction project and the contractors' private interests as well. This is just one way allowing assignability of payment bond claims may be in both the public's interest and in contractors' interests.

Therefore, while the question has not been conclusively decided in North Carolina, there are arguments supporting the ability of contractors to assign their payment bond claims along with their accounts. Understanding this can be an effective business tool for contractors.

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<sup>[1]</sup> In *Gulf Ins. Co.*, the court ultimately determined an actual assignment had not occurred and there was no viable claim because the subcontractors, who alleged assignee claimed it was subrogated to, were not owed any payments. 313 F. Supp. 2d at 598.

**Work begins on Strawberry Hill redevelopment project in Charlotte**

MPV Properties says that it started construction on a redevelopment for its Strawberry Hill shopping center in South Charlotte.



The newly-renovated plaza will include a water feature, repaved walkways, and modern architectural finishes, according to the developer.

When complete, the center will include a new 24,000 sq.ft. The Fresh Market, and about 17,000 sq.ft. of new shop space at the corner of Providence Rd. and Sardis Rd.

Marsh Properties is the owner/developer of Strawberry Hill. The firm manages the leasing and the center, with Steve Vermillion as the development consultant.

**Developer plans 80 unit apartment project near Duke University's East Campus**



Wilmorite Construction, based in Rochester, NY, has proposed turning a property on Erwin Rd. near Duke University's East Campus into a seven-story, 80 unit apartment building, the News & Observer reports.

The developer says it has reached a purchase agreement for the 1.2-acre property with an overall appraised value of \$999,910, based on Durham County records.

The site currently has a car wash

and the Sam's Quick Shop bar and beer store.

While the sale hasn't been officially completed, Wilmorite submitted the plans to the Durham City-County Planning Department in June. The existing structures on the site will be demolished.

Sam's owner John Boy owns the site, consisting of four separate parcels.

**HHHunt starts construction work on \$43 million community**



HHHunt has started work on Aberberly Solaire, an apartment community in Garner.

The development marks the company's fifth in North Carolina and third in the Triangle region.

Located at 1030 Element Circle, the \$43 million community will include 282 one and two-bedroom units. Interior features will include granite countertops, oversized garden tubs and stainless steel appliances, says MHN.

HHHunt owns and manages more than 7,750 apartment communities across Maryland, North Carolina, South Carolina and Virginia. The company currently has more than 890 units in its development pipeline in North Carolina and Virginia.

The 24-acre site is expected to open in the summer of 2019.

**Raleigh shopping center to get new lease on life**

Raleigh's Gateway Plaza could be looking a lot different come this fall.

Construction will begin this month on the building's facade and landscaping, as well as the replacement of its large parking lot, which could

be completed by Labor Day.

The Herald-Sun says the center will also see a host of new leases including a craft store, a brewery, a coffee shop and a bakery.

Redevelopment will also include the planting of trees in the parking lot and along the sidewalks for more shade.

A local real estate group, which includes Russ Jones and Henry Ward, partners with Loden Properties in Raleigh, bought the shopping center for \$3.45 million in 2016.

**Trinity Capital to build new office building in Charlotte**

Trinity Capital Advisors started construction in June on Toringdon 7, a 198,195 sq. ft. office building in Charlotte.

ReBusinessOnline reported that the eight-story building will be the seventh and final office building within Toringdon Office Park, which is located immediately off Interstate 485.

The building will feature column-free floor plans, floor-to-ceiling windows and a parking ratio of four spaces per 1,000 sq. ft.

The building is designed by architecture firm Gensler. Brasfield & Gorrie is the project's general contractor, while D&A Wolverine is the civil engineer.

Trinity Capital expects to complete construction of the building in summer 2019.

**Kessler Collection breaks ground on a new hotel in downtown Charlotte.**

The Grand Bohemian is a 16-story hotel being built on West Trade and Church streets.

The 254-room hotel features 32 suites, a spa, indoor and outdoor event spaces, an open kitchen restaurant concept and lounge with sidewalk and park seating, as well as a rooftop bar providing views of Charlotte.

Construction is expected to be completed in 2020. The project will cost \$110 million.

**Five real estate teams selected to submit plan for Seventh & Tryon project**

Five real estate teams have been selected to submit detailed proposals for the Seventh & Tryon public-private, mixed-use development.

The two-block Seventh & Tryon project, along North Tryon St., includes shops, a hotel, offices, and affordable and market-rate apartments alongside a new or renovated Charlotte-Mecklenburg Main Library, according to WFAE.

The selected firms are:

- Integral Group and Cousins Properties
- L+M Development Partners
- Metropolitan Partnership and Baupost Group

- Portman Holdings and Mill Creek Residential Trust
- Related Group

The firms have until Aug. 18 to submit master plans. The Seventh & Tryon committee will select a developer this fall.

**176-room hotel for Charlotte's Stonewall Station project gets \$28M construction loan**

NorthMarq Capital has secured a \$28 million construction loan for a new EVEN Hotel in Charlotte's Central Business District, ReBusinessOnline reported.

Local media reports suggest that the site was acquired by Mayfair Street Partners in 2017 to develop



the 176-room hotel.

The hotel is part of Stonewall Station, a mixed-use project under development by Crescent Communities. The development includes a Whole Foods, 458 multifamily units, a 1,350 space parking deck and a 180 room Home2Suites hotel.

A construction timeline for the EVEN Hotel was not disclosed.

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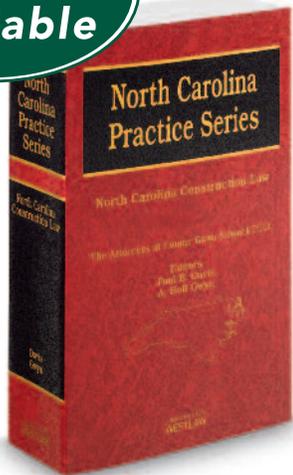
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**CAGC establishes  
Construction Careers  
Camp for teens**

Carolinas Associated General Contractors (CAGC) says it is celebrating the success of the inaugural Construction Careers Camp, held recently in partnership with Durham Technical Community College and the North Carolina Community College System.



*Students had a great time at CAGC's first construction camp in partnership with Durham Technical Community College.*

Photo Credit: Durham Technical Community College.

The diverse group of 10 campers, ages 14 to 17 years, included three young women. Nine of the 10 campers were African American. Currently, women make up less than 10 percent of the jobs in construction and African Americans represent an even smaller percentage of the industry's workforce at just 6.1 percent (2017 Bureau of Labor Statistics).

"At a time when the construction industry is facing a significant worker shortage, the diversity of the camp participants holds promise for future recruiting efforts aimed at targeted populations that are currently under-represented in the construction industry. CAGC has found a willing and capable partner in the NC Community College System (NCCCS) and the local community colleges who are very supportive of our efforts to increase training for construction trade programs," Betsy Bailey, CAGC's North Carolina government relations division director, said in a statement.

The week-long camp, held at the Durham Tech campus, was run by faculty at Durham Tech through three

experienced instructors, and featured hands-on use of construction tools and equipment. Each demonstration began with "safety first" where campers were required to wear safety goggles while operating machinery, and then they were given a thorough safety demonstration before being allowed to operate any equipment.

The final project, the construction of a tool shed, incorporated everything the students learned throughout the week: planning, design, math and measurement, correct use of tools and materials and—most importantly—how to work effectively as a team. Each day, contractors from the surrounding community helped with instruction and talked about the rewarding careers within their company.

C.T. Wilson Construction provided a special drone demonstration, and on the final afternoon campers participated in a Habitat for Humanity project.

To continue fostering these campers' interest, CAGC will connect them to local contractors for future internships or pre-apprenticeships. Funding for the camp was provided from a state appropriation to the NCCS for an outreach campaign designed to increase awareness of and interest in construction careers.

CAGC said in a news release that it is excited to expand the camp at Durham Tech and create additional camps in community colleges throughout North Carolina next summer. If you are interested in working with CAGC to start a camp in your area, contact Bailey at [bbailey@carolinasagc.org](mailto:bbailey@carolinasagc.org).

**NC Subcontractors Alliance (NCSA) selects new leadership**

The North Carolina Subcontractors Alliance (NCSA), an affiliate of the National Subcontractors Alliance (NSA), has selected its new officers for the 2018-2019 fiscal year. The new officers are:

- President, Joseph Teeter, senior

project manager at Axiom Foundations, LLC;

- Vice-president, Billy Graves, president/CEO at W. B. Moore Electric Company;
- Treasurer, Michelle Frankum, controller at Horsepower Site Services;
- Secretary, Don Hanson, partner at Noble Insurance Advisors; and
- Director at large, Brady Nails, contract coordinator at Binswanger Glass

Additionally, the NCSA created a board of advisors to assist the board of directors:

- Legal advisor, B. David Carson, partner at Johnston Allison & Hord;
- GC Council representative to the board, Josh Freeman, project manager at Messer Construction;
- Past presidents, Chris Paone, Christopher Bryan Company, Duff Regan, Regan and Associates and Art Rouse, director at National Subcontractors Alliance

GC Council Members for 2018-2019 include Edifice, Inc, Messer Construction, Miles-McClellan Construction and Myers & Chapman, Inc.

The NCSA was originally incorporated in 1976 as the Metrolina Charlotte Chapter of the American Subcontractors Association (ASA) and was later incorporated into the ASA of the Carolinas.

"In 2015, upset with the financial strain of supporting a large Washington, DC based organization with a national focus, the NCSA voted to leave the ASA and in 2016 became an affiliate of the National Subcontractors Alliance," NCSA past president Art Rouse said in a statement.

Rouse said the NSA is an alliance of independent associations across the country representing more than 3,500 subcontractors nationally. "The NSA provides support to its affiliates to provide networking, education and advocacy to members. The NSA also has an attorney's council consisting of all the chapter attorneys that meets twice a year to discuss legal issues that affect subcontractors.

The NSA affiliation allows the NCSA to emphasize local and state issues with the strength of a national organization."

The NCSA provides networking events, educational meetings and seminars, general contractor access and local advocacy.

### ABC Carolinas announces deadlines, changes for EIC Awards program

Associated Builders and Contractors (ABC) of the Carolinas has revised deadlines and included a new award in its annual Excellence in Construction (EIC) awards program.

"We have looked at the entry questions with a fresh eye and have made adjustments to reflect current industry standards," the association says in a notice to members. "Please be sure to read each question carefully as long-standing instructions have changed. The impacted sections are: Scope, Narrative, Difficulty and Quality of Finished Product."

### Video: Last year's EIC Awards winners

The new category for Historical Restoration/Renovation aligns with national EIC categories.

There will be new trophies, commemorating the 20th anniversary of ABC Carolinas.

Deadlines have been moved up:

- June 8 – EIC Phase I Opens
- July 20 – Entry Application (Phase I) closes with payment due
- Sept. 21 – Complete Online Entry (Phase II) submission due
- Nov. 15 – EIC Award Banquet – Hilton Charlotte

To start the 2018 entry process, visit the ABC Carolinas Chapter EIC Awards site. If you have questions, contact EIC committee chair Erin Branham.

### HCAC to host Gala & Brilliance Awards in August

The Hispanic Contractors Association of the Carolinas (HCAC) is hosting the Gala & Brilliance Awards to celebrate its 10-year anniversary.

At the Gala & Brilliance Awards,



industry leaders gather together in the Triangle to recognize the success and advancement of Hispanic and other minority contractors across the Carolinas, as well as the impact of the HCAC in the industry.

"We are joined by organizations and key partners who advocate for the prosperity of minority construction businesses, including minority contractors, general contractors, government agencies, associates, industry colleagues, sponsors, partners, and our incredible board of directors," according to HCAC.

The event will take place at Historic Royal Bakery Building, 3801 Hillsborough St. Suite 109, in Raleigh.

### ABC Carolinas electrical apprentice graduates celebrate at BB&T Park

The Associated Builders and Contractors (ABC) of the Carolinas helped 13 electrical apprentice graduates celebrate their achievements by hosting them in June at Charlotte's BB&T Ballpark for a Charlotte Knights game.

The graduates were recognized during pre-game festivities, walking onto the field with t-shirts imprinted with the slogan: "The Other 4-Year Degree".

"ABC Carolinas Chapter is the premier construction association representing the commercial/industrial construction industry," the ballpark announcer said. "ABC members build the hospitals, churches, schools, office buildings – and even

this amazing ballpark – where we live, work and play in the Carolinas. ABC Carolinas Chapter is investing in the future of the construction industry and is proud to introduce the Electrical Apprenticeship Graduation Class of 2018. Please welcome the future of the construction industry."

Valedictorian Jeff Klutzz of Eldeco was invited to throw out the first pitch, Groundbreak Carolinas reported.

In the program, apprentices work full time during the day and attend classes two nights per week. They learn about the use and care of tools, conduit, switchboards, wiring devices, lighting fixtures, motors and controls and general electrical work. The classroom training applies standardized curriculum from the National Center for Construction and Education Research (NCCER) and lasts four years.

Jeff Morris, the ABC Carolinas Chapter director of workforce development, was quoted as saying that overall enrolment increased by 57 percent compared to the previous year.

"Congratulations to all of the 2018 graduates. We applaud your hard work, dedication and achievements," Morris said. "As you embark on this new beginning, we encourage you to make a difference in someone else's life by sharing your knowledge. It's a remarkable accomplishment to complete this program. We wish you continued success in your careers," said Morris.

Graduates are: Jose Cano – Howard Brother Electric; Chad Efrid – Gowdy Electric; Steven Hofmann – Watson Electrical Construction Company; Brandon Hunter – Starr Electric Company; Joshua Jenkins; Tyson Keenan; Jeff Klutzz, Valedictorian – Eldeco; Christopher Pavelek – Watson Electrical Construction Company; Christopher Pressley – Starr Electric Company; O'Bryant Ralph – WB Moore; Auturo Vizcarra Santiago – Hardhat Workforce Solutions; James Thornton – Watson Electric Company; and David Vargus – Gaylor Electric.

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