

Story of a Building – Norfolk Agricultural HS

Who Substitutes if your Contractor is Absent

May 1, 2018





AGENDA

- **Introduction to Surety** **Tim Bonfatti, Compass**
- **Original Project Timeline** **Bryan Jarvis, Compass**
- **Actual Project History** **Bryan Jarvis, Compass**
- **Legal Considerations** **Bob Garrity, Garrity and Knisely**
- **Completion Contractor Viewpoint** **Bob Brait, Brait Builders**
- **Surety Consultant Perspective** **Jon Lemieux, Vertex**



INTRO TO SURETY BONDS

Surety is NOT Insurance

1. **Three Parties**
 - Obligee
 - Principal
 - Surety
2. **No Losses**
3. **Indemnity**
4. **Rate**





INTRO TO SURETY BONDS

Surety's Options

1. Take Over and Complete the Contract
2. **Tender a New Contractor**
3. Finance the Original Contractor
4. Reimburse the Owner
5. Pay the Bond Amount or Penalty
6. Deny the Claim

Surety's Defenses

- a. **All the Defenses of the Default GC**
- b. **Must be Given Notice of Default**
- c. Major Change to the Contract without
Their Knowledge
- d. **Overpayment to Default GC**
- e. Release of the Default GC
- f. **Failure to Mitigate Damages**



CONSTRUCTION PHASING AND TIMELINE

Phase 1

March 2012 – June 13, 2013

Phase 1:

- Animal Science Building
- Agricultural Mechanical Building
- Equine Facility
- Equipment Garage
- Related Utility, Road, and Site work

Phase 3

Summer 2013

Phase 3:

- Campus wide Phone; IT (fiber backbone); FA upgrades
- New entry drive to Route 1A

Phase 2

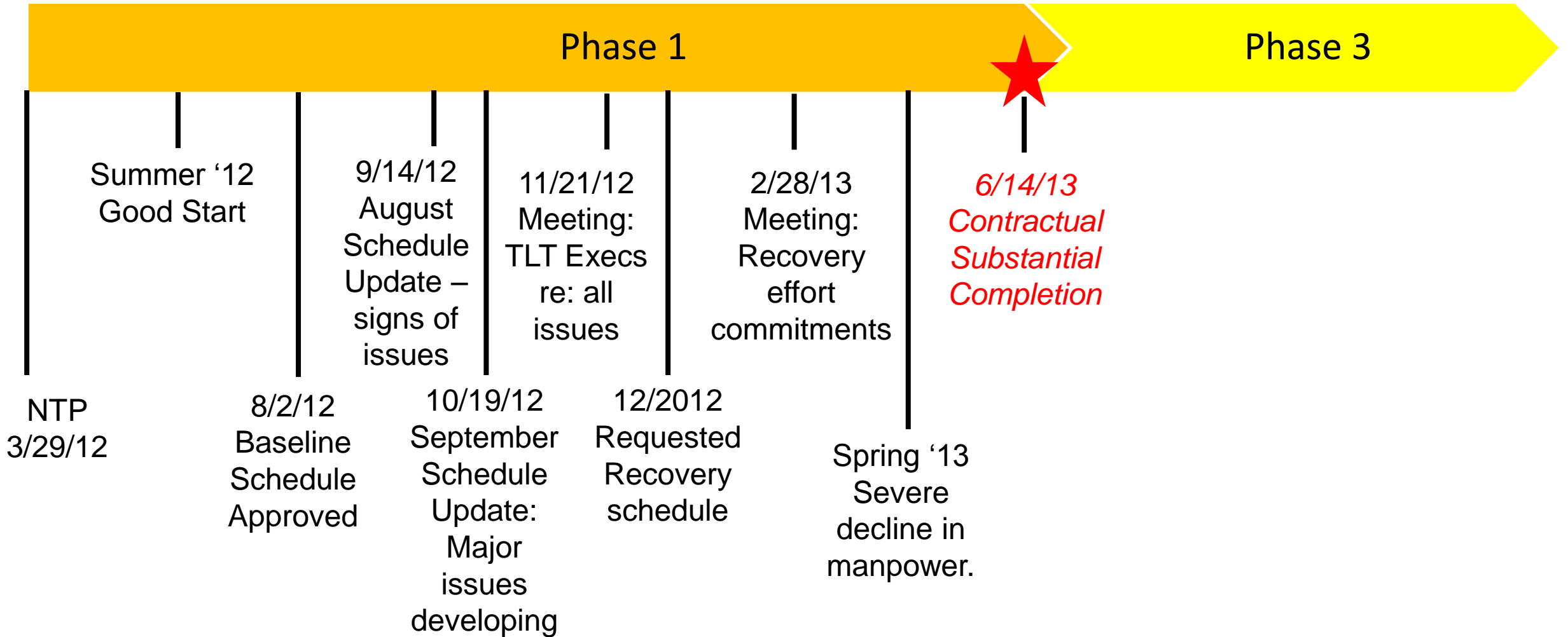
July 2013 – May 9, 2014

Phase 2:

- Renovate old Ag. Mech. into Administration Building
- Renovate old Animal Science into Classroom Building



CONSTRUCTION PHASING AND TIMELINE





June 14, 2013



Animal Science



Agricultural Mechanical



June 14, 2013



Equine Building



Equipment Garage



June 14, 2013



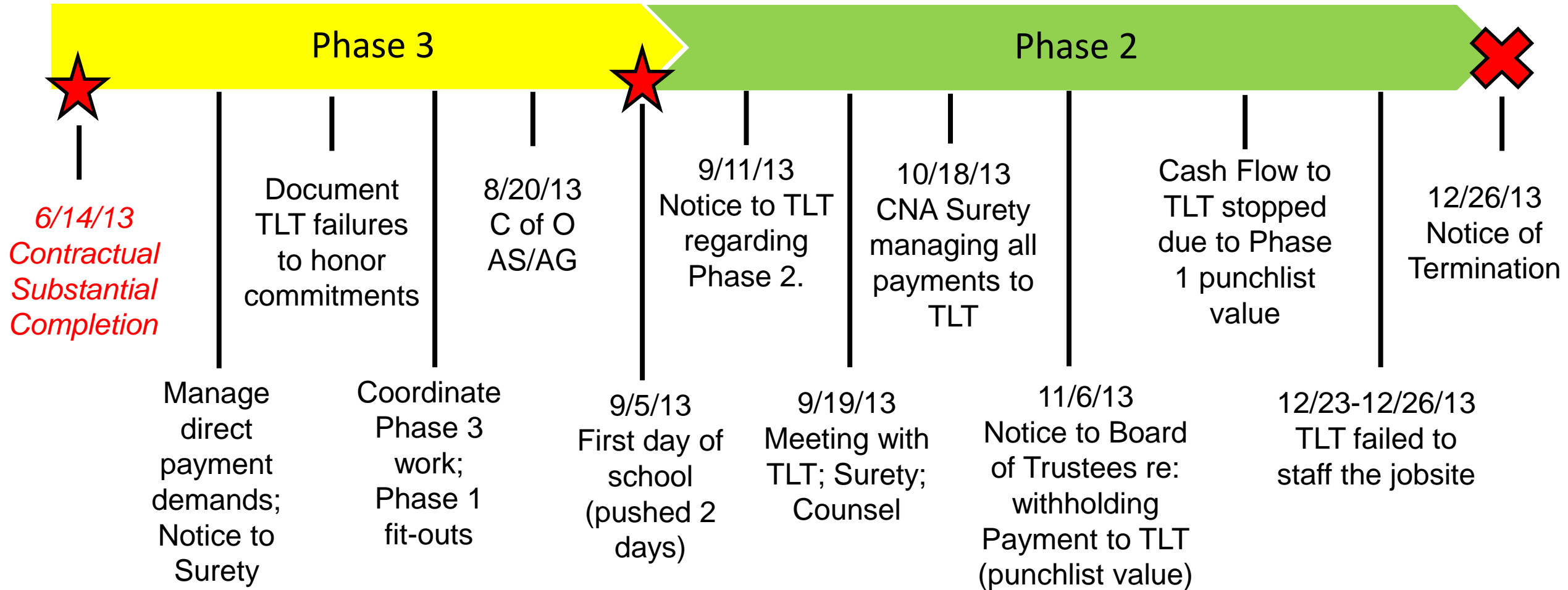
Site towards Animal Science



Site towards Equine



CONSTRUCTION PHASING AND TIMELINE





CONSISTENT AND DILIGENT EFFORTS

- Timely documentation of GC issues and overall project management
- Documentation of GC's commitments and failures to honor them
- Constant meetings to keep GC Execs involved and on point
- Process for communications with subs and payments
- Fill voids left by a failing GC: (e.g. coordination of Phase 3 work)
- Clear and strong process for substantial completion; punchlist completion
- Early and consistent notice to Surety and Counsel
- Keep the Client calm with a focus on the “end game”; don't get emotional



LEGAL CONSIDERATIONS

- Make sure to include a “good” bond form in contract
- Precisely follow the steps for termination
- Give the surety all it asks in investigating the claim
- Request them to tender a new GC – maintain original contract provisions
- If needed, agree for surety to “reserve rights” in order to complete the work
- Be mindful of Direct Payment Demands
- Surety has obligation to complete the work – don’t give them a defense



COMPLETION CONTRACTOR VIEWPOINT

- Work w Surety Consultant to Ratify Subcontracts
- Mobilize to Site
- Inventory all Material and Equipment Onsite – Track Offsite Material
- Work with the Project Team and Owner to Ease Transition
- Organize for Success
- Develop a Good Completion Schedule