



CITY OF HENDERSONVILLE CITY COUNCIL REGULAR MEETING

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792
Thursday, November 03, 2022 – 5:45 PM

AGENDA

1. **CALL TO ORDER**
2. **INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG**
3. **PUBLIC COMMENT** - *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*
4. **CONSIDERATION OF AGENDA**
5. **CONSENT AGENDA** - *Items are considered routine, noncontroversial in nature and are considered approved by a single motion and vote.*
 - A. Adoption of City Council Minutes – *Angela L. Reece, City Clerk*
 - B. Budget Amendments – *Adam Murr, Budget Manager*
 - C. Utility Extension Agreement for the Blue Ridge Commerce Center Development – *Brendan Shanahan, Civil Engineer IV*
 - D. Utility Extension Agreement for the Creekside Community Development – *Brendan Shanahan, Civil Engineer IV*
 - E. Utility Extension Agreement for the Mills River Townhomes Development – *Brendan Shanahan, Civil Engineer IV*
 - F. French Broad River Intake Project Engineering Amendment 7 – *Brent Detwiler, City Engineer*
 - G. Purchase of +/- 0.92 Acre Lot on Williams Street – *John Connet, City Manager*
 - H. Ordinance to Allow Electronic Meetings for Subcommittees – *Angela Beeker, City Attorney*
 - I. Clear Creek Greenway Professional Engineering Services Contract Execution – *Brendan Shanahan, Civil Engineer IV*
6. **PRESENTATIONS**
 - A. Proclamation - Homeless Youth Awareness Month - *Barbara G. Volk, Mayor*
 - B. Proclamation - American Indian Heritage Month - *Barbara G. Volk, Mayor*
 - C. Proclamation - Retirement Appreciation for Dr. Janet Bull - *Barbara G. Volk, Mayor*
 - D. Certificate of Commendation - *Barbara G. Volk, Mayor*

- [E.](#) Recognition of Andy Brogden and Patrick Warren – *Tom Wooten, Public Works Director*
- [F.](#) Quarterly MVP Recipients – *John Connet, City Manager*
- [G.](#) Fiscal Year 2022 Audit Presentation – *John Buchanan, Finance Director*

7. PUBLIC HEARINGS

- [A.](#) Zoning Text Amendment: Multi-Family in the 7th Ave MSD (P22-75-ZTA) – *Matthew Manley, AICP – Planning Manager*

8. UNFINISHED BUSINESS

- [A.](#) Establishment of Social Districts in Downtown Hendersonville – *Council Member Simpson*
- [B.](#) Continuation of American Rescue Plan Discussions – *Adam Murr, Budget Manager*

9. NEW BUSINESS

- [A.](#) ADA Obstructions in Hendersonville – *Amy Siegler, ADA Advocate*
- [B.](#) Electric Vehicle Infrastructure Discussion – *Will Garvey, Environmental Sustainability Board Member*
- [C.](#) Recommendation for 2045 Comprehensive Plan Consultant – *Matthew Manley, AICP – Planning Manager*
- [D.](#) Consideration of Ordinance Amending Chapter 20, Article II, Noise of the Hendersonville City Code – *Rodney Gilliam, VLGMF Intern*
- [E.](#) Discussion Regarding the Closing of 4th Avenue on Halloween – *Jennifer Hensley, Council Member*

10. CITY COUNCIL COMMENTS

11. CITY MANAGER REPORT - John F. Connet, City Manager

- [A.](#) Cash and Investment Report – *John Buchanan, Finance Director*
- [B.](#) Cancellation of November 23, 2022 City Council Workshop - *John Connet, City Manager*

12. CLOSED SESSION

- [A.](#) Closed Session – *John Connet, City Manager*

13. ADJOURN

The City of Hendersonville is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or an

accommodation for this meeting please contact the City Clerk no later than 24 hours prior to the meeting at 697-3005.



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Angela Reece, *MPA, CMC, NCCMC*, **MEETING DATE:** November 3, 2022
City Clerk

AGENDA SECTION: CONSENT **DEPARTMENT:** Administration

TITLE OF ITEM: Adoption of City Council Minutes – *Angela L. Reece, City Clerk*

SUGGESTED MOTION(S):

I move that City Council adopt the minutes of the September 28, 2022 Second Monthly Meeting and the October 6, 2022 Regular Meeting.

SUMMARY:

The City Clerk has prepared minutes of the following meeting(s) for Council consideration:

- i. September 28, 2022, Second Meeting Minutes [DRAFT]
- ii. October 6, 2022, Regular Session Minutes [DRAFT]

BUDGET IMPACT: \$0

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

ATTACHMENTS:

- i. September 28, 2022, Second Meeting Minutes [DRAFT]
- ii. October 6, 2022, Regular Session Minutes [DRAFT]



MINUTES

September 28, 2022

SECOND MONTHLY MEETING OF THE CITY COUNCIL CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 4:00 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members:
Dr. Jennifer Hensley, Debbie O'Neal-Roundtree, and Jerry A. Smith Jr., J.D.

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle, City Attorney Angela Beeker, City Clerk Angela Reece, Communications Manager Allison Justus, and others

1. CALL TO ORDER

Mayor Barbara G. Volk called the meeting to order at 4:03 p.m. and welcomed those in attendance. A quorum was established with the majority of members in attendance.

2. CONSENT

A. Adoption of City Council Minutes – Angela Reece, City Clerk

I move that City Council adopt the minutes of the August 24, 2022 Second Monthly Meeting and the September 1, 2022 Regular Meeting.

B. August Budget Amendments – Adam Murr, Budget Manager

I move City Council adopt budget amendment(s) 09282022-01, 09282022-02, and 09282022-03, as presented.

C. Henderson County Tax Adjustments -Amanda Lofton, Deputy Tax Collector

I move that City Council resolve to direct and authorize the tax releases submitted by Henderson County Tax Collector as presented and relieve the Henderson County Tax Collector and the Deputy Tax Collectors of the charges owed.

D. Project Coordinator Engineering department – Jennifer Harrell, HR Director

I move City Council adopt the Engineering Project Coordinator position and job description as presented.

E. Seventh Ave. Streetscape Construction Manager at Risk Contract Execution – Brendan Shanahan, Civil Engineer IV

I move the City Council adopt a Resolution authorizing the City Manager to execute a contract with Harper General Contractors to provide construction manager at risk services.

Resolution #R-22-122

RESOLUTION BY THE HENDERSONVILLE CITY COUNCIL ACCEPTING HARPER GENERAL CONTRACTORS' CONSTRUCTION MANAGER AT RISK PROPOSAL FOR THE SEVENTH AVENUE STREETSCAPE PROJECT

WHEREAS, the City Council has resolved to authorize the negotiation of a contract for construction manager at risk services with Harper General Contractors for the Seventh Avenue Streetscape Project and;

WHEREAS, staff have received and evaluated a proposal for such services from Harper General Contractors; and

WHEREAS, a contract for services is still to be established;

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

1. The City Manager is authorized to execute a contract for construction manager at risk pre-construction services with Harper General Contractors on behalf of City Council in the amount not to exceed \$30,000 for pre-construction services and a construction manager's fee

not greater than 7.5% of the cost of work upon establishment of a guaranteed maximum price (GPM), for the Seventh Avenue Streetscape project, and

2. The City Manager is authorized to utilize additional services as described in the proposal when it is determined to be in the best interest of the City of Hendersonville within budgeted funds available for the project.
3. The City Manager and City Attorney are authorized to negotiate and execute a final contract with Harper General Contractors for construction manager at risk services for the Seventh Avenue Streetscape project.

Adopted by the City Council of the City of Hendersonville, North Carolina this 28th day of September 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

Council Member Lyndsey Simpson moved that City Council approve the consent agenda as presented. A unanimous vote of the Council followed. Motion carried.

3. NEW BUSINESS

- A. Authorizing the Hiring of Contract City Clerk and Appointment of Deputy City Clerk**
– John Connet, City Manager

Council Member Dr. Jennifer Hensley moved that City Council authorize the City Manager to enter into a contract with Angela Reece to serve as City Clerk until a full-time City Clerk can be appointed and appoint Daniel Heyman as Deputy City Clerk. A unanimous vote of the Council followed. Motion carried.

4. PRESENTATIONS

- A. American Rescue Plan Appropriation Discussion**– Adam Murr, Budget Manager

Budget Manager Adam Murr provided an update on the American Rescue Plan (ARP) appropriations in fiscal year 2022-2023. Mr. Murr stated the City received eighteen (18) ARP funding applications which were reviewed, scored, and ranked by five staff members based on the following criteria:

- Application – the applicant submitted a complete application; the applications is, overall, grammatically correct, and professional.
- Project – the project is clearly defined, and Staff can render an opinion on the City’s legal authority to fund the project.
- Impact – the benefits and externalities of the project are clearly defined, the project’s “transformative” nature is evidenced in the application.
- Outcomes – results are defined and supported by research and/or evidence; the applicant has a clear understanding of indicators of success for the project.
- Reporting – the applicant has provided funding sources and uses for the project, a budget, summary of funding use, and acknowledges accountability requirements.

City Manager John F. Connet provided a recommendation for funding the highest-ranking applications which are transformative and do not receive funding from other sources. Manager Connet explained how funding a crisis response advocate position would be beneficial to public safety and code enforcement. He further explained this would be a pilot project to embed a social worker into city government to assist departments with certain types of calls, provide efficiency, and assist victims thereby reducing pressure on patrol officers.

5. CLOSED SESSION

- A. Closed Session** – John Connet, City Manager

At 4:36 p.m. Council Member Jerry A. Smith Jr., J.D. moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) and (3) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body. A unanimous vote of the Council followed. Motion carried.

At 6:52 p.m. Council Member Debbie O’Neal-Roundtree moved that City Council return to open session. A unanimous vote of the Council followed. Motion carried.

There being no further business, the regular meeting was adjourned at 6:52 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Angela L. Reece, City Clerk

DRAFT



MINUTES

October 6, 2022

REGULAR MEETING OF THE CITY COUNCIL

CITY OPERATIONS CENTER | 305 WILLIAMS ST. | 5:45 p.m.

Present: Mayor Barbara G. Volk, Mayor Pro Tem Lyndsey Simpson and Council Members: Dr. Jennifer Hensley, Debbie O'Neal-Roundtree, and Jerry A. Smith Jr., J.D.

Staff Present: City Manager John F. Connet, Assistant City Manager Brian Pahle, City Attorney Angela Beeker, Deputy City Clerk, Daniel Heyman, Communications Manager Allison Justus, Budget Manager Adam Murr, and others

1. CALL TO ORDER

Mayor Volk called the meeting to order at 5:45 p.m. and welcomed those in attendance. A quorum was established with all members in attendance.

2. INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The City Council observed a moment of silence for prayer or reflection followed by the Pledge of Allegiance to the Flag.

3. PUBLIC COMMENT *Up to 15 minutes is reserved for comments from the public not listed on the agenda.*

Dennis Justus submitted written digital comments to City Council regarding support of additional pickleball facilities which are ADA compliant in the City of Hendersonville.

4. CONSIDERATION OF AGENDA

Council Member Jerry A. Smith Jr., J.D. moved that City Council approve the agenda as presented. A unanimous vote of the Council followed. Motion carried.

Council Member Jerry A. Smith Jr., J.D. requested to amend the agenda by moving Item A, Special Event: Christmas Parade from Consent to be Item 6E Presentations.

Council Member Jerry A. Smith Jr., J.D. moved that City Council approve the agenda as amended. A unanimous vote of the Council followed. Motion carried.

5. CONSENT AGENDA

A. REMOVED

B. Purchase of Motorola Car and Body Worn Camera System – Blair Myhand, Chief of Police

I move City Council approve the Resolution By The City Of Hendersonville City Council To Authorize The City Manager To Execute Agreement With Motorola Solutions For Purchase Of Car And Body Worn Camera System.

Resolution #R-22-123

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT WITH MOTOROLA SOLUTIONS FOR PURCHASE OF CAR AND BODY WORN CAMERA SYSTEM

WHEREAS, The police department is seeking to replace its current outdated car and body worn camera system; and

WHEREAS, City Council approved Camera System as part of the 2022 fiscal year budget; and

WHEREAS, Hendersonville Police Department has informally solicited proposals in an effort to select a reputable and responsible Vendor to provide the products and services. A total of 5 companies were contacted and quotes were received for each; and

WHEREAS, the variable costs were weighed against the options, specifications, and abilities to choose the system that best suited our agency needs. Many hours of work and several meetings were held to choose the final product and vendor. Motorola Solutions submitted the lowest price

proposal. References indicate that they are a responsible vendor and are able to complete the Project within the quoted pricing and within the time frames requested; and

WHEREAS, The purchase totals \$568,845.20 divided into a first-year payment of \$115,000.02 and a yearly payment for 4 additional years of \$113,573.42; and

WHEREAS, Motorola is on the N.C. Sheriff's association purchasing Contract/bid # 22-01-0303; and

WHEREAS, the Hendersonville Police Department is recommending that the Project be awarded to Motorola Solutions and the Agreement be approved; and

WHEREAS, the Hendersonville Police Department requested that the City Manager be authorized to negotiate and enter into a contract with Motorola Solutions for a not to exceed amount;

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

1. The Project is awarded to Motorola Solutions in the amount of \$ 568,845.20.
2. The City Manager is authorized to negotiate and enter into an agreement with Motorola Solutions on behalf of the City in such form and with such provisions as he may deem appropriate, after consultation with the City Attorney, provided that the price may not be changed without approval from the City Council.
3. The City Manager, City Attorney, and City Staff are authorized to take such other actions as may be necessary to carry out the terms and provisions of the agreement as entered and signed by the City Manager.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

C. Governors Highway Safety Grant Award for Overtime - Traffic Enforcement Activities— Blair Myhand, Chief of Police

I move that City Council approve the Resolution for the reimbursement amount of up to \$25,000.00 for overtime for traffic enforcement related activities conducted by the Hendersonville Police Department.

Resolution #R-22-124

NORTH CAROLINA GOVERNOR'S HIGHWAY SAFETY PROGRAM LOCAL GOVERNMENTAL RESOLUTION

WHEREAS, the City of Hendersonville (herein called the "Agency")
(The Applicant Agency)
has completed an application contract for traffic safety funding; and that City Council
(The Governing Body of the Agency)
(herein called the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as described in the contract;
THEREFORE, NOW BE IT RESOLVED BY THE City Council IN OPEN
(Governing Body)
MEETING ASSEMBLED IN THE CITY OF Hendersonville, NORTH CAROLINA,
THIS 6 DAY OF October, 20 22, AS FOLLOWS:

1. That the project referenced above is in the best interest of the Governing Body and the general public; and
2. That Kenneth Hipps, Lieutenant is authorized to file, on behalf of the Governing
(Name and Title of Representative)
Body, an application contract in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of \$ up to \$25,000.00 to be made to the Governing Body to assist in defraying
(Federal Dollar Request)
the cost of the project described in the contract application; and
3. That the Governing Body has formally appropriated the cash contribution of \$ 0.00 as
(Local Cash Appropriation)
required by the project contract; and
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program; and
5. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

D. Utility Extension Agreement for the Camp Judaea Cabins – Brendan Shanahan, Civil Engineer IV

I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with CJ Property, Inc. for the Camp Judaea Cabins Phases 3 and 4 as presented.

Resolution #R-22-125

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH CJ PROPERTY, INC FOR THE CAMP JUDAEA CABINS**

WHEREAS, the City of Hendersonville owns, operates and maintains a water system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, CJ Property, Inc., the “Developer” and “Owner”, will enter into a Utility Extension Agreement with the City to provide water service to the Camp Judaea Cabins.

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

4. The Utility Extension Agreement with CJ Property, Inc., the “Developer” and “Owner” to provide water service to the Camp Judaea Cabins is approved, as presented.
5. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
6. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

E. Justification for the Sole Source Purchase of UV Disinfection Equipment for the UV Improvements Project – Adam Steurer, Utilities Engineer

I move Council to adopt the Resolution by the City of Hendersonville City Council to Authorize the Sole-Source Purchase of UV Disinfection Equipment for the UV Improvements Project as presented.

Resolution #R-22-126

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE SOLE-SOURCE PURCHASE OF UV DISINFECTION EQUIPMENT
FOR THE UV IMPROVEMENTS PROJECT**

WHEREAS, the City uses ultraviolet (UV) disinfection at its wastewater treatment facility (WWTF) to disinfect treated wastewater before discharging to the receiving Mud Creek. The existing equipment was commissioned in 2001 and is in need of replacement due to unreliable operation, significant wear, lack of redundancy, damage potentially related to lightning strikes, and the

increasing cost of continued maintenance. The existing equipment is a UV4000 system manufactured by Trojan Technologies™; and

WHEREAS, NCGS 143-129(e) lists the authorized exceptions to the formal bid procedures. NCGS 143-129(e)(6) allows for purchases of apparatus, supplies, materials, or equipment to be purchasing using sole-source exception when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. The governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract; and

WHEREAS, utility Staff and project engineer, McKim & Creed, Inc. are requesting to standardize on UV equipment by asking that Council approve the sole source purchase of UVSigna disinfection equipment manufactured by Trojan Technologies™. The UVSigna system has a lower 20-year net present value of capital and O&M versus comparable equipment, is compatible with the existing UV4000 system, which will be used as a backup for redundancy after project completion and provides equipment familiarity for operations staff.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

F. Resolution in Support of a NSFLTP Grant Application by the City of Brevard and Henderson County to Construct the Ecusta Trail in Transylvania and Henderson Counties – Brent Detwiler, City Engineer

I move City Council to approve the resolution in support of a NSFLTP Grant Application by the City of Brevard and Henderson County to Construct the Ecusta Trail in Transylvania and Henderson Counties.

Resolution #R-22-127

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL IN SUPPORT OF AN APPLICATION BY THE CITY OF BREVARD AND HENDERSON COUNTY FOR NSFLTP GRANT FUNDING TO CONSTRUCT THE ECUSTA TRAIL IN TRANSYLVANIA AND HENDERSON COUNTIES

WHEREAS, the City Council of the City of Hendersonville considers bicycle and pedestrian transportation to be of utmost importance to the region by providing Western North Carolina with recreation and equitable transportation opportunities as well as increased economic viability and community development; and

WHEREAS, the City Council of the City of Hendersonville adopted a resolution on April 5, 2012 supporting a regional recreational greenway along the Ecusta rail corridor to link the City of Hendersonville in Henderson County to the City of Brevard in Transylvania County and the Pisgah National Forest; and

WHEREAS, the City is investing in and pursuing further funding to reconnect the 7th Avenue community; an area where connections were previously severed through urban renewal programs and the construction of major highways; through streetscaping and a new greenway connection to the Ecusta Trail; and

WHEREAS, the United States Department of Transportation has established the Nationally Significant Federal Lands and Tribal Projects Program (NSFLTP) of The Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114-94, section 1123), providing funding for the construction, reconstruction, and rehabilitation of nationally-significant projects within, adjacent to, or accessing Federal and tribal lands; and

WHEREAS, a collaborative effort between the City of Brevard, the North Carolina Department of Transportation (NCDOT), Henderson County, Transylvania County, Friends of the Ecusta Trail, and other local stakeholders are producing a NSFLTP Grant Application to fund the construction of the Ecusta Trail in Transylvania and Henderson Counties; and

WHEREAS, the City Council of the City of Hendersonville feels that it is in the best interest of the citizens of Hendersonville to support and endorse said grant application; and

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

1. The City hereby fully supports and endorses an application by the City of Brevard and Henderson County for NSFLTP grant funding to construct the Ecusta Trail in Transylvania and Henderson Counties; and
2. The City hopes that Secretary Pete Buttigieg and the US Department of Transportation will recognize the significance of this project and award this funding to enhance access to Pisgah National Forest and other opportunities for historically marginalized communities, create an equitable and healthy transportation system that works for everyone, promote creation of jobs and economic opportunity, and transition to a more environmentally conscience network that prioritizes non-motorized users.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

G. Resolution for the City of Hendersonville to Pursue a USDOT Reconnecting Communities Planning Grant – Brent Detwiler, City Engineer– Brent Detwiler, City Engineer

I move that City Council approve the resolution to submit an application to USDOT for a Reconnecting Communities Pilot Program Planning Grant to further study the Above the Mud project to engage the community, determine potential solutions, and develop cost estimates for project implementation.

Resolution #R-22-128

RESOLUTION FOR THE CITY OF HENDERSONVILLE TO PURSUE A USDOT RECONNECTING COMMUNITIES PLANNING GRANT

WHEREAS, the USDOT has issued a Notice of Funding Opportunity for the Reconnecting Communities Pilot Program; and

WHEREAS, the Reconnecting Communities Pilot Program emphasizes developing transportation connections in areas where connections were previously severed through urban renewal program and the construction of major highways; and

WHEREAS, the Reconnecting Communities Pilot Programs offers planning grants to assist with further community engagement, project development, and cost estimations with an 80% federal share; and

WHEREAS, the City of Hendersonville’s Comprehensive Plan has noted the need for additional connectivity between 7th Avenue and Downtown Hendersonville; and

WHEREAS, the area around 7th Avenue was disconnected from much of the rest of the City by the construction of US 64; and

WHEREAS, City staff has developed a preliminary project, “Above the Mud,” to reconnect the 7th Avenue area through streetscaping, a new greenway connection to the Ecusta Trail, and flood mitigation;

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

1. The City shall submit an application to USDOT for a Reconnecting Communities Pilot Program Planning Grant to further study the Above the Mud project to engage the community, determine potential solutions, and develop cost estimates for project implementation; and
2. The City hopes that Secretary Pete Buttigieg and the US Department of Transportation will recognize the significance of this project and award funding to complete the planning effort.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

H. Purchase of Pipe, Fittings, Valves, and Materials for the WWTF Ultraviolet Disinfection Improvements Project – Adam Steurer, Utilities Engineer

I move City Council to adopt the Resolution By the City of Hendersonville to purchase materials for the WWTF Ultraviolet Improvements Project.

Resolution #R-22-129

RESOLUTION BY THE CITY OF HENDERSONVILLE TO PURCHASE MATERIALS FOR THE WWTF ULTRAVIOLET DISINFECTION IMPROVEMENTS PROJECT

WHEREAS, the Water and Sewer Department has solicited bids in an effort to hire a reputable and responsible Vendor to provide the necessary pipe, fittings, valves, and materials for the WWTF Ultraviolet Improvements Project ('Project'); and

WHEREAS, Ferguson Enterprises, LLC submitted the lowest price proposal, and is a responsible bidder; and

WHEREAS, the Water and Sewer Department is recommending purchasing the necessary materials for the Project from Ferguson Enterprises, LLC; and

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

1. The purchase of materials for the Project is awarded to Ferguson Enterprises, LLC in the amount of \$469,265.75 plus applicable sales tax.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

I. NC Commerce CDBG-NR Grant 7th Ave Revitalization Project 19-C-3128 Updated Plans/Policies – John Connet, City Manager, Mary Roderick, PhD, Regional Planner- Land of Sky

I move City Council adopt the Resolution by the City of Hendersonville City Council to Authorize the continued Sole-Source Purchase of Chlorine for the City Water Treatment Plant.

Resolution #R-22-130

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO AUTHORIZE THE SOLE-SOURCE PURCHASE OF CHLORINE FOR THE WATER TREATMENT PLANT

WHEREAS, the City's Water Treatment Plant utilizes Chlorine; and,

WHEREAS, Chlorine is required by the state for certain levels in the treatment train for certain CT/Contact Times and a certain residual level must be maintained in the distribution system; and,

WHEREAS, there are no other suppliers in our region. If we did go outside of our region – product availability, cost, safety, and would be an issue; and,

WHEREAS, requesting department has been looking for additional chlorine suppliers each year. When current staff took over position, staff was informed by other staff that there weren't any suppliers/vendors close enough that could provide chlorine in the containers nor amount used by the City. Requesting department has made several attempts to locate additional suppliers and has inquired to everyone in the industry contacts – with no success. Attached are example emails of the latest search efforts. Additionally, requesting department also brought in Brenntag chemical recently to look things over. It was learned that the vendor is unable to supply the amount needed by the City in ton containers and is not equipped to supply currently. This was basically the only lead requesting department had, and this vendor is not located in NC. The others with applicable capabilities were in either Florida or South Georgia. They, however, have to keep their regional customers supplied, so the City would not have a place of priority if that route was selected. The cost would also be higher due to shipping. In addition to increased cost, this distance is not in line with best safety practices; and,

WHEREAS, the City's RMP Risk Management Plan (which is filed with the USEPA, NCDEQ) and Emergency Management require certain safety training along with training at City facilities to be

documented. The inspectors are more pleased when you stick with the same vendor as much as possible from a safe handling aspect.; and,

WHEREAS, Overall, there are no other viable options other than JCI Jones Chemical (out of Charlotte, NC) who can provide chlorine gas in the ton containers and in the volume the City requires for water treatment disinfection at the City's 12 million per gallon a day rated water treatment facility. The City uses 2000 lb. cylinders, and one ton will last about 10 days. The City's maximum allowed facility storage amount at any one time is 8 tons/16,000 lbs. This is regulated by the State and Federal government. The current bid price is \$2,103 per ton delivered, and this price is good until 12/31/2022. The volatile market is continuing at this time. The City also has much email documentation regarding extensive market volatility and price increases over the past year. Due to the cost escalation in the current market, chlorine costs are now exceeding formal bid thresholds. Costs have nearly quadrupled over the past year. Therefore, we are seeking council approval to continue use of JCI Jones Chemicals – although this does not follow formal bid policy – in order to ensure that we are able to consistently source this chemical safely and to ensure effective operation of our facilities.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that the City's Water Treatment Plant is authorized to continue to utilize JCI Chemical as the source for Chlorine.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

Council Member Lyndsey Simpson moved that City Council approve the consent agenda as presented. A unanimous vote of the Council followed. Motion carried.

6. PRESENTATIONS

A. Proclamation - Fire Prevention Week - Mayor Barbara G. Volk

Mayor Barbara G. Volk presented a proclamation recognizing Fire Prevention Week.

B. Proclamation - American Pharmacists Month - Mayor Barbara G. Volk

Mayor Barbara G. Volk presented a proclamation recognizing American Pharmacists Month.

C. Proclamation - 15th Anniversary Hands On! Children's Museum - Mayor Barbara G. Volk

Mayor Barbara G. Volk presented a proclamation recognizing the 15th anniversary of the Hands On! Children's Museum to the Museum's director and staff.

C-1. Proclamation – City Manager of Distinction - Mayor Barbara G. Volk

Mayor Barbara G. Volk presented a proclamation recognizing the City Manager, John F. Connet for thirty years of distinguished public service. Council Members, staff, and the public thank Manager Connet for his dedicated leadership and excellence in governance throughout the years and congratulate him for becoming a City Manager of Distinction.

D. Special Event Policy & Fee Update - Jamie Carpenter, Downtown Manager

Downtown Manager, Jamie Carpenter stated the special event committee has spent the past year reviewing and discussing necessary changes to the special event policy and fee schedule. Ms. Carpenter stated the proposed amendments reflect the financial cost incurred by the city to provide services required to make events safe for the public to enjoy, as well as updates to the policy regarding public safety and logistics. City Manager John F. Connet reminded everyone that there are additional event fees for public safety which are not included in this presentation. Council Member Jerry A. Smith Jr., J.D. requested staff to provide monetary comparisons for events which were not traditionally charged a fee compared to proposed rates before a vote is taken. City Manager Connet reminded everyone there are production costs to the City for all events.

E. Special Event: Christmas Parade – Change to evening parade – Lew Holloway, Community Development Director

Downtown Manager, Jamie Carpenter stated the Hendersonville Merchants Association requested consideration of moving the annual parade time to an evening parade beginning at 6:00 p.m. and street closure beginning at 4:00 p.m. Ms. Carpenter advised the special event committee and Downtown Advisory Board unanimously supported the change.

Council Member Jerry A. Smith Jr., J.D. moved that City Council approve the special event permit for the Hendersonville Christmas Parade. A unanimous vote of the Council followed. Motion carried.

7. PUBLIC HEARINGS

A. Annexation: Public Hearing-2509, 2511, 2513 Haywood Road (Cantrell, Clubb, Riley) (C22-78-ANX) – Tyler Morrow, Planner II

Planner Tyler Morrow advised the City of Hendersonville has received a petition from Elizabeth Cantrell, Timothy & Lisa Clubb, and Robin Kay Riley for contiguous annexation of PINs 9559-96-0225, 9559-86-9361, and 9559-86-9317 located on Haywood Road that is approximately 0.843 acres.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:46 p.m.

There were no comments.

The public hearing was closed at 6:47 p.m.

Council Member Lyndsey Simpson. moved that City Council adopt an ordinance of the City of Hendersonville to extend the Corporate Limits of the City as a contiguous annexation, to annex that property owned by Elizabeth Cantrell, Timothy & Lisa Clubb, and Robin Kay Riley, identified as PINs 9559-96-0225, 9559-86-9361, and 9559-86-9317, finding that the standards established by North Carolina General Statute 160A-31 have been satisfied and that the annexation is in the best interest of the City. A unanimous vote of the Council followed. Motion carried.

Ordinance #O-22-54

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO EXTEND THE CORPORATE LIMITS OF THE CITY AS A CONTIGUOUS ANNEXATION

IN RE: Petition for Contiguous Annexation
Parcel Numbers: 9559-96-0225, 9559-86-9361, and 9559-86-9317
2509, 2511, & 2513 Haywood Road (File# C22-78-ANX)

WHEREAS, The City of Hendersonville has been petitioned by Elizabeth Cantrell, Timothy & Lisa Clubb, and Robin Kay Riley (formerly known as Robin R. Chandler, pursuant to North Carolina General Statutes (NCGS) 160A-31, as amended, to annex the area described herein below; and

WHEREAS, the City Clerk has investigated and certified the sufficiency of said petition; and,

WHEREAS, a public hearing on the question of this annexation was held at 305 Williams Street (City Operations Center), Hendersonville, NC at 5:45 pm, on the 6th day of October 2022, after due notice by publication as provided by law on September 25, 2022 and October 2nd, 2022; and

WHEREAS, the City Council further finds the areas described therein meets the standards of N.C. G.S. 160A-31.

WHEREAS, the City further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City further finds that the petition is otherwise valid, and that the public health, safety and welfare of the City and of the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that:

- 1: By virtue of the authority granted by N.C.G.S. 160A-31, as amended, the following described contiguous area is hereby annexed and made part of the City of Hendersonville as of the 6th day of October 2022.

Being all of that real property shown on that annexation plat recorded on Book 2022 at Page _____ of the Henderson County Registry [to be inserted at recording], and being also all of that real property described in deed of record in Deed Book 1659; pages 490 (4), Deed Book 1688; pages 548 (5), and Deed Book 1036; pages 541 (4) of the Henderson County Registry, and being described by metes and bounds as follows:

PARCEL A - PIN 9559-86-9317

BEING ALL OF LOTS 12, 13, & 14 OF WANTESKA VALLEY SUBDIVISION AS SHOWN ON PLAT THEREOF RECORDED IN PLAT CABINET B SLIDE 270A (ALSO KNOWN AS PLAT BOOK 5 PAGE 12), AND BEING MORE PARTICULARY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 14 OF PLAT CABINET B SLIDE 370, COMMON CORNER OF LOT 15 OF SAID PLAT AT THE SOUTHERN RIGHT OF WAY OF HAYWOOD ROAD (NC 191), AND BEING AT THE BOUNDARY OF THE CITY OF HENDERSONVILLE; THENCE WITH THE SOUTHERN RIGHT OF WAY OF HAYWOOD ROAD AND WITH THE BOUNDARY OF THE CITY OF HENDERSONVILLE THE FOLLOWING TWO CALLS: S37°44'33"E 50.31' TO A POINT; THENCE S39°05'37"E 25.06' TO THE NORTHEAST CORNER OF LOT 12 AND COMMON CORNER OF LOT 11; THENCE LEAVING THE RIGHT OF WAY OF HAYWOOD ROAD AND BOUNDARY OF THE CITY OF HENDERSONVILLE WITH THE COMMON LINE OF LOTS 11 & 12 S42°15'00"W 161.60' TO THE SOUTHEAST CORNER OF LOT 12, COMMON CORNER OF LOTS 11, 12, 37, & 38, AND BEING AT THE BOUNDARY OF THE CITY OF HENDERSONVILLE; THENCE WITH THE COMMON LINES OF LOTS 12-14 & 35-37 AND WITH THE BOUNDARY OF THE CITY OF HENDERSONVILLE N40°00'00"W 75.00' TO THE SOUTHWEST CORNER OF LOT 14, COMMON CORNER OF LOTS 14, 15, 34, & 35; THENCE LEAVING THE BOUNDARY OF THE CITY OF HENDERSONVILLE AND WITH THE COMMON LINE OF LOTS 14 & 15 N42°15'00"E 164.00' TO THE POINT OF BEGINNING BEING ALL OF THE PROPERTY DESCRIBED IN DEED BOOK 1036 PAGE 541 TO ROBIN R. CHANDLER (ROBIN R. CHANDLER NOW KNOWN AS ROBIN KAY RILEY PER CLERK OF SUPERIOR COURT OF HENDERSON COUNTY, NC: FILE #2021 R 210, DATED 4/19/21)

PARCEL B - PIN 9559-86-9361

BEING ALL OF LOTS 9, 10, & 11 OF WANTESKA VALLEY SUBDIVISION AS SHOWN ON PLAT THEREOF RECORDED IN PLAT CABINET B SLIDE 270A (ALSO KNOWN AS PLAT BOOK 5 PAGE 12), AND BEING MORE PARTICULARY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 11 OF PLAT CABINET B SLIDE 370, COMMON CORNER OF LOT 12 OF SAID PLAT AT THE SOUTHERN RIGHT OF WAY OF HAYWOOD ROAD (NC 191), AND BEING AT THE BOUNDARY OF THE CITY OF HENDERSONVILLE; THENCE WITH THE SOUTHERN RIGHT OF WAY OF HAYWOOD ROAD AND WITH THE BOUNDARY OF THE CITY OF HENDERSONVILLE THE FOLLOWING THREE CALLS: S39°19'12"E 25.04' TO A POINT; THENCE S38°52'04"E 30.09' TO A POINT; THENCE S38°25'00"E 25.10' TO THE NORTHEAST CORNER OF LOT 9 AND COMMON CORNER OF LOT 8; THENCE LEAVING THE RIGHT OF WAY OF HAYWOOD ROAD AND BOUNDARY OF THE CITY OF HENDERSONVILLE WITH THE COMMON LINE OF LOTS 8 & 9 S42°15'00"W 160.00' TO THE SOUTHEAST CORNER OF LOT 9, COMMON CORNER OF LOTS 8, 9, 40, & 41, AND BEING AT THE BOUNDARY OF THE CITY OF HENDERSONVILLE; THENCE WITH THE COMMON LINES OF LOTS 9-11 & 38-40 AND WITH THE BOUNDARY OF THE CITY OF HENDERSONVILLE N40°00'00"W 80.00' TO THE SOUTHWEST CORNER OF LOT 11, COMMON CORNER OF LOTS 11, 12, 37, & 38; THENCE LEAVING THE BOUNDARY OF THE CITY OF HENDERSONVILLE AND WITH THE COMMON LINE OF LOTS 11 & 12 N42°15'00"E 161.60' TO THE POINT OF BEGINNING.

BEING ALL OF THE PROPERTY DESCRIBED IN DEED BOOK 1688 PAGE 548 TO TIMOTHY MAX CLUBB & LISA BALLARD CLUBB.

PARCEL C - PIN 9559-96-0225

BEING ALL OF LOTS 6, 7, & 8 OF WANTESKA VALLEY SUBDIVISION AS SHOWN ON PLAT THEREOF RECORDED IN PLAT CABINET B SLIDE 270A (ALSO KNOWN AS PLAT BOOK 5 PAGE 12), AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 8 OF PLAT CABINET B SLIDE 370, COMMON CORNER OF LOT 9 OF SAID PLAT AT THE SOUTHERN RIGHT OF WAY OF HAYWOOD ROAD (NC 191), AND BEING AT THE BOUNDARY OF THE CITY OF HENDERSONVILLE; THENCE WITH THE SOUTHERN RIGHT OF WAY OF HAYWOOD ROAD AND WITH THE BOUNDARY OF THE CITY OF HENDERSONVILLE THE FOLLOWING TWO CALLS: S40°00'00"E 50.00' TO A POINT; THENCE S41°08'18"E 24.94' TO THE NORTHEAST CORNER OF LOT 6 AND COMMON CORNER OF LOT 5; THENCE LEAVING THE RIGHT OF WAY OF HAYWOOD ROAD AND BOUNDARY OF THE CITY OF HENDERSONVILLE WITH THE COMMON LINE OF LOTS 5 & 6 S42°15'00"W 160.50' TO THE SOUTHEAST CORNER OF LOT 6, COMMON CORNER OF LOTS 5, 6, 43, & 44, AND BEING AT THE BOUNDARY OF THE CITY OF HENDERSONVILLE; THENCE WITH THE COMMON LINES OF LOTS 6-8 & 41-43 AND WITH THE BOUNDARY OF THE CITY OF HENDERSONVILLE N40°00'00"W 75.00' TO THE SOUTHWEST CORNER OF LOT 8, COMMON CORNER OF LOTS 8, 9, 40, & 41; THENCE LEAVING THE BOUNDARY OF THE CITY OF HENDERSONVILLE AND WITH THE COMMON LINE OF LOTS 8 & 9 N42°15'00"E 160.00' TO THE POINT OF BEGINNING.

BEING ALL OF THE PROPERTY DESCRIBED IN DEED BOOK 1659 PAGE 490 TO ELIZABETH A. CANTRELL.

- 2: Upon and after the sixth day of October 2022, the above-described territory, and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Hendersonville and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-58.10, as amended.
3. The Mayor of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Henderson County Board of Elections, as required by G. S. 163-288.1.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

B. Annexation: Public Hearing- Duncan Terrace (Lee Ray Bergman LLC.) (C22-73-ANX) – Tyler Morrow, Planner II

Community Development Planner Tyler Morrow stated the City of Hendersonville has received a petition from Lee Ray Bergman LLC for contiguous annexation of PINs 9569-95-7758, 9569-95-5941, and 9569-96-4013 located on Duncan Hill Road and Signal Hill Road that is approximately 8.67 acres. Please refer to the attached maps for additional information.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 6:48 p.m.

Ken Fitch addressed City Council via Zoom electronic software expressing concerns regarding final site plans and sewer connections.

The public hearing was closed at 6:50 p.m.

Council Member Debbie O'Neal-Roundtree moved that City Council adopt an ordinance of the City of Hendersonville to extend the Corporate Limits of the City as a contiguous annexation, to annex that property owned by Lee Ray Bergman LLC, identified as PINs 9569-95-7758, 9569-95-5941, and 9569-96-4013, finding that the standards established by North Carolina General Statute

160A-31 have been satisfied and that the annexation is in the best interest of the City. A unanimous vote of the Council followed. Motion carried.

Ordinance #O-22-55

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO EXTEND THE CORPORATE LIMITS OF THE CITY AS A CONTIGUOUS ANNEXATION

IN RE: Petition for Contiguous Annexation
Parcel Numbers: 9569-95-7758, 9569-95-5941, and 9569-96-4013.
Duncan Terrace (File# C22-73-ANX)

WHEREAS, The City of Hendersonville has been petitioned by Leah Bergman of Lee Ray Bergman LLC. pursuant to North Carolina General Statutes (NCGS) 160A-31, as amended, to annex the area described herein below; and

WHEREAS, the City Clerk has investigated and certified the sufficiency of said petition; and,

WHEREAS, a public hearing on the question of this annexation was held at 305 Williams Street (City Operations Center), Hendersonville, NC at 5:45 pm, on the 6th day of October 2022, after due notice by publication as provided by law on September 25, 2022 and October 2nd, 2022; and

WHEREAS, the City Council further finds the areas described therein meets the standards of N.C. G.S. 160A-31.

WHEREAS, the City further finds that the petition has been signed by all the owners of real property in the area who are required by law to sign; and

WHEREAS, the City further finds that the petition is otherwise valid, and that the public health, safety and welfare of the City and of the area proposed for annexation will be best served by annexing the area described;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that:

- 1: By virtue of the authority granted by N.C.G.S. 160A-31, as amended, the following described contiguous area is hereby annexed and made part of the City of Hendersonville as of the 6th day of October 2022.

Being all of that real property shown on that annexation plat recorded on Book 2022 at Page _____ of the Henderson County Registry [to be inserted at recording], and being all of that real property described in deed of record in Deed Book 3841; pages 517 (3), Deed Book 3841; pages 514 (3), of the Henderson County Registry, and being described by metes and bounds as follows:

Beginning on a 5/8" rebar, said rebar having North Carolina Grid Coordinates of Northing – 595484.50 and Easting – 969625.25 and being located in the Existing City of Hendersonville Boundary Line, thence from said beginning point thus established and running with the Existing City of Hendersonville Boundary Line, S 51°24'22" W 15.40' to a point, said point being located in the northern margin of Duncan Hill Road, North Carolina State Road 1525, and thence leaving the Existing City of Hendersonville Boundary Line and continuing with the margin of Duncan Hill Road, N 37°42'37" W 309.38' to a point, thence N 37°42'37" W 156.03' to a point, thence N 38°03'44" W 274.32' to a point, thence leaving the margin of Duncan Hill Road N 52°25'00" E 17.09' to a 5/8" rebar, thence N 37°17'49" W 65.17' to a 5/8" rebar, thence on a curve to the right, said curve having a radius of 287.15' and an arc length of 56.76' (chord bearing and distance, N 31°31'20" W, 56.67') to a point, thence on a curve to the right, said curve having a radius of 32.03' and an arc length of 71.49' (chord bearing and distance, N 38°05'05" E, 57.55') to a point located in the right of way of Signal Hill Road, North Carolina State Road 1508, thence continuing with the right of way of Signal Hill Road on a curve to the left, said curve having a radius of 2255.54' and an arc length of 377.58' (chord bearing and distance, S 81°40'18" E 377.14') to a point, thence S 86°28'03" E 198.13' to a 1/2" iron pipe set, thence S 86°28'03" E 125.33' to a 5/8" rebar, thence leaving the right of way of Signal Hill Road, S 39°04'23" E 72.92' to a 1/2"

iron pipe, thence S 39°04'23" 308.67' to a 5/8" rebar located in the Existing City of Hendersonville Boundary Line , thence running with the Existing City of Hendersonville Boundary Line S 51°24'22" W 576.53' to the point and place of beginning. Containing 8.67 Acres and being all of that property as described in Tracts I and II of Deed Book 3841, Page 517 and all of that property as described in Deed Book 3841, Page 514 as shown on survey by Associated Land Surveyors & Planners, PC dated July 11, 2022 and bearing job number S- 21-900.

- 2: Upon and after the sixth day of October 2022, the above-described territory, and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Hendersonville and shall be entitled to the same privileges and benefits as other parts of the City of Hendersonville. Said territory shall be subject to municipal taxes according to NCGS 160A-58.10, as amended.
3. The Mayor of the City of Hendersonville shall cause to be recorded in the office of the Register of Deeds of Henderson County and at the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1, above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Henderson County Board of Elections, as required by G. S. 163-288.1.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

C. Rezoning: Conditional Zoning District – Hendersonville Connections (P22-66-CZD) –

Matthew Manley, AICP – Planning Manager

Community Development Planning Manager Matt Manley stated the City of Hendersonville is in receipt of an application for a Conditional Zoning District from Moe Marks of Tamara Peacock Architects and Charles Morris of Grace Blue Ridge Presbyterian Church. Mr. Manley stated the applicant is requesting to amend the C-2 Secondary Business CZD for the subject property at 109 Florence St (PINs 9578-21-4699, 9578-21-4924, 9578-21-5614 and 9578-21-5868) located off of Brooklyn Ave for the establishment of a ‘day center’ on a portion of a 2.46-acre parcel. Mr. Manley stated the proposal includes the conversion of a 9,975 Sq Ft portion of an existing church structure into a day center which will serve those in need through the provision of a variety of services. He said the proposal also includes improvements to the existing parking areas and significant landscaping in order to address the buffers required for day centers that are located adjacent to residential uses. Mr. Manley clarified this is known as alternative compliance as allowed in City ordinance. Mr. Manley stated other than the existing religious institution and the proposed day center, there are no other uses being proposed to be permitted by the rezoning.

Rachael Ingram of the Connections Center addressed City Council in support of the rezoning.

The City Attorney confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 7:03 p.m.

There were no comments.

The public hearing was closed at 7:04 p.m.

Council Member Jerry A. Smith Jr., J.D. moved that City Council adopt an ordinance amending the official zoning map of the City of Hendersonville changing the zoning designation of the subject property (PINS: 9578-21-4699, 9578-21-4924, 9578-21-5614, 9578-21-5868) from C-2-CZD (Secondary Business – Conditional Zoning District) to C-2-CZD (Secondary Business – Conditional Zoning District) based on the site plan and list of conditions submitted by and agreed to by the applicant, [dated September 13, 2022,] and presented at this meeting and subject to the following: The development shall be consistent with the site plan, including the list of applicable conditions contained therein, and the following permitted uses:

- 1. Day Center***
- 2. Religious Institution***

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and because the High Intensity Neighborhood

Future Land Use designation recommends public and institutional uses as a secondary recommended land use. Compatibility is achieved through the implementation of landscape buffers per Strategy PH 1.1. Furthermore, we find this petition to be reasonable and in the public interest based on the information from the staff analysis, public hearing and because the proposed use will provide a need to the underserved in the community, and the proposed use will be made compatible through the implementation of landscaped buffers. A unanimous vote of the Council followed. Motion carried.

Ordinance #O-22-56

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF HENDERSONVILLE FOR PARCELS POSSESSING PIN NUMBERS: 9578-21-4699, 9578-21-4924, 9578-21-5614, 9578-21-5868 BY CHANGING THE ZONING DESIGNATION FROM C-2-CZD (SECONDARY BUSINESS – CONDITIONAL ZONING DISTRICT) TO C-2-CZD (SECONDARY BUSINESS – CONDITIONAL ZONING DISTRICT)

IN RE: Parcel Numbers: 9578-21-4699, 9578-21-4924, 9578-21-5614, 9578-21-5868
Addresses: 109 Florence Street
Hendersonville Connections: (File # P22-66-CZD)

WHEREAS, the City is in receipt of a Conditional Rezoning application from applicant, Moe Marks / Tamara Peacock Architects, and property owner, Charles Morris / Grace Blue Ridge PCA, Inc., for the use of a Day Center within an existing structure at 109 Florence St, and

WHEREAS, the Planning Board took up this application at its regular meeting on September 12, 2022; voting 5-1 to recommend City Council approve an ordinance amending the official zoning map of the City of Hendersonville, and

WHEREAS, City Council took up this application at its regular meeting on October 6, 2022, and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina:

1. Pursuant to Article XI of the Zoning Ordinance of the City of Hendersonville, North Carolina, the Zoning Map is hereby amended by changing the zoning designation of the following: Parcel Numbers: 9578-21-4699, 9578-21-4924, 9578-21-5614, 9578-21-5868, changing the zoning designation from C-2-CZD (Secondary Business – Conditional Zoning District) To C-2-CZD (Secondary Business – Conditional Zoning District)
2. Development of the parcel pursuant to this Ordinance is subject to the following.
 - a. Development shall comply with the site plan submitted by the applicant dated September 13, 2022, including the conditions listed therein, [and/or as modified and presented to City Council][and/or including modifications approved by City Council which shall be added to the site plan. The updated site shall be submitted to the City at or before the applicant's execution of this Ordinance].
 - b. Permitted uses shall include:
 - i. Religious Institution
 - ii. Day Center
 - c. Additional conditions that shall be satisfied prior to final site plan approval include:
3. Except where modified by the terms of this Ordinance, development of the parcel(s) shall occur in accordance with the final site plan requirements of Article VII of the Zoning Ordinance of the City of Hendersonville, North Carolina.
4. Except where explicit relief is granted by the terms of this Ordinance, the development of the parcel(s) shall occur in accordance with all applicable standards within local ordinances and policies.

This ordinance shall not be effective until the list of use(s) and conditions, established herein, is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.

/s/Barbara G. Volk, Mayor

Attest: /s/Angela L. Reece, City Clerk

Approved as to form: /s/Angela S. Beeker, City Attorney

D. Zoning Text Amendment: Parking Standards in C-1 (P22-72-ZTA) – Matthew Manley, AICP – Planning Manager

Community Development Planning Manager Matt Manley stated that the City of Hendersonville is in receipt of an application for a Zoning Text Amendment from Moe Marks of Tamara Peacock Architects for an amendment to eliminate parking minimums within C-1. He reminded everyone that currently there is no parking minimum for commercial uses or residential uses under 5 dwelling units and said residential developments with 5 or more dwelling units requires 1.5 parking spaces per dwelling unit in the C-1 district. Mr. Manley stated the 7th Ave Municipal Service District has no parking minimums due to an exemption established in the zoning ordinance. Mr. Manley stated Hendersonville's downtown provides a significant amount of public on-street parking, public and private surface lots and structured public parking will be available soon. He reminded everyone that parking in downtown is in high demand from a variety of users including downtown dwellers, local residents and visitors. Mr. Manley stated in consideration of the applicant's request, staff is recommending the reduction of parking minimums to 1 per dwelling unit to align with standards across our zoning ordinance and is proposing to align standards in the PRD as well and make clarifications to the per unit parking requirements in the general parking standards to ensure consistency.

Council Member Jerry A. Smith Jr., J.D. discussed on-street parking and overflow of residents parking in the street which will soon be metered and market conditions.

The Deputy City Clerk confirmed this public hearing has been advertised in accordance with North Carolina General Statutes. The public hearing was opened at 7:21 p.m.

Ken Fitch addressed City Council via Zoom electronic software expressing concerns regarding parking and future parking fees, walkability, and access.

Council Member Dr. Jennifer Hensley agreed with Council Member Smith citing market conditions and parking needs.

Mayor Barbara G. Volk agreed with Council Members stating the market will determine the need for parking and the burden will be placed on the developers to supply adequate parking.

The public hearing was closed at 7:29 p.m.

Council Member Dr. Jennifer Hensley moved that City Council adopt an ordinance amending the official City of Hendersonville Zoning Ordinance, Article V. – Zoning District Classifications, Section 5-6-3.1. and Section 5-14-6.7; and Article VI. – General Provisions, Section 6.5. “Off-street Parking Standards” based on the recommended modifications to the petition as presented by staff and based on the following: The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because the petition aligns with Goal LU-10 of the Land Use and Development Chapter which calls for maintaining a highly urban, pedestrian-focused environment through building and streetscape design. We find this petition, in conjunction with the recommendations presented by staff, to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because the amendments align the minimum parking requirements for the C-1 and PRD Zoning Districts with other residential and mixed-use parking standards, the amendments reduce costs associated with, and restrictions for, residential development in downtown and along thoroughfares. Residential development and utilization of underutilized properties within these areas is desired, the amount of parking needed for a development is market-driven, a significant amount of public and private parking spaces are available with the C-1 Zoning District, reduction of minimum parking space requirements reduces the need for individually-owned surface parking lots, and centrally-located, consolidated parking locations are preferred over individually-owned surface parking lots as a means of protecting and advancing walkability and

better utilizing land within the downtown core. A unanimous vote of the Council followed. Motion carried.

Ordinance #O-22-57

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND ARTICLE V. – ZONING DISTRICT CLASSIFICATIONS, SECTION 5-6-3.1. AND SECTION 5-14-6.7; AND ARTICLE VI. – GENERAL PROVISIONS, SECTION 6.5. “OFF-STREET PARKING STANDARDS” OF THE CITY OF HENDERSONVILLE ZONING ORDINANCE TO ADDRESS STANDARDS FOR PARKING REQUIREMENTS

WHEREAS, the Planning Board reviewed this petition for a zoning text amendment at its regular meeting on September 12, 2022; voting 6-0 to recommend City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance, and

WHEREAS, City Council took up this application at its regular meeting on October 6, 2022, and

WHEREAS, City Council has found that this zoning text amendment is consistent with the City’s comprehensive plan, and that it is reasonable and in the public interest for the reasons stated, and

WHEREAS, City Council has conducted a public hearing as required by the North Carolina General Statutes on October 6, 2022,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville to amend Article V. – Zoning District Classifications, Section 5-6-3.1. and Section 5-14-6.7; and Article VI. – General Provisions, Section 6.5. “Off-street Parking Standards” be amended as follows to reduce minimum parking requirements in the C-1 and PRD Zoning Districts and to make additional clarifications and corrections.

Section 5-6-3. Development standards.

The following standards shall apply to development within the C-1 Central Business Zoning District Classification and Central Business Conditional Zoning District Classification in addition to all other applicable standards contained in this appendix.

5-6-3.1. Parking and Loading. For non-residential developments and residential developments containing fewer than five dwelling units, no off-street parking is required. For residential developments containing five or more dwelling units, off-street parking of one ~~and one-half~~ spaces per dwelling unit shall be provided.

As far as practicable, off-street parking, when provided, shall be accessed by means of east-west streets or alley ways and shall be designed so that it is screened, as far as practicable, to minimize motor vehicles and parking areas from view from Main, Church and King Streets. This provision is not intended to require that buildings be screened from view.

Section 5-14-6.7 Off-street parking. Off-street parking requirements for planned residential developments shall be as follows:

A minimum of one~~-and-one-half~~ spaces per residential unit containing one or two bedrooms. A minimum of ~~two~~ **one and one half** spaces per residential unit containing three or more bedrooms. Enclosed garages and carports count towards meeting the parking requirement. All parking spaces shall be located within 75 feet of the residential unit they serve.

Section 6.5. Off-street Parking Standards

Residential dwellings	1 per each dwelling unit or 1.5 per each dwelling unit <u>containing</u> exceeding three -or more bedrooms
Planned residential development	1.5 per <u>each dwelling</u> unit w/1 or 2 bedrooms and <u>or 2</u> 1.5 per <u>each dwelling</u> unit <u>containing</u> w/3 <u>three or more+</u> bedrooms

Adopted by the City Council of the City of Hendersonville, North Carolina this 6th day of October 2022.
/s/Barbara G. Volk, Mayor
Attest: /s/Angela L. Reece, City Clerk Approved as to form: /s/Angela S. Beeker, City Attorney

E. Zoning Text Amendment: Multi-Family in the 7th Ave MSD (P22-75-ZTA) – Matthew Manley, AICP – Planning Manager

Community Development Planning Manager Matt Manley stated that the petitioner has requested to postpone this hearing until the November meeting.

The public hearing was opened at 7:34 p.m.

Council Member Jerry A. Smith Jr., J.D. moved that City Council continue this public hearing until the November 3, 2022 regular meeting at 5:45 p.m. or as soon thereafter as possible. A unanimous vote of the Council followed. Motion carried.

Mayor Barbara G. Volk briefly recessed the meeting for a short break at 7:35 p.m. and reconvened at 7:40 p.m.

8. UNFINISHED BUSINESS

There was no unfinished business.

9. NEW BUSINESS

A. American Rescue Plan Appropriation – Adam Murr, Budget Manager

City Manager John F. Connet recalled the last presentation on the American Rescue Plan (ARP) funding at the September 28, 2022 City Council second monthly meeting and said staff has provided a summary of each funding application as well as the City Manager’s recommended allocations as outlined below to begin the allocation discussion.

Joseph’s Outreach Ministry	\$800,000
Housing Assistance Corporation	\$360,000
Pisgah Legal Services	\$320,000
Safelight	\$20,000
City Staffed Crisis Advocate Position	\$500,000
TOTAL	\$2,000,000

Council Members discussed preferences for allocations. Council Member Jerry A. Smith Jr., J.D. posed ideas to reallocate funding and reserve a portion to fund a new crisis response advocate position in the city for public safety. Council Member Dr. Jennifer Hensley expressed fairness concerns about reallocation of funding and inquired if there were other programs that are better suited for their needs. Mayor Barbara G. Volk expressed her preferences and reminded the Council they agreed to allocate funds to nonprofits in the community. After much discussion Council Members agreed that they support the crisis response advocate position but asked staff to prepare a spreadsheet with alternate allocations and bring back at the November meeting.

B. Request to Review Knollwood and Orleans Intersection – John Connet, City Manager

Public Works Director, Tom Wooten addressed City Council regarding a request from Ms. Barbara Glassman regarding the stop sign at the intersection of Knollwood Avenue and Orleans Avenue. City Council Members discussed steps to evaluate or modify the intersection of Orleans Avenue and Knollwood Avenue.

The consensus of City Council was to instruct staff to take action to evaluate or modify the intersection of Orleans Avenue and Knollwood Avenue.

10. CITY COUNCIL COMMENTS

Council Member Lyndsey Simpson updated Council on ESB activities. Council Member Debbie O’Neal-Roundtree expressed thanks and appreciation to Black Mountain Police Department for hosting National Night Out. Council Member O’Neal-Roundtree also reminded everyone that the month of October is breast cancer awareness month.

11. CITY MANAGER REPORT – John F. Connet, City Manager

City Manager John F. Connet discussed requests for modification of the Council policy regarding remote meetings for advisory boards and commissions recalling phone calls he and Council has received asking for approval. Council Member Dr. Jennifer Hensley discussed the benefits of remote meetings to advisory boards to be respectful of volunteer time and expense in attending meetings. City Attorney Angela S. Beeker stated she could prepare a resolution to remind advisory boards of the requirements and open meetings and bring back to Council for approval. Council Members agreed.

12. CLOSED SESSION**A. Closed Session** – John Connet, City Manager

At 8:07 p.m. Council Member Jerry A. Smith Jr., J.D. moved that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1), (3), (4) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, to discuss matters relating to the location or expansion of industries and businesses in the area served by the public body and to consider the qualifications, competence, performance and character, fitness conditions of an individual public officer, to consult with an attorney retained or employed by the City Council to preserve the attorney client privilege, and to discuss a claim or pending claim or potential litigation. A unanimous vote of the Council followed. Motion carried.

At 8:51 p.m. Council Member Debbie O’Neal-Roundtree moved that City Council return to open session. A unanimous vote of the Council followed. Motion carried.

13. ADJOURN

There being no further business, the meeting was adjourned at 8:51 p.m. upon unanimous assent of the Council.

Barbara G. Volk, Mayor

ATTEST:

Angela L. Reece, City Clerk



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Adam Murr

MEETING DATE: 11/03/2022

AGENDA SECTION: CONSENT

DEPARTMENT: Administration

TITLE OF ITEM: Budget Amendments – *Adam Murr, Budget Manager*

SUGGESTED MOTION(S):

1. I move that City Council adopt the budget amendment(s) 11032022-01

SUMMARY:

An amendment increasing Local Sales & Use Tax by \$50,000 due to higher-than-expected collections. The funds will be used to purchase furniture for City Hall and Council Chambers out of Fund 010 and Fund 060 Non-Capital Equipment Accounts.

BUDGET IMPACT: Fund 010 - Increase of \$25,000
Fund 060 - Increase of \$25,000

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded. The proposed budget amendment will be funded through Local Sales & Use Tax revenue.

ATTACHMENTS:

1. 11032022-01

TO MAYOR & COUNCIL - November 03, 2022

FISCAL YEAR 2023
Form Number - 11032022-01

BUDGET AMENDMENT

FUND 010 | 060

ACCOUNT NUMBER	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
010-0000-410001	Local Sales & Use Tax	50,000	-
010-0000-598901	Transfer Out	25,000	-
010-1002-534000	Non-Capital Equipment	25,000	-
FUND 010	TOTAL REVENUES	50,000	-
	TOTAL EXPENDITURES	50,000	-
060-0000-470100	Transfer In	25,000	-
060-7002-534000	Non-Capital Equipment	25,000	-
FUND 060	TOTAL REVENUES	25,000	-
	TOTAL EXPENDITURES	25,000	-
An amendment increaseing Local Sales & Use Tax following greater than expected collections. The amendment increased Non-Capital Equipment within the General Fund and the Water & Sewer Fund for the purpose of purchasing furniture.			

City Manager

Date

City Clerk

Date

Approved: 11/3/2022



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Brendan Shanahan, Civil Engineer IV

MEETING DATE: November 3, 2022

AGENDA SECTION: CONSENT

DEPARTMENT: Engineering

TITLE OF ITEM: Utility Extension Agreement for the Blue Ridge Commerce Center Development
– *Brendan Shanahan, Civil Engineer IV*

SUGGESTED MOTION(S): I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with Asheville Industrial Owner, LLC., for the Blue Ridge Commerce Center Development as presented and recommended by staff.

SUMMARY:

The Blue Ridge Commerce Center located off Upward Road in Henderson County proposes to extend the City's water and sewer systems to serve said expansion. The attached Utility Extension Agreement (UEA) outlines the water and sewer utility line extension processes and assigns responsibilities to the Developer and City. We welcome any questions that you may have.

BUDGET IMPACT: \$0

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

PROJECT NUMBER: 22109

PETITION NUMBER: N/A

ADDITIONAL PETITION NUMBER: N/A

PETITIONER NAME: N/A

ATTACHMENTS:

Utility Extension Agreement – Blue Ridge Commerce Center

Map showing Blue Ridge Commerce parcel

Resolution # __-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH ASHEVILLE INDUSTRIAL OWNER, LLC. FOR THE BLUE RIDGE
COMMERCE CENTER**

WHEREAS, the City of Hendersonville owns, operates and maintains a water and sewer system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service and sanitary sewer service as a part of their development projects; and

WHEREAS, the Developer extends public water lines and sanitary sewer lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water and sewer line extension process; and

WHEREAS, Asheville Industrial Owner, LLC., the “Developer” and “Owner”, will enter into a Utility Extension Agreement with the City to provide water and sewer service to the Blue Ridge Commerce Center.

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

1. The Utility Extension Agreement with Asheville Industrial Owner, LLC., the “Developer” and “Owner” to provide water and sewer service to the Blue Ridge Commerce Center is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

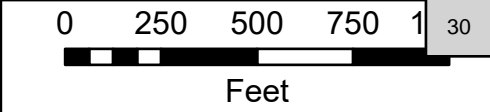
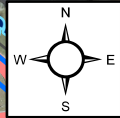
CITY OF HENDERSONVILLE

UTILITY AVAILABILITY

Blue Ridge Commerce Center

Blue Ridge Commerce Center
PINs: 9588136579, 9588231267,
9588233651
Blue Ridge Fire District
Fire Chief: W. Sheehan

- Sewer Layers**
- Gravity Main
- Public Gravity Main
 - Public Force Main
 - Proposed Gravity Main
 - Abandoned
- Water Layers**
- Fire Hydrants
- City Fire Hydrant
- Water Main
- City Water Main
 - Private Fire Line
 - Abandoned Water Main
- Road Layers**
- State Maintained Road
 - Non-State Maintained Road



The City of Hendersonville makes every effort to confirm the accuracy of this information; however, it does not warrant or guarantee that any information provided is accurate or current.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

Prepared by and return to: Daniel Heyman, Staff Attorney, City of Hendersonville, in the City Box

UTILITY EXTENSION AGREEMENT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2022 by and between the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation, situate in Henderson County, herein referred to as the "City", and **ASHEVILLE INDUSTRIAL OWNER, LLC**, a Delaware limited liability company, herein referred to as "Developer,"

WITNESSETH:

THAT WHEREAS, Developer is the owner of, and is desirous of developing and improving, a tract of land situated in Henderson County, State of North Carolina, described as follows:

Consisting of +/- 65.31 acres, and being all of that real property described in that deed recorded in Deed Book 3925 at page 710, Henderson County registry, also being all of that 65.31 acres as shown on that plat entitled "Plat of Survey for Oppidan Holdings, LLC," recorded in Plat Book 2022 slide 14196, Henderson County registry, reference to which is hereby made and incorporated herein for a more particular description, hereinafter referred to as the "Property"; and

WHEREAS, the Developer has submitted an application for the development of a project known as Blue Ridge Commerce Center (project number 22109); and

WHEREAS, in the process of such development and improvement, Developer is desirous of constructing water infrastructure and/or sanitary sewer infrastructure to and on said tract(s) of land, for which the City requires that the Developer enter into a utility extension agreement with the City, said water and/or sewer infrastructure to consist of the following:

Being and consisting of: 1) Water Service Extension consisting of 1,536 LF of 8" water line (DIP/CL 350) and appurtenances connecting to the existing 8" main along McMurray Road; and 2) a Sanitary Service Extension consisting of 1,991 LF of 8" sewer line (PVC/SDR-35), 11 manholes and appurtenances connecting to an existing manhole at the intersection of Upward Road and McMurray Road, and being more particularly shown and described on those construction plans and specifications, dated August 25,

2022, prepared by Thomas & Hutton a Civil Engineering firm, bearing project number J-29675.0000, said plans being incorporated herein by reference. 1) and 2) are collectively hereinafter referred to as the "New Infrastructure". It is understood and agreed that the New Infrastructure may be modified or amended from and after the date of this Agreement as may be required to meet the standards of the City of Hendersonville. As used herein, "New Infrastructure" shall be deemed to include any and all of any such modifications and amendments; and

WHEREAS, the Developer has received zoning approval from the designated governing body for such development and improvement on the Property; and

WHEREAS, the Property is not located within the City's municipal boundaries but is located within the unincorporated area of Henderson County, North Carolina; and

WHEREAS, the City is not obligated to offer water or sanitary sewer service to property outside its corporate limits; and

WHEREAS, Developer desires to have the completed New Infrastructure connected to the City's municipal water system and/or sanitary sewer system and made an integral portion thereof; and

WHEREAS, the City will permit said system(s) to be connected to the municipal system(s) under the terms and conditions heretofore established and agreed upon between the parties and specifically in conformance with the requirements of the most recent extension policy, most recent water and sewer standard construction specifications and details, and the City's Code of Ordinances currently in force.

NOW, THEREFORE, in consideration of the mutual benefits which will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

1. Developer shall, at Developer's own expense, employ a North Carolina registered and licensed professional engineer ("Engineer") to complete design and permitting of the proposed New Infrastructure in conformance with NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T (sanitary sewer), the City's water and sewer standard construction specifications and details, and the City water and/or sewer Master Plan(s).
2. Developer shall require the Engineer to submit plans, reports, technical specifications, fees, permit applications, and any other items as required and approvable by the City ("Required Documents"). The Engineer shall disclose all proposed changes in the approved construction plans to the City in writing. If proposed changes are deemed by the City to be "significant" in nature, the City may require the Engineer to resubmit plans for re-permitting. The determination of whether a change is deemed to be significant shall be in the sole and absolute discretion of the City, and the Developer agrees to be bound thereby. This will require written approval by the City prior to re-submitting to the permitting agency or before proceeding with changes, even if permitting agency re-submittal is not required. City approval of a utility extension is subject to expiration should construction not be completed after a period of two years from the date of approval. Once the Required Documents have been approved by the City, they shall be deemed to be incorporated herein by reference as an amendment to this Agreement to indicate the Developers construction obligations under this Agreement.

3. The City will perform construction inspection during installation of the New Infrastructure and upon project completion submit written certification that the project was completed in accordance with the approved plans and specifications as required by NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T (sanitary sewer). Water and Sewer inspection fees shall be in accordance with the adopted City Fee Schedule as of the date of this agreement. Fees will be paid by the Developer upon certification and acceptance of the New Infrastructure, with amounts due being based on length of lines inspected, certified and accepted.
4. The Developer shall, at his or her own expense, furnish and transfer to the City all on-site and off-site easements, rights-of-way, and real property required for access to and perpetual maintenance and operation of the New Infrastructure and its appurtenances in accordance with the terms of this Agreement as provided herein below.

Developer will be required to enter into the City's standard Deed of Dedication and Conveyance With Associated Easements for conveyance of the New Infrastructure and on-site easements, as amended. Further Developer will be required to use the City's standard Utility Infrastructure Easement Agreement when securing the necessary off-site right of way for the operation and maintenance of the New Infrastructure. For the avoidance of doubt, both standard forms permit use of the easements for the future installation of water, sewer and stormwater lines, and their associated appurtenances and accessories, in addition to the New Infrastructure, by or on behalf of the City. The City shall provide a copy of these standard forms upon request by the Developer.

5. Developer shall convey to the City all of the New Infrastructure and easements, on-site and off-site, prior to selling any of the lots in the development. If the Developer sells or otherwise conveys a lot within the development to a third-party prior to the conveyance of the New Infrastructure and easements, Developer shall be responsible for all costs associated with obtaining title to the New Infrastructure and all easements for each lot, including but not limited to acquisition costs and recording costs.
6. Developer shall, at his or her own cost and expense, furnish all materials and all equipment and perform all the work necessary to complete the construction of the New Infrastructure described in the plans and specifications as approved by the City's authorized representative and permitting agency.
7. The installation and construction of the New Infrastructure shall be performed by a reputable and responsible Contractor possessing a valid North Carolina Public Utility Contractor's License directly related to the installation of the New Infrastructure issued by the North Carolina Licensing Board for General Contractors. As used herein, a "responsible Contractor" shall mean one possessing the requisite knowledge, experience, and financial resources to complete the construction of the New Infrastructure in accordance with the plans and specifications within the time allotted.
8. The Engineer shall contact the City prior to the start of construction in order to schedule a preconstruction conference between the Developer, Contractor, Engineer, and City staff. This request should be made at least seven (7) days in advance of the anticipated starting date. Developer or Engineer shall receive a written notice to proceed (NTP) from the City before commencing with construction. If construction is anticipated to be greater than sixty (60) days, a monthly progress meeting shall be scheduled once every thirty (30) days. The date and time of the monthly progress meeting shall be established during the preconstruction conference.

9. Developer shall submit the name, address and the Public Utility Contractor's License Identification Number of the proposed Contractor to the City prior to the preconstruction meeting. The City may investigate the validity of the Contractor's license and the Contractor's status as a responsible Contractor by methods including but not limited to contacting the owners of past projects for which the Contractor furnished work in order to obtain reference information
10. City staff will be assigned for the express purpose of periodic construction observation and inspection. The City's construction inspector(s) shall have the authority to report all discrepancies identified in all phases of construction to the Engineer regarding conformance with the approved construction drawings and specifications. This report shall in no way relieve the Developer of his or her obligation to engage a professional engineer to perform construction inspection and coordinate construction.
11. During construction, no deviations from the approved plans and specifications shall be allowed without the prior express written approval of the City and permitting agency if deemed necessary by the City.
12. The City Engineer, or authorized representative, shall be authorized to resolve disagreements between Developer's Contractor(s), and the City's construction inspector(s) regarding conformance with approved plans and/or specifications.
13. Upon completion of construction, the Developer shall cause the Engineer to arrange for a final inspection to be performed jointly by the Engineer, the contractor, and the City's construction inspector to determine if the project is acceptable to the City. At this time, a draft as-built shall be submitted to the City. If the project is not immediately acceptable, any deficiencies shall be noted in a written report (punch list) prepared by the City. This report shall be transmitted to the responsible parties. It shall be the responsibility of the Developer to correct any such deficiencies and arrange for a re-inspection of the system.
14. As part of the final inspection process for sewer collection systems, Developer shall satisfactorily complete the following as described in the most recent water and sewer standard construction specifications and details: air test, manhole vacuum tests, and mandrel deflection test. Video of the new sanitary sewer collection system by means of closed-circuit television (CCTV) will be performed by the City. All testing shall be certified and all certifications, along with the related data and any video of the sewer system, shall be submitted to the City before final acceptance of the project is granted by the City.
15. As part of the final inspection process for water distribution systems, Developer shall satisfactorily complete the following: pressure test lines, bacteriological sampling performed by a certified laboratory. The City's certified laboratory may be utilized. All testing shall be certified and all certifications, along with related data, shall be submitted to the City before final acceptance of the project is granted by the City.
16. Once all deficiencies are corrected and the project is deemed acceptable to the City, the Developer shall cause the Engineer to submit as-builts in formats acceptable to the City. The Engineer shall also submit any easements required for the New Infrastructure and any deeds necessary to convey ownership to the City. The Developer shall be responsible for acquiring easements from any third parties owning property over which

any portion of the New Infrastructure is constructed, said easements to be titled in the name of the City, using forms to be provided by the City.

17. Prior to the activation of services on the newly constructed New Infrastructure, Developer shall convey unencumbered title and ownership to the City, of the New Infrastructure and its appurtenances, and shall assign and transfer all associated permits, licenses and permissions to the City. If a water extension was permitted for the same or similar project, the City shall receive final approval from the permitting agency. In certain circumstances as approved by the City, activation of services on portion(s) of the New Infrastructure may be permitted after partial certification(s) completion and approval(s).
18. The conveyance, assignment or transfer of (1) all permits, licenses or other permissions, and (2) all property and assets to the City, including but not limited to real or personal property, the New Infrastructure and its appurtenances, easements, rights of way or encroachments, (1) and (2) collectively hereinafter referred to as "Required Conveyances," shall be in form as approved by the City's legal counsel, and unless specifically excepted by the City Attorney, shall be in form proper for recording in the appropriate public registry. The conveyance of real property shall be in the form of a fee simple deed and without encumbrance as approved by the City's legal counsel. The Developer shall cause all affiliates or other third parties or entities having an ownership interest in the New Infrastructure or the Property to join the Required Conveyances, as reasonably determined by the City to be necessary to convey full title to the New Infrastructure and Required Conveyances to the City. With the execution hereof, Developer and City specifically agree that the New Infrastructure shall remain personal property, and shall not become a part of the real property, regardless of whether or not the New Infrastructure is permanently affixed to the real property comprising the Property.
19. The Developer shall provide a written release of the City's interest in the Required Conveyances (in form approved by the City Attorney) from any and all liens or other legal interests held by lenders, vendors or other third parties. The release(s) must be delivered in form for recording in the appropriate public registry, and must be received by the City in conjunction with the City's receipt of the Required Conveyances.
20. To the fullest extent allowed by law, and regardless of the approval(s) of any document(s) by the City's legal counsel, the Developer shall indemnify and hold the City harmless from all actions, causes and claims whatsoever against the City by any persons, firms, and corporations whatsoever relating in any manner to this Agreement (including but not limited to damages to persons or property related to construction and/or installation of the New Infrastructure) or the Required Conveyances. Without limiting the Developer's obligations under this paragraph in any manner, the Developer shall defend any and all claims, causes or actions whatsoever regarding the City's title or ownership in any of the Required Conveyances.
21. Developer shall guarantee the accepted and dedicated New Infrastructure to be free of defects in materials and workmanship and to be properly functioning in all respects for a period of one calendar year from the date of acceptance by the City. During this year of guarantee, Developer shall correct, or have corrected, any defects that may develop in material, equipment, or workmanship. Should Developer fail to correct defects within a reasonable period of time after being notified, as determined in good faith by the City Engineer or designee, the City may proceed to correct defects and Developer shall be liable for the City's expense in doing so. It shall be the Developer's responsibility to attend, or to provide an authorized representative to attend, a warranty inspection with the City prior to the expiration of said warranty period.

22. Before the issuance of final acceptance, the Developer or Engineer shall schedule a project closeout meeting with the City. The Developer or Engineer shall submit to the City, not later than the start of the project closeout meeting, all required closeout documents, including but not limited to recorded easement plats, warranty deeds, affidavits of lien waiver, as-built drawings with georeferenced infrastructure data, final walk-through inspection punch list and evidence of completion of said punch list, utility extension agreements, fixed asset evaluation form and infrastructure testing results. The City shall be under no obligation to [and in the absence of extraordinary circumstances will not] activate any services before receipt of all required documentation. Partial receipt shall be treated as an incomplete project closeout and no services shall be activated. A project closeout form shall be completed and executed by the Developer or by an authorized representative of the Developer and the City for each project. If the project described in this utility extension agreement is divided into phases, a project closeout form shall be executed for each phase prior to issuance of final acceptance. For purposes of this paragraph, and notwithstanding any other provision of this agreement, every required document shall be considered material, and "substantial compliance" shall not apply.
23. Once all items are complete, City staff shall submit the project to City Council for formal acceptance during a regularly scheduled meeting. The City shall issue a formal "Letter of Acceptance" upon acceptance by City Council to the Developer for the project. The City shall incorporate the accepted system as an integral part of its utility system and shall furnish service therefrom in accordance with the rules, regulations, rates, and policies established for its customers.
24. There shall be no intended nor incidental third-party beneficiaries of this Agreement.
25. This Agreement may not be assigned by the Developer without the express written consent of the City. Any assignment without the express written consent of the City shall be void. Any assignment approved by the City shall be in form approved by the City's legal counsel. Such consent by the City and approval by the City's legal counsel shall be for the sole and exclusive benefit and reliance of the City, and shall not be relied upon by the Developer nor any third party as to the validity or legal effect of an assignment.
26. All inspections of the New Infrastructure performed by the City shall be for the sole and exclusive benefit and reliance of the City. The inspection, approval and acceptance of the New Infrastructure shall not be deemed a warranty or guarantee upon which any person or entity can rely that the construction of the extension was done in a workmanlike manner, or was completed in accordance with the construction contract documents, with standards of the profession in and around Hendersonville, North Carolina, or in accordance with the applicable federal, State, or local laws, rules or regulations.
27. This agreement is executed in the State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.
28. This Agreement may be recorded in the Henderson County Register of Deeds Office at the option of the City.
-

PLEASE BE ADVISED: The City shall not allow the activation of any water or sewer services until the City receives partial certification approval or final approval from the permitting agency and shall not allow the issuance of any certificates of occupancy until the City deems the project complete.

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

DEVELOPER: ASHEVILLE INDUSTRIAL OWNER, LLC, THE CITY OF HENDERSONVILLE
a North Carolina Limited Liability Company

BY: _____ (SEAL) BY: _____ (SEAL)
(signature) John F. Connet, City Manager

Printed name: _____

Title: _____

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day, and being duly sworn, stated that they are the _____ (title) for **ASHEVILLE INDUSTRIAL OWNER, LLC**, and that they executed and acknowledged the foregoing instrument on behalf of **ASHEVILLE INDUSTRIAL OWNER, LLC** pursuant the due authorization by **ASHEVILLE INDUSTRIAL OWNER, LLC** and that the instrument is the act and deed of **ASHEVILLE INDUSTRIAL OWNER, LLC**.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature (OFFICIAL SEAL)

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that John F. Connet, personally appeared before me and, being duly sworn, stated that he is City Manager of the City of Hendersonville, North Carolina, and that he executed and acknowledged the foregoing instrument on behalf of the City of Hendersonville pursuant to order of the City Council of said City and that the instrument is the act and deed of the City of Hendersonville.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature (OFFICIAL SEAL)



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Brendan Shanahan, Civil Engineer IV

MEETING DATE: November 3, 2022

AGENDA SECTION: CONSENT

DEPARTMENT: Engineering

TITLE OF ITEM: Utility Extension Agreement for the Creekside Community Development – *Brendan Shanahan, Civil Engineer IV*

SUGGESTED MOTION(S): I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with The West Family Limited Partnership and Ambach Communities, LLC., for the Creekside Community Development as presented and recommended by staff.

SUMMARY:

The Creekside Community Development located off Brevard Road in Henderson County proposes to extend the City's water system to serve said expansion. The attached Utility Extension Agreement (UEA) outlines the water utility line extension process and assigns responsibilities to the Developer and City. We welcome any questions that you may have.

BUDGET IMPACT: \$0

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

PROJECT NUMBER: 21136

PETITION NUMBER: N/A

ADDITIONAL PETITION NUMBER: N/A

PETITIONER NAME: N/A

ATTACHMENTS:

Utility Extension Agreement – Creekside Community

Map showing Creekside Community parcel

Resolution # ____-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH THE WEST FAMILY LIMITED PARTNERSHIP AND AMBACH
COMMUNITIES, LLC., FOR THE CREEKSIDE COMMUNITY DEVELOPMENT**

WHEREAS, the City of Hendersonville owns, operates and maintains a water system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, Ambach Communities, LLC., the “Developer” and The West Family Limited Partnership, the “Owner”, will enter into a Utility Extension Agreement with the City to provide water service to the Creekside Community Development.

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

1. The Utility Extension Agreement with Ambach Communities, LLC., the “Developer” and The West Family Limited Partnership, the “Owner” to provide water service to the Creekside Community Development is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Prepared by and return to: Daniel Heyman, Staff Attorney
City of Hendersonville
160 6th Ave E
Hendersonville, NC 28792

UTILITY EXTENSION AGREEMENT

THIS AGREEMENT, Made and entered into this _____ day of _____, 20____, by and between the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation, situated in Henderson County, herein referred to as the “City”, **THE WEST FAMILY LIMITED PARTNERSHIP**, a North Carolina limited partnership, and **AMBACH COMMUNITIES, LLC**, a Florida limited liability company, herein referred to as "Developer,"



WITNESSETH:

THAT WHEREAS, Developer is the owner of, and is desirous of developing and improving, a tract of land situated in Buncombe County, State of North Carolina, described as follows:

Consisting of +/- 47.619 acres, and being all of that real property described in that deed recorded in Deed Book 2330 at page 547, Buncombe County registry, having a PIN of 963344756100000, hereinafter referred to as the “Property”; and

WHEREAS, the Developer has submitted an application for the development of a project known as Creekside Community (project number 21136); and

WHEREAS, in the process of such development and improvement, Developer is desirous of constructing water infrastructure and/or sanitary sewer infrastructure to and on said tract(s) of land, for which the City requires that the Developer enter into a utility extension agreement with the City, said water and/or sewer infrastructure to consist of the following:

Being and consisting of: Water Service Extension consisting of a 2,383 LF of 8" water line (DIP/CL 350) and related appurtenances running southerly within the right-of-way of Brevard Road, connecting to the existing 8” ductile water main in the right-of-way of Brevard Road; and being more particularly shown

and described on those construction plans and specifications, dated August 10, 2022 and bearing project number 22.00105, prepared by McGill & Associates a Civil Engineering firm, said plans being incorporated herein by reference. Said Water Service Extension is hereinafter referred to as the "New Infrastructure". It is understood and agreed that the New Infrastructure may be modified or amended from and after the date of this Agreement as may be required to meet the standards of the City of Hendersonville. As used herein, "New Infrastructure" shall be deemed to include any and all of any such modifications and amendments; and

WHEREAS, the Developer has received zoning approval from the designated governing body for such development and improvement on the Property; and

WHEREAS, the Property is not located within the City's municipal boundaries but is located within the unincorporated area of Buncombe County, North Carolina; and

WHEREAS, the City is not obligated to offer water or sanitary sewer service to property outside its corporate limits; and

WHEREAS, Developer desires to have the completed New Infrastructure connected to the City's municipal water system and/or sanitary sewer system and made an integral portion thereof; and

WHEREAS, the City will permit said system(s) to be connected to the municipal system(s) under the terms and conditions heretofore established and agreed upon between the parties and specifically in conformance with the requirements of the most recent extension policy, most recent water and sewer standard construction specifications and details, and the City's Code of Ordinances currently in force.

NOW, THEREFORE, in consideration of the mutual benefits which will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

1. Developer shall, at Developer's own expense, employ a North Carolina registered and licensed professional engineer ("Engineer") to complete design and permitting of the proposed New Infrastructure in conformance with NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T (sanitary sewer), the City's water and sewer standard construction specifications and details, and the City water and/or sewer Master Plan(s).
2. Developer shall require the Engineer to submit plans, reports, technical specifications, fees, permit applications, and any other items as required and approvable by the City ("Required Documents"). The Engineer shall disclose all proposed changes in the approved construction plans to the City in writing. If proposed changes are deemed by the City to be "significant" in nature, the City may require the Engineer to resubmit plans for re-permitting. The determination of whether a change is deemed to be significant shall be in the sole and absolute discretion of the City, and the Developer agrees to be bound thereby. This will require written approval by the City prior to re-submitting to the permitting agency or before proceeding with changes, even if permitting agency re-submittal is not required. City approval of a utility extension is subject to expiration should construction not be completed after a period of two years from the date of approval. Once the Required Documents have been approved by the City, they shall be deemed to be incorporated herein by reference as an amendment to this Agreement to indicate the Developers construction obligations under this Agreement.

3. The City will perform construction inspection during installation of the New Infrastructure and upon project completion submit written certification that the project was completed in accordance with the approved plans and specifications as required by NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T (sanitary sewer). Water and Sewer inspection fees shall be in accordance with the adopted City Fee Schedule as of the date of this agreement. Fees will be paid by the Developer upon certification and acceptance of the New Infrastructure, with amounts due being based on length of lines inspected, certified and accepted.
4. The Developer shall, at his or her own expense, furnish and transfer to the City all on-site and off-site easements, rights-of-way, and real property required for access to and perpetual maintenance and operation of the New Infrastructure and its appurtenances in accordance with the terms of this Agreement as provided herein below.

Developer will be required to enter into the City's standard Deed of Dedication and Conveyance with Associated Easements for conveyance of the New Infrastructure and on-site easements, as amended. Further Developer will be required to use the City's standard Utility Infrastructure Easement Agreement when securing the necessary off-site right of way for the operation and maintenance of the New Infrastructure. For the avoidance of doubt, both standard forms permit use of the easements for the future installation of water, sewer and stormwater lines, and their associated appurtenances and accessories, in addition to the New Infrastructure, by or on behalf of the City. The City shall provide a copy of these standard forms upon request by the Developer.

5. Developer shall convey to the City all of the New Infrastructure and easements, on-site and off-site, prior to selling any of the lots in the development. If the Developer sells or otherwise conveys a lot within the development to a third-party prior to the conveyance of the New Infrastructure and easements, Developer shall be responsible for all costs associated with obtaining title to the New Infrastructure and all easements for each lot, including but not limited to acquisition costs and recording costs.
6. Developer shall, at his or her own cost and expense, furnish all materials and all equipment and perform all the work necessary to complete the construction of the New Infrastructure described in the plans and specifications as approved by the City's authorized representative and permitting agency.
7. The installation and construction of the New Infrastructure shall be performed by a reputable and responsible Contractor possessing a valid North Carolina Public Utility Contractor's License directly related to the installation of the New Infrastructure issued by the North Carolina Licensing Board for General Contractors. As used herein, a "responsible Contractor" shall mean one possessing the requisite knowledge, experience, and financial resources to complete the construction of the New Infrastructure in accordance with the plans and specifications within the time allotted.
8. The Engineer shall contact the City prior to the start of construction in order to schedule a preconstruction conference between the Developer, Contractor, Engineer, and City staff. This request should be made at least seven (7) days in advance of the anticipated starting date. Developer or Engineer shall receive a written notice to proceed (NTP) from the City before commencing with construction. If construction is anticipated to be greater than sixty (60) days, a monthly progress meeting shall be scheduled once every thirty (30) days. The date and time of the monthly progress meeting shall be established during the preconstruction conference.

9. Developer shall submit the name, address and the Public Utility Contractor's License Identification Number of the proposed Contractor to the City prior to the preconstruction meeting. The City may investigate the validity of the Contractor's license and the Contractor's status as a responsible Contractor by methods including but not limited to contacting the owners of past projects for which the Contractor furnished work in order to obtain reference information
10. City staff will be assigned for the express purpose of periodic construction observation and inspection. The City's construction inspector(s) shall have the authority to report all discrepancies identified in all phases of construction to the Engineer regarding conformance with the approved construction drawings and specifications. This report shall in no way relieve the Developer of his or her obligation to engage a professional engineer to perform construction inspection and coordinate construction.
11. During construction, no deviations from the approved plans and specifications shall be allowed without the prior express written approval of the City and permitting agency if deemed necessary by the City.
12. The City Engineer, or authorized representative, shall be authorized to resolve disagreements between Developer's Contractor(s), and the City's construction inspector(s) regarding conformance with approved plans and/or specifications.
13. Upon completion of construction, the Developer shall cause the Engineer to arrange for a final inspection to be performed jointly by the Engineer, the contractor, and the City's construction inspector to determine if the project is acceptable to the City. At this time, a draft as-built shall be submitted to the City. If the project is not immediately acceptable, any deficiencies shall be noted in a written report (punch list) prepared by the City. This report shall be transmitted to the responsible parties. It shall be the responsibility of the Developer to correct any such deficiencies and arrange for a re-inspection of the system.
14. As part of the final inspection process for sewer collection systems, Developer shall satisfactorily complete the following as described in the most recent water and sewer standard construction specifications and details: air test, manhole vacuum tests, and mandrel deflection test. Video of the new sanitary sewer collection system by means of closed-circuit television (CCTV) will be performed by the City. All testing shall be certified and all certifications, along with the related data and any video of the sewer system, shall be submitted to the City before final acceptance of the project is granted by the City.
15. As part of the final inspection process for water distribution systems, Developer shall satisfactorily complete the following: pressure test lines, bacteriological sampling performed by a certified laboratory. The City's certified laboratory may be utilized. All testing shall be certified and all certifications, along with related data, shall be submitted to the City before final acceptance of the project is granted by the City.
16. Once all deficiencies are corrected and the project is deemed acceptable to the City, the Developer shall cause the Engineer to submit as-builts in formats acceptable to the City. The Engineer shall also submit any easements required for the New Infrastructure and any deeds necessary to convey ownership to the City. The Developer shall be responsible for acquiring easements from any third parties owning property over which

any portion of the New Infrastructure is constructed, said easements to be titled in the name of the City, using forms to be provided by the City.

17. Prior to the activation of services on the newly constructed New Infrastructure, Developer shall convey unencumbered title and ownership to the City, of the New Infrastructure and its appurtenances, and shall assign and transfer all associated permits, licenses and permissions to the City. If a water extension was permitted for the same or similar project, the City shall receive final approval from the permitting agency. In certain circumstances as approved by the City, activation of services on portion(s) of the New Infrastructure may be permitted after partial certification(s) completion and approval(s).
18. The conveyance, assignment or transfer of (1) all permits, licenses or other permissions, and (2) all property and assets to the City, including but not limited to real or personal property, the New Infrastructure and its appurtenances, easements, rights of way or encroachments, (1) and (2) collectively hereinafter referred to as "Required Conveyances," shall be in form as approved by the City's legal counsel, and unless specifically excepted by the City Attorney, shall be in form proper for recording in the appropriate public registry. The conveyance of real property shall be in the form of a fee simple deed and without encumbrance as approved by the City's legal counsel. The Developer shall cause all affiliates or other third parties or entities having an ownership interest in the New Infrastructure or the Property to join the Required Conveyances, as reasonably determined by the City to be necessary to convey full title to the New Infrastructure and Required Conveyances to the City. With the execution hereof, Developer and City specifically agree that the New Infrastructure shall remain personal property, and shall not become a part of the real property, regardless of whether or not the New Infrastructure is permanently affixed to the real property comprising the Property.
19. The Developer shall provide a written release of the City's interest in the Required Conveyances (in form approved by the City Attorney) from any and all liens or other legal interests held by lenders, vendors or other third parties. The release(s) must be delivered in form for recording in the appropriate public registry, and must be received by the City in conjunction with the City's receipt of the Required Conveyances.
20. To the fullest extent allowed by law, and regardless of the approval(s) of any document(s) by the City's legal counsel, the Developer shall indemnify and hold the City harmless from all actions, causes and claims whatsoever against the City by any persons, firms, and corporations whatsoever relating in any manner to this Agreement (including but not limited to damages to persons or property related to construction and/or installation of the New Infrastructure) or the Required Conveyances. Without limiting the Developer's obligations under this paragraph in any manner, the Developer shall defend any and all claims, causes or actions whatsoever regarding the City's title or ownership in any of the Required Conveyances.
21. Developer shall guarantee the accepted and dedicated New Infrastructure to be free of defects in materials and workmanship and to be properly functioning in all respects for a period of one calendar year from the date of acceptance by the City. During this year of guarantee, Developer shall correct, or have corrected, any defects that may develop in material, equipment, or workmanship. Should Developer fail to correct defects within a reasonable period of time after being notified, as determined in good faith by the City Engineer or designee, the City may proceed to correct defects and Developer shall be liable for the City's expense in doing so. It shall be the Developer's responsibility to attend, or to provide an authorized representative to attend, a warranty inspection with the City prior to the expiration of said warranty period.

22. Before the issuance of final acceptance, the Developer or Engineer shall schedule a project closeout meeting with the City. The Developer or Engineer shall submit to the City, not later than the start of the project closeout meeting, all required closeout documents, including but not limited to recorded easement plats, warranty deeds, affidavits of lien waiver, as-built drawings with georeferenced infrastructure data, final walk-through inspection punch list and evidence of completion of said punch list, utility extension agreements, fixed asset evaluation form and infrastructure testing results. The City shall be under no obligation to [and in the absence of extraordinary circumstances will not] activate any services before receipt of all required documentation. Partial receipt shall be treated as an incomplete project closeout and no services shall be activated. A project closeout form shall be completed and executed by the Developer or by an authorized representative of the Developer and the City for each project. If the project described in this utility extension agreement is divided into phases, a project closeout form shall be executed for each phase prior to issuance of final acceptance. For purposes of this paragraph, and notwithstanding any other provision of this agreement, every required document shall be considered material, and "substantial compliance" shall not apply.
23. Once all items are complete, City staff shall submit the project to City Council for formal acceptance during a regularly scheduled meeting. The City shall issue a formal "Letter of Acceptance" upon acceptance by City Council to the Developer for the project. The City shall incorporate the accepted system as an integral part of its utility system and shall furnish service therefrom in accordance with the rules, regulations, rates, and policies established for its customers.
24. There shall be no intended nor incidental third-party beneficiaries of this Agreement.
25. This Agreement may not be assigned by the Developer without the express written consent of the City. Any assignment without the express written consent of the City shall be void. Any assignment approved by the City shall be in form approved by the City's legal counsel. Such consent by the City and approval by the City's legal counsel shall be for the sole and exclusive benefit and reliance of the City, and shall not be relied upon by the Developer nor any third party as to the validity or legal effect of an assignment.
26. All inspections of the New Infrastructure performed by the City shall be for the sole and exclusive benefit and reliance of the City. The inspection, approval and acceptance of the New Infrastructure shall not be deemed a warranty or guarantee upon which any person or entity can rely that the construction of the extension was done in a workmanlike manner, or was completed in accordance with the construction contract documents, with standards of the profession in and around Hendersonville, North Carolina, or in accordance with the applicable federal, State, or local laws, rules or regulations.
27. This agreement is executed in the State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.
28. This Agreement may be recorded in the Buncombe County Register of Deeds Office at the option of the City.

PLEASE BE ADVISED: The City shall not allow the activation of any water or sewer services until the City receives partial certification approval or final approval from the permitting agency and shall not allow the issuance of any certificates of occupancy until the City deems the project complete.

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

THE WEST FAMILY LIMITED PARTNERSHIP,
a North Carolina limited partnership

THE CITY OF HENDERSONVILLE

BY: _____ (SEAL)
(signature)

BY: _____ (SEAL)
John F. Connet, City Manager

Printed name: _____

Title: _____

AMBACH COMMUNITIES, LLC,
a Florida limited liability company

BY: _____ (SEAL)
(signature)

Printed name: _____

Title: _____

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day, and being duly sworn, stated that they are the _____ (title) for **THE WEST FAMILY LIMITED PARTNERSHIP**, and that they executed and acknowledged the foregoing instrument on behalf of **THE WEST FAMILY LIMITED PARTNERSHIP** pursuant the due authorization by **THE WEST FAMILY LIMITED PARTNERSHIP** and that the instrument is the act and deed of **THE WEST FAMILY LIMITED PARTNERSHIP**.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day, and being duly sworn, stated that they are the _____ (title) for **AMBACH COMMUNITIES, LLC**, and that they executed and acknowledged the foregoing instrument on behalf of **AMBACH COMMUNITIES, LLC** pursuant the due authorization by **AMBACH COMMUNITIES, LLC** and that the instrument is the act and deed **AMBACH COMMUNITIES, LLC**.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that John F. Connet, personally appeared before me and, being duly sworn, stated that he is City Manager of the **City of Hendersonville**, North Carolina, and that he executed and acknowledged the foregoing instrument on behalf of the **City of Hendersonville** pursuant to order of the City Council of said City and that the instrument is the act and deed of the **City of Hendersonville**.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

CITY OF HENDERSONVILLE

UTILITY AVAILABILITY

Brevard Road Development

Brevard Road Development
PIN: 963344756100000
Buncombe County

COH WATER
STORAGE
TANK #306

COH BOOSTER
PUMP STATION
#205

Sewer Layers

Gravity Main

- Public Gravity Main
- Public Force Main
- Abandoned

Water Layers

Fire Hydrants

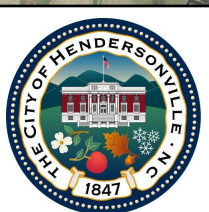
- City Fire Hydrant

Water Main

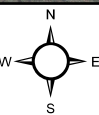
- City Water Main
- Private Fire Line
- Abandoned Water Main

Road Layers

- State Maintained Road
- Non-State Maintained Road



MARCH 2022



0 375 750 1,125 49 0

Feet

The City of Hendersonville makes every effort to confirm the accuracy of this information; however, it does not warrant or guarantee that any information provided is accurate or current.

Z:\GIS\Water_Sewer_Dept\WS_GIS_Projects\Water_Sewer_Availability_Maps



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

Brendan Shanahan, Civil Engineer IV

MEETING DATE:

November 3, 2022

AGENDA SECTION:

CONSENT

DEPARTMENT:

Engineering

TITLE OF ITEM:

Utility Extension Agreement for the Mills River Townhomes Development –
Brendan Shanahan, Civil Engineer IV

SUGGESTED MOTION(S): I move that City Council approve the Resolution authorizing the City Manager to enter into a Utility Extension Agreement with The Franklin Family Trust Dated The 19th Of May 1994, Longbranch Development, LLC., and Calvary Fellowship of Western North Carolina, Inc., for the Mills River Townhomes Development as presented and recommended by staff.

SUMMARY:
The Mills River Townhomes Development located off Jeffress Road in Henderson County proposes to extend the City's water system to serve said expansion. The attached Utility Extension Agreement (UEA) outlines the water utility line extension process and assigns responsibilities to the Developer and City. We welcome any questions that you may have.

BUDGET IMPACT: \$0

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. N/A

PROJECT NUMBER:

21141

PETITION NUMBER:

N/A

ADDITIONAL PETITION NUMBER:

N/A

PETITIONER NAME:

N/A

ATTACHMENTS:

Utility Extension Agreement – Mills River Townhomes

Map showing Mills River Townhomes parcel

Resolution # ____-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A UTILITY EXTENSION
AGREEMENT WITH LONGBRANCH DEVELOPMENT, LLC., THE FRANKLIN
FAMILY TRUST DATED THE 19th OF MAY 1994 AND CALVARY FELLOWSHIP OF
WESTERN NORTH CAROLINA, INC., FOR THE MILLS RIVER TOWNHOMES
DEVELOPMENT**

WHEREAS, the City of Hendersonville owns, operates and maintains a water system to serve customers throughout Henderson County; and

WHEREAS, residential, commercial, and industrial developments often require public water service as a part of their development projects; and

WHEREAS, the Developer extends public water lines to their site, which upon completion and acceptance, are provided to the City to own, operate, and maintain; and

WHEREAS, the City requires a Utility Extension Agreement to be executed to establish requirements of both the Developer and the City for the water line extension process; and

WHEREAS, Longbranch Development, LLC., the “Developer” and The Franklin Family Trust Dated the 19th of May 1994 and Cavalry Fellowship of Western North Carolina, the “Owners”, will enter into a Utility Extension Agreement with the City to provide water service to the Mills River Townhomes Development.

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

1. The Utility Extension Agreement with Longbranch Development, LLC., the “Developer” and The Franklin Family Trust Dated the 19th of May 1994 and Cavalry Fellowship of Western North Carolina, the “Owners”, to provide water service to the Mills River Townhomes is approved, as presented.
2. City Manager is authorized to execute the Utility Extension Agreement, and to approve and execute amendments to the Utility Extension Agreement in the future provided such amendments do not impose a financial obligation upon the City.
3. City Manager is authorized to acquire easements, rights-of-way, and other interests in real property consistent with the terms of the Utility Extension Agreement, provided that such acquisition does not impose a financial obligation upon the City.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beecker, City Attorney

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

Prepared by and return to: Daniel Heyman, Staff Attorney, City of Hendersonville, in the City Box

UTILITY EXTENSION AGREEMENT

THIS AGREEMENT, Made and entered into this _____ day of _____, 20____, by and between the **CITY OF HENDERSONVILLE**, a North Carolina municipal corporation, situated in Henderson County, herein referred to as the “City”, **THE FRANKLIN FAMILY TRUST DATED THE 19th OF MAY 1994**, memorandum of said Trust being on file in Deed Book 845 at page 31, Henderson County Registry, and **LONGBRANCH DEVELOPMENT, LLC**, a South Carolina limited liability company, and **CALVARY FELLOWSHIP OF WESTERN NORTH CAROLINA, INC.**, a North Carolina non-profit corporation, all three of the foregoing herein referred to as "Developer,"



WITNESSETH:

THAT WHEREAS, Developer is the owner of, and is desirous of developing and improving, a tract of land situated in Henderson County, State of North Carolina, described as follows:

Consisting of +/- 37.00 acres, and being all of that real property described in that deed recorded in Deed Book 3837 at page 512, Henderson County registry, having PINs of 9631794210 and 9631774946, and a portion of the property described in Deed Book 1438 at page 656, Henderson County registry, all of the foregoing hereinafter referred to as the “Property”; and

WHEREAS, the Developer has submitted an application for the development of a project known as Mills River Townhomes (City of Hendersonville project number 21141); and

WHEREAS, in the process of such development and improvement, Developer is desirous of constructing water infrastructure and/or sanitary sewer infrastructure to and on said tract(s) of land, for which the City requires that the Developer enter into a utility extension agreement with the City, said water and/or sewer infrastructure to consist of the following:

Being and consisting of: Water Service Extension consisting of 4,287 LF of 8" water line (DIP/CL 350) together with all meters, valves, and appurtenances, connecting to the existing 12" water main along

Boylston Highway, and running easterly along Jeffress Road, and then running southerly withing the project confines, and being more particularly shown and described on those construction plans and specifications, dated August 31, 2022 and bearing project number 548521, prepared by Brooks Engineering & Associates a Civil Engineering firm, said plans being incorporated herein by reference. Said Water Service Extension is hereinafter referred to as the "New Infrastructure". It is understood and agreed that the New Infrastructure may be modified or amended from and after the date of this Agreement as may be required to meet the standards of the City of Hendersonville. As used herein, "New Infrastructure" shall be deemed to include any and all of any such modifications and amendments; and

WHEREAS, the Developer has received or in in the process of receiving zoning approval from the designated governing body for such development and improvement on the Property; and

WHEREAS, the Property is not located within the City's municipal boundaries but is located within the Town of Mills River, North Carolina; and

WHEREAS, the City is not obligated to offer water or sanitary sewer service to property outside its corporate limits; and

WHEREAS, Developer desires to have the completed New Infrastructure connected to the City's municipal water system and/or sanitary sewer system and made an integral portion thereof; and

WHEREAS, the City will permit said system(s) to be connected to the municipal system(s) under the terms and conditions heretofore established and agreed upon between the parties and specifically in conformance with the requirements of the most recent extension policy, most recent water and sewer standard construction specifications and details, and the City's Code of Ordinances currently in force.

NOW, THEREFORE, in consideration of the mutual benefits which will result to the parties in carrying out the terms of this Agreement, it is agreed as follows:

1. Developer shall, at Developer's own expense, employ a North Carolina registered and licensed professional engineer ("Engineer") to complete design and permitting of the proposed New Infrastructure in conformance with NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T(sanitary sewer), the City's water and sewer standard construction specifications and details, and the City water and/or sewer Master Plan(s).
2. Developer shall require the Engineer to submit plans, reports, technical specifications, fees, permit applications, and any other items as required and approvable by the City ("Required Documents"). The Engineer shall disclose all proposed changes in the approved construction plans to the City in writing. If proposed changes are deemed by the City to be "significant" in nature, the City may require the Engineer to resubmit plans for re-permitting. The determination of whether a change is deemed to be significant shall be in the sole and absolute discretion of the City, and the Developer agrees to be bound thereby. This will require written approval by the City prior to re-submitting to the permitting agency or before proceeding with changes, even if permitting agency re-submittal is not required. City approval of a utility extension is subject to expiration should construction not be completed after a period of two years from the date of approval. Once the Required Documents have been approved by the City, they shall be deemed to be incorporated herein by reference as an amendment to this Agreement to indicate the Developers construction obligations under this Agreement.

3. The City will perform construction inspection during installation of the New Infrastructure and upon project completion submit written certification that the project was completed in accordance with the approved plans and specifications as required by NCAC Title 15A Subchapter 18C (water) and NCAC Title 15A Subchapter 02T (sanitary sewer). Water and Sewer inspection fees shall be in accordance with the adopted City Fee Schedule as of the date of this agreement. Fees will be paid by the Developer upon certification and acceptance of the New Infrastructure, with amounts due being based on length of lines inspected, certified and accepted.
4. The Developer shall, at his or her own expense, furnish and transfer to the City all on-site and off-site easements, rights-of-way, and real property required for access to and perpetual maintenance and operation of the New Infrastructure and its appurtenances in accordance with the terms of this Agreement as provided herein below.

Developer will be required to enter into the City's standard Deed of Dedication and Conveyance with Associated Easements for conveyance of the New Infrastructure and on-site easements, as amended. Further Developer will be required to use the City's standard Utility Infrastructure Easement Agreement when securing the necessary off-site right of way for the operation and maintenance of the New Infrastructure. For the avoidance of doubt, both standard forms permit use of the easements for the future installation of water, sewer and stormwater lines, and their associated appurtenances and accessories, in addition to the New Infrastructure, by or on behalf of the City. The City shall provide a copy of these standard forms upon request by the Developer.

5. Developer shall convey to the City all of the New Infrastructure and easements, on-site and off-site, prior to selling any of the lots in the lots in the development. If the Developer sells or otherwise conveys a lot within the development to a third-party prior to the conveyance of the New Infrastructure and easements, Developer shall be responsible for all costs associated with obtaining title to the New Infrastructure and all easements for each lot, including but not limited to acquisition costs and recording costs.
6. Developer shall, at his or her own cost and expense, furnish all materials and all equipment and perform all the work necessary to complete the construction of the New Infrastructure described in the plans and specifications as approved by the City's authorized representative and permitting agency.
7. The installation and construction of the New Infrastructure shall be performed by a reputable and responsible Contractor possessing a valid North Carolina Public Utility Contractor's License directly related to the installation of the New Infrastructure issued by the North Carolina Licensing Board for General Contractors. As used herein, a "responsible Contractor" shall mean one possessing the requisite knowledge, experience, and financial resources to complete the construction of the New Infrastructure in accordance with the plans and specifications within the time allotted.
8. The Engineer shall contact the City prior to the start of construction in order to schedule a preconstruction conference between the Developer, Contractor, Engineer, and City staff. This request should be made at least seven (7) days in advance of the anticipated starting date. Developer or Engineer shall receive a written notice to proceed (NTP) from the City before commencing with construction. If construction is anticipated to be

greater than sixty (60) days, a monthly progress meeting shall be scheduled once every thirty (30) days. The date and time of the monthly progress meeting shall be established during the preconstruction conference.

9. Developer shall submit the name, address and the Public Utility Contractor's License Identification Number of the proposed Contractor to the City prior to the preconstruction meeting. The City may investigate the validity of the Contractor's license and the Contractor's status as a responsible Contractor by methods including but not limited to contacting the owners of past projects for which the Contractor furnished work in order to obtain reference information
10. City staff will be assigned for the express purpose of periodic construction observation and inspection. The City's construction inspector(s) shall have the authority to report all discrepancies identified in all phases of construction to the Engineer regarding conformance with the approved construction drawings and specifications. This report shall in no way relieve the Developer of his or her obligation to engage a professional engineer to perform construction inspection and coordinate construction.
11. During construction, no deviations from the approved plans and specifications shall be allowed without the prior express written approval of the City and permitting agency if deemed necessary by the City.
12. The City Engineer, or authorized representative, shall be authorized to resolve disagreements between Developer's Contractor(s), and the City's construction inspector(s) regarding conformance with approved plans and/or specifications.
13. Upon completion of construction, the Developer shall cause the Engineer to arrange for a final inspection to be performed jointly by the Engineer, the contractor, and the City's construction inspector to determine if the project is acceptable to the City. At this time, a draft as-built shall be submitted to the City. If the project is not immediately acceptable, any deficiencies shall be noted in a written report (punch list) prepared by the City. This report shall be transmitted to the responsible parties. It shall be the responsibility of the Developer to correct any such deficiencies and arrange for a re-inspection of the system.
14. As part of the final inspection process for sewer collection systems, Developer shall satisfactorily complete the following as described in the most recent water and sewer standard construction specifications and details: air test, manhole vacuum tests, and mandrel deflection test. Video of the new sanitary sewer collection system by means of closed-circuit television (CCTV) will be performed by the City. All testing shall be certified and all certifications, along with the related data and any video of the sewer system, shall be submitted to the City before final acceptance of the project is granted by the City.
15. As part of the final inspection process for water distribution systems, Developer shall satisfactorily complete the following: pressure test lines, bacteriological sampling performed by a certified laboratory. The City's certified laboratory may be utilized. All testing shall be certified and all certifications, along with related data, shall be submitted to the City before final acceptance of the project is granted by the City.
16. Once all deficiencies are corrected and the project is deemed acceptable to the City, the Developer shall cause the Engineer to submit as-builts in formats acceptable to the City. The Engineer shall also submit any easements required for the New Infrastructure and any deeds necessary to convey ownership to the City. The

Developer shall be responsible for acquiring easements from any third parties owning property over which any portion of the New Infrastructure is constructed, said easements to be titled in the name of the City, using forms to be provided by the City.

17. Prior to the activation of services on the newly constructed New Infrastructure, Developer shall convey unencumbered title and ownership to the City, of the New Infrastructure and its appurtenances, and shall assign and transfer all associated permits, licenses and permissions to the City. If a water extension was permitted for the same or similar project, the City shall receive final approval from the permitting agency. In certain circumstances as approved by the City, activation of services on portion(s) of the New Infrastructure may be permitted after partial certification(s) completion and approval(s).
18. The conveyance, assignment or transfer of (1) all permits, licenses or other permissions, and (2) all property and assets to the City, including but not limited to real or personal property, the New Infrastructure and its appurtenances, easements, rights of way or encroachments, (1) and (2) collectively hereinafter referred to as "Required Conveyances," shall be in form as approved by the City's legal counsel, and unless specifically excepted by the City Attorney, shall be in form proper for recording in the appropriate public registry. The conveyance of real property shall be in the form of a fee simple deed and without encumbrance as approved by the City's legal counsel. The Developer shall cause all affiliates or other third parties or entities having an ownership interest in the New Infrastructure or the Property to join the Required Conveyances, as reasonably determined by the City to be necessary to convey full title to the New Infrastructure and Required Conveyances to the City. With the execution hereof, Developer and City specifically agree that the New Infrastructure shall remain personal property, and shall not become a part of the real property, regardless of whether or not the New Infrastructure is permanently affixed to the real property comprising the Property.
19. The Developer shall provide a written release of the City's interest in the Required Conveyances (in form approved by the City Attorney) from any and all liens or other legal interests held by lenders, vendors or other third parties. The release(s) must be delivered in form for recording in the appropriate public registry, and must be received by the City in conjunction with the City's receipt of the Required Conveyances.
20. To the fullest extent allowed by law, and regardless of the approval(s) of any document(s) by the City's legal counsel, the Developer shall indemnify and hold the City harmless from all actions, causes and claims whatsoever against the City by any persons, firms, and corporations whatsoever relating in any manner to this Agreement (including but not limited to damages to persons or property related to construction and/or installation of the New Infrastructure) or the Required Conveyances. Without limiting the Developer's obligations under this paragraph in any manner, the Developer shall defend any and all claims, causes or actions whatsoever regarding the City's title or ownership in any of the Required Conveyances.
21. Developer shall guarantee the accepted and dedicated New Infrastructure to be free of defects in materials and workmanship and to be properly functioning in all respects for a period of one calendar year from the date of acceptance by the City. During this year of guarantee, Developer shall correct, or have corrected, any defects that may develop in material, equipment, or workmanship. Should Developer fail to correct defects within a reasonable period of time after being notified, as determined in good faith by the City Engineer or designee, the City may proceed to correct defects and Developer shall be liable for the City's expense in doing

so. It shall be the Developer's responsibility to attend, or to provide an authorized representative to attend, a warranty inspection with the City prior to the expiration of said warranty period.

22. Before the issuance of final acceptance, the Developer or Engineer shall schedule a project closeout meeting with the City. The Developer or Engineer shall submit to the City, not later than the start of the project closeout meeting, all required closeout documents, including but not limited to recorded easement plats, warranty deeds, affidavits of lien waiver, as-built drawings with georeferenced infrastructure data, final walk-through inspection punch list and evidence of completion of said punch list, utility extension agreements, fixed asset evaluation form and infrastructure testing results. The City shall be under no obligation to [and in the absence of extraordinary circumstances will not] activate any services before receipt of all required documentation. Partial receipt shall be treated as an incomplete project closeout and no services shall be activated. A project closeout form shall be completed and executed by the Developer or by an authorized representative of the Developer and the City for each project. If the project described in this utility extension agreement is divided into phases, a project closeout form shall be executed for each phase prior to issuance of final acceptance. For purposes of this paragraph, and notwithstanding any other provision of this agreement, every required document shall be considered material, and "substantial compliance" shall not apply.
23. Once all items are complete, City staff shall submit the project to City Council for formal acceptance during a regularly scheduled meeting. The City shall issue a formal "Letter of Acceptance" upon acceptance by City Council to the Developer for the project. The City shall incorporate the accepted system as an integral part of its utility system and shall furnish service therefrom in accordance with the rules, regulations, rates, and policies established for its customers.
24. There shall be no intended nor incidental third-party beneficiaries of this Agreement.
25. This Agreement may not be assigned by the Developer without the express written consent of the City. Any assignment without the express written consent of the City shall be void. Any assignment approved by the City shall be in form approved by the City's legal counsel. Such consent by the City and approval by the City's legal counsel shall be for the sole and exclusive benefit and reliance of the City, and shall not be relied upon by the Developer nor any third party as to the validity or legal effect of an assignment.
26. All inspections of the New Infrastructure performed by the City shall be for the sole and exclusive benefit and reliance of the City. The inspection, approval and acceptance of the New Infrastructure shall not be deemed a warranty or guarantee upon which any person or entity can rely that the construction of the extension was done in a workmanlike manner, or was completed in accordance with the construction contract documents, with standards of the profession in and around Hendersonville, North Carolina, or in accordance with the applicable federal, State, or local laws, rules or regulations.
27. This agreement is executed in the State of North Carolina, and shall be construed in accordance with the laws of the State of North Carolina. Both parties submit their persons to the jurisdiction of the Courts for North Carolina. Exclusive venue for any action brought in connection with this agreement, its interpretation and breach shall be in the courts for Henderson County, North Carolina.
28. This Agreement may be recorded in the Henderson County Register of Deeds Office at the option of the City.

PLEASE BE ADVISED: The City shall not allow the activation of any water or sewer services until the City receives partial certification approval or final approval from the permitting agency and shall not allow the issuance of any certificates of occupancy until the City deems the project complete.

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

THE FRANKLIN FAMILY TRUST DATED
THE 19th OF MAY 1994

BY: _____ (SEAL)
(signature)

Printed name: _____

Title: _____

Longbranch Development, LLC,
a South Carolina limited liability company

BY: _____ (SEAL)
(signature)

Printed name: _____

Title: _____

Calvary Fellowship of Western North Carolina, Inc.,
a North Carolina non-profit corporation

BY: _____ (SEAL)
(signature)

Printed name: _____

Title: _____

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, as Trustee of **THE FRANKLIN FAMILY TRUST DATED THE 19th OF MAY 1994** personally appeared before me this day, and acknowledged that, they executed and acknowledged the foregoing instrument on behalf of **THE FRANKLIN FAMILY TRUST DATED THE 19th OF MAY 1994** in the capacity stated and for the purposes stated therein.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature (OFFICIAL SEAL)

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day, and being duly sworn, stated that they are the _____(title) for **LONGBRANCH DEVELOPMENT, LLC**, and that they executed and acknowledged the foregoing instrument on behalf of **LONGBRANCH DEVELOPMENT, LLC** pursuant the due authorization by **LONGBRANCH DEVELOPMENT, LLC** and that the instrument is the act and deed of **LONGBRANCH DEVELOPMENT, LLC**.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature (OFFICIAL SEAL)

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day, and being duly sworn, stated that they are the _____(title) for **CALVARY FELLOWSHIP OF WESTERN NORTH CAROLINA, INC.**, and that they executed and acknowledged the foregoing instrument on behalf of **CALVARY FELLOWSHIP OF WESTERN NORTH CAROLINA, INC.** pursuant the due authorization by **CALVARY FELLOWSHIP OF WESTERN NORTH CAROLINA, INC.** and that the instrument is the act and deed of **CALVARY FELLOWSHIP OF WESTERN NORTH CAROLINA, INC.**

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature (OFFICIAL SEAL)

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that John F. Connet, personally appeared before me and, being duly sworn, stated that he is City Manager of the **City of Hendersonville**, North Carolina, and that he executed and acknowledged the foregoing instrument on behalf of the **City of Hendersonville** pursuant to order of the City Council of said City and that the instrument is the act and deed of the **City of Hendersonville**.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

CITY OF HENDERSONVILLE

UTILITY AVAILABILITY

Mills River Townhomes

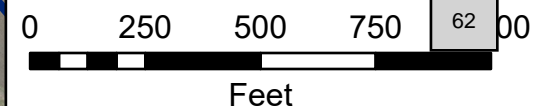
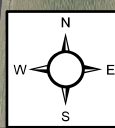
Mills River Townhomes
PINs: 9631-79-4210 & 9631-77-4946
Mills River Town
Town Manager: Daniel Cobb
Mills River Town Fire District
Fire Chief: Rick Livingston

Sewer Layers
Gravity Main
Public Gravity Main
Public Force Main
Abandoned

Water Layers
Fire Hydrants
City Fire Hydrant

Water Main
City Water Main
Raw Water Line
Private Fire Line
Abandoned Water Main

Road Layers
State Maintained Road
Non-State Maintained Road



The City of Hendersonville makes every effort to confirm the accuracy of this information; however, it does not warrant or guarantee that any information provided is accurate or current.



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER: Brent Detwiler **MEETING DATE:** November 3, 2022

AGENDA SECTION: CONSENT **DEPARTMENT:** Engineering

TITLE OF ITEM: French Broad River Intake Project Engineering Amendment 7 – *Brent Detwiler, City Engineer*

SUGGESTED MOTION(S):

I move that City Council resolve to approve the Amendment 7 to the Black & Veatch engineering agreement for the French Broad River Intake Project and to authorize the City Manager to execute the Amendment for said work; as presented and recommended by staff.

SUMMARY:

The City received Bids on January 14, 2021 for the French Broad River Intake Project and decided to reject all bids and conduct a Value Engineering exercise in an attempt to reduce cost. The project was rebid on October 14, 2021 and the low bid was accepted. As part of the Value Engineering process the construction schedule for the project was extended from 20 months to 26 months. This will result in additional effort for project management and administration, monthly progress meetings, site visits, RPR observation time and Specialty Inspections for the additional 6 months of construction time.

BUDGET IMPACT: \$ 255,733.00

Is this expenditure approved in the current fiscal year budget? Yes, this has been included in the loan funding for the project.

If no, describe how it will be funded.

ATTACHMENTS:

Etowah Water Engineering Amendment 7 – Black & Veatch

Resolution #__-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO AN
AGREEMENT WITH BLACK & VEATCH AS PART OF THE FRENCH BROAD RIVER
INTAKE PROJECT**

WHEREAS, the French Broad River Intake Project (Project No. 16007) is under construction; and

WHEREAS, an engineering agreement with Black & Veatch was previously executed to complete the construction administration work associated with the project; and

WHEREAS, the construction of the project has been extended as a value engineering measure; and

WHEREAS, the construction timeline extension has resulted in the need to amend the agreement with Black & Veatch to cover the extended construction administration, construction observation, and postconstruction services.

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

1. The City Manager is authorized to enter into an Amendment to an Agreement with Black & Veatch for the French Broad River Intake Project, as presented.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

Amendment to Professional Services Agreement – See Attached Exhibit Amendment 7 Attachments A and B

Description of Amendment

- 1. Engineer shall perform Professional Services for the fees shown as provided in the detailed proposal and scope entitled Amendment 7 Attachments A and B.
- 2. All other terms and conditions of the Agreement dated July 26, 2017 for New French Broad River Intake shall remain in full force and effect.
- 3. Payment for the services described in Amendment 7 Attachments A and B will be at the rates provided in the Amendment 7 Attachments A and B and shall not exceed \$255,733.00.

The Effective Date of this Amendment is _____.

OWNER: City of Hendersonville	ENGINEER: Black & Veatch International Company
By: _____	By: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____

I hereby certify that this contract has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ Finance Director	_____ Date
---------------------------	---------------

AMENDMENT 7 ATTACHMENT A SCOPE OF SERVICES

Project: French Broad River Intake and Pumping Station

Project Description

The French Broad River Intake and Pumping Station project (Project) generally consists of the construction of intake, pumping station, and connection to existing 30" raw water transmission main to supply raw water to the City of Hendersonville Water Treatment Plant. The intake is located on the bank of the French Broad River and includes raw water screening, micro-pile supported foundation, and pipe/sheet pile bank stabilization and erosion protection system. Amendment 5, effective Date January 7, 2021, identified the scope of construction phase services and schedule (April 2021 to December 2022) anticipated for the project. The Owner received Bids on January 14, 2021 and decided to reject all bids and conduct a Value Engineering exercise in an attempt to reduce cost. The project was rebid on October 14, 2021 and the low bid was accepted. As part of the Value Engineering process the construction schedule for the project was extended from 20 months to 26 months. This will result in additional effort for project management and administration, monthly progress meetings, site visits, RPR observation time and Specialty Inspections for the additional 6 months of construction time.

Resident Field Observation

In Amendment 5, Section B Resident Field Observation budgeted RPR duties for a 16-month (70 Week) timeframe. The additional construction period will increase the period of RPR services to 22 months (95 weeks), or an additional 25 weeks of RPR duties for both the Senior RPR employed by Engineer at one (1) site visit site for one (1) day every other week, and the subconsultant RPR at an average of 20 hours per week (Not to exceed 500 additional hours) plus subconsultant expenses.

Materials Testing and Inspections: Engineer has included an allowance of \$65,500.00 for the testing services identified below. Costs above this allowance will be provided as a Supplemental Service. Through a subcontract with S&ME, the Engineer will provide the services of a part-time materials testing and inspection subconsultant to perform materials testing and specialty inspection services during construction. Scope of services may include:

A. Subgrade Evaluations:

Services will consist of an evaluation of the subgrade soils prior to proceeding with:

- Site grading activities in proposed building and pavement areas; and
- Aggregate base course stone placement in proposed building slab and pavement areas.

Services will consist of visually evaluating subgrade soil conditions by proofrolling prior to fill placement or base course and construction of floor slabs to help identify soft/ unstable areas which pump, rut, or deflect under passage of construction equipment. The evaluation could also consist of test pit observations, probing, and/or hand auger borings supplemented with Dynamic Cone Penetrometer testing. These services will also include observation of undercutting of the existing fill in the building pad as planned and of the subgrade soils when necessary.

B. Engineered Fill Testing:

Services will consist of periodic classification and testing of compacted fill materials and continuous observations of materials used, lift thicknesses, and randomly performing field density tests to estimate the compaction of the fill placed in the following locations:

- Building pad areas;
- Roadways; and
- Utility line trenches.

Density testing will be performed by nuclear density gauge, drive tube, or sand cone methods. In addition, material tester will perform classification tests and standard Proctor (ASTM D698) moisture-density relationships on the different materials used as fill, as necessary.

C. Foundation Bearing Material Evaluation:

Services will consist of periodic visual observations of the foundation subgrade soils. The near-surface bearing materials will then be evaluated with hand auger borings and dynamic cone penetration (DCP) testing for adequate bearing capacity and consistency with the project documents. Recommendations for removal and replacement of loose or soft foundation bearing soils (where necessary) will be provided based on the DCP test results and engineering judgment.

D. Concrete Sampling and Testing:

Services during reinforced concrete construction will consist of the following (periodic unless otherwise noted):

- Sampling of fresh concrete for slump, air content, temperature and unit weight tests, and preparing 4"x8" laboratory-cured concrete specimens for concrete placed in at a frequency determined by the specifications.

E. Masonry Sampling and Testing:

Services during reinforced masonry construction will consist of the following (periodic unless otherwise noted):

- Sampling concrete masonry units for compressive strength testing at a frequency determined by the specifications.
- Sampling fresh grout for slump tests and preparing grout prisms for compressive strength testing at a frequency determined by the specifications.
- Sampling fresh mortar and preparing mortar cube samples for compressive strength testing at a frequency determined by the specifications.

F. Structural Steel/Aluminum Observations:

Services during structural steel, steel joist, metal decking, and aluminum structure construction will consist of the following:

- Collecting (from the general contractor, provided by the fabricator) material and welder certifications, and Certified Mill Test Reports for structural steel;
- Collecting (from the general contractor, provided by the fabricator) a Certificate of Compliance at the completion of the fabrication of structural steel (for steel fabricators that are AISC "approved"). If the project steel fabricator is not an AISC approved fabricator, then steel shop inspections may be required per the NC Building Code, but are excluded from this proposal;
- Periodic observations of high strength bolts, nuts, washers, and structural steel to observe that the materials used are as specified in the project documents;
- Evaluations of high strength bolting;
 - Full tension and/or slip critical connections require a continuous observation;
 - Bearing type and/or non-slip critical connections are a periodic observation;
- Evaluations of welding and reinforcing steel;
 - Continuous observation of partial and full penetration welds, multi pass fillet welds and fillet welds $\geq 5/16"$;
 - Periodic observation of fillet welds $< 5/16"$; and
- Periodic observations of steel frame joint details and metal decking to observe compliance with approved construction documents;
- Material Verification of weld filler material;

- Liquid penetrant (PT), magnetic particle (MT), ultrasonic (UT), and radiographic testing of field welds, if required.

G. Pavement Construction Testing

a. Subgrade Evaluations:

Services will consist of visually evaluating subgrade soil conditions by proofrolling prior to preparation of concrete pavement areas to help identify soft / unstable areas which pump, rut, or deflect under passage of construction equipment. The evaluation could also consist of test pit observations, probing, and/or hand auger borings supplemented with Dynamic Cone Penetrometer testing. These services could include observations of undercutting or over-excavation of the subgrade soils and/or installation of stabilization layers.

b. Pavement Aggregate Base Course (ABC) Stone Testing:

Our services can consist of evaluating stone base thickness (by digging a test hole and measuring the depth with a tape measure) and performing nuclear or sand cone density tests to estimate the compaction of the material as outlined in the project specifications. In addition, Proctor moisture-density relationships can be performed on the aggregate base course, if required.

c. Concrete Pavement Testing Services

- Check batch tickets for the use of approved concrete mix designs.
- Prior to placement of concrete for pavements, our field representative can observe and document reinforcing steel for correct layout, size, support, cleanliness, and clearance with respect to the project plans and specifications.
- Sampling of fresh concrete for slump, air content, temperature and unit weight tests, and preparing 4"x8" laboratory-cured concrete specimens for concrete placed in at a frequency determined by the specifications.

H. Field Reports

Field reports will be prepared by subconsultant's technicians and draft copies can be provided to the on-site representative daily if requested. Formal reports summarizing our test results will be distributed according to a project distribution list directed by the Owner after review.

I. Discrepancies

Discrepancies are defined as deviations of material, installation, fabrication, erection, or placement of components and connections from the project design drawings,

specifications, direction provided by the designers, or industry standards referenced in the project documents. A "deviation" identified and corrected in accordance with the design during the same shift under the observation of the same Special Inspector that identified the deviation will not be logged as a Discrepancy. If it is not corrected before the end of the shift, it will be logged as a Discrepancy.

A Discrepancy Notice will be prepared for each discrepancy on a standard form documenting the discrepancy and providing additional information. The Discrepancy Notice will be distributed to the project designer and construction team (typically the Contractor, Owner, Architect, SER, and Building Official).

J. Completion Report

At completion of the project, a Special Inspection Final Report can be issued indicating compliance of inspected items to the design documents to the best of the Special Inspectors' knowledge and belief. The Final Report will be signed and sealed by the Special Inspector Coordinator. The submittal is conditionally dependent on the previous scope of services being implemented and on all discrepancies having been resolved.

K. Excluded Services

Without attempting to provide a complete list of all services or potential services that will be excluded from this proposal, the following services are specifically excluded. Some of these services can be performed by S&ME if desired; however, a separate proposal for these services would be required.

- Directing of any contractor's or subcontractor's work.
- Any aspect of site safety other than safety of subconsultant's employees.
- Providing a conformance letter for any fill if our services are requested on a part-time basis.
- Special Inspections or Construction Materials Testing of construction items not listed above.
- Exterior Insulation and Finish Systems observations.
- Sedimentation and erosion control inspections.
- Surveying.
- X-Ray testing of welds is not anticipated to be required and is excluded from this scope.

AMENDMENT 7

ATTACHMENT B

Project: French Broad River Intake and Pumping Station

COMPENSATION

For the modified Scope of Services identified in Amendment 7 Attachment A, Owner will compensate Engineer a fee not-exceed \$255,733.00 unless authorized by the Owner in writing. Engineer will invoice Owner in accordance with the attached Budget Estimate, plus reimbursable expenses times 1.0, plus subconsultant expenses times 1.10. The estimated cost of each phase of work is included in the Budget Estimate following this page. Owner agrees Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but not exceed the total amount unless approved in writing by the Owner. Standard hourly rates are subject to review and adjustment annually.

For Supplemental Services, City and Engineer will negotiate a written amendment to this Agreement for the additional services.

Engineer will submit to City invoices for Services performed over a monthly period. City agrees to pay Engineer’s invoice upon receipt. Invoices will be in Engineer’s standard format.

AMENDMENT 7 - ATTACHMENT B
Billing Rate Schedule

For the Scope of Services, Owner will compensate ENGINEER in accordance with the Bill Rate Schedule below, plus reimbursable expenses times 1.0, plus subconsultant expenses times 1.10. The maximum billed for these services shall not exceed the amount shown in the Task Order without further written approval from the Owner. Standard hourly rates are subject to review and adjustment annually. Hourly rates effective on the date of this Agreement are as follows:

HOURLY RATE SCHEDULE	
Effective through December 31, 2022	
Principal	\$255-310
Sr. Planning Manager	\$220-280
Sr. Project Manager	\$220-280
Project Manager	\$190-250
Sr. Engineering Manager	\$225-295
Engineering Manager	\$180-230
Sr. Engineer/ Planning Sr. Engineer	\$185-290
Project Engineer	\$155-210
Staff/Planning Engineer 4	\$145-180
Staff/Planning Engineer 3	\$135-170
Staff/Planning Engineer 2	\$125-150
Staff/Planning Engineer 1	\$100-135
Sr. Architect	\$160-240
Architect	\$140-190
Sr. Construction Manager	\$175-240
Construction Manager	\$150-190
Resident Project Representative	\$120-180
Construction Inspector	\$80-150
Technical Specialist	\$170-280
Sr. Engineering Technician	\$155-190
Engineering Technician	\$105-155
Sr. Drafter	\$95-150
Drafter	\$80-120
Project Controls	\$100-185
Finance/Accountant	\$95-175
Project Administrator	\$95-135
Clerical	\$74-105

The following expenses are reimbursable work items and will be billed at cost: bulk reproduction of documents (outside reproduction services will be treated as a subconsultant); charges for review of drawings and specifications by government agencies, if any; vehicular transportation costs at the rate established by the Internal Revenue Service; airline tickets, meals, and lodging with out-of-town travel.

Owner: Hendersonville, City of

Project: New French Broad River Intake and Pumping Station A

PHASE/Task		Sr. Project Manager	Admin	Sr. Engineering Manager	Civil Engineer	Resident Project Representative	Electrical Engineer	Finance	Project Controls	HC Civil Sr. Engineer		SUBTOTAL, hours	SUBTOTAL, Billings \$	SUBTOTAL, EXPENSES	SUBCON Ellum	S&ME	SUBTOTAL, SUBCONTRACTS	TOTAL Billings
		\$260.00	\$110.00	\$240.00	\$175.00	\$155.00	\$250.00	\$130.00	\$125.00	\$235.00								
(Billing Rate, \$\$,Hr.)																		
WORK BREAKDOWN STRUCTURE	PHASE																	
PROJECT ADMINISTRATION	4000	8	6	12	-	-	-	12	20	-		58	\$ 9,680	\$ 1,000			\$ -	\$ 10,680
		-	-	-	-	-	-	-	-	-		-	\$ -	\$ -			\$ -	\$ -
CONSTRUCTION ADMINISTRATION	4100											-	\$ -	\$ -			\$ -	\$ -
Submittal Review		-	-	3	15	-	-	-	-	-		18	\$ 3,345	\$ -			\$ -	\$ 3,345
Requests for Information		-	-	5	15	-	-	-	-	-		20	\$ 3,825	\$ -			\$ -	\$ 3,825
Contractor Schedule Review		-	-	-	5	-	-	-	12	-		17	\$ 2,375	\$ -			\$ -	\$ 2,375
Change Orders Management		2	-	2	8	-	-	-	-	-		12	\$ 2,400	\$ -			\$ -	\$ 2,400
		-	-	-	-	-	-	-	-	-		-	\$ -	\$ -			\$ -	\$ -
FIELD SUPPORT												-	\$ -	\$ -			\$ -	\$ -
Construction Progress Review Meetings		6	20	10	12	-	6	-	-	-		54	\$ 9,760	\$ 5,023			\$ -	\$ 14,783
Site Visits		6	-	-	26	-	9	-	-	-		41	\$ 8,360	\$ 5,000			\$ -	\$ 13,360
Specialty Inspections		-	-	-	-	24	-	-	-	12		36	\$ 6,540	\$ 2,000	\$ 9,100		\$ 10,010	\$ 18,550
		-	-	-	-	-	-	-	-	-		-	\$ -	\$ -			\$ -	\$ -
		-	-	-	-	-	-	-	-	-		-	\$ -	\$ -			\$ -	\$ -
RESIDENT PROJECT REPRESENTATIVE		-	-	-	-	55	-	-	-	-		55	\$ 8,525	\$ 5,000	\$ 80,000		\$ 88,000	\$ 101,525
MATERIALS TESTING SUBCONSULTANT		6	-	4	16	-	-	-	-	32		58	\$ 12,840	\$ -		\$ 65,500	\$ 72,050	\$ 84,890
		-	-	-	-	-	-	-	-	-		-	\$ -	\$ -			\$ -	\$ -
		-	-	-	-	-	-	-	-	-		-	\$ -	\$ -			\$ -	\$ -
Total, Hours		28	26	36	97	79	15	12	32	44		369						
Total, Billings		\$ 7,280	\$ 2,860	\$ 8,640	\$ 16,975	\$ 12,245	\$ 3,750	\$ 1,560	\$ 4,000	\$ 10,340			\$ 67,650	\$ 18,023	\$ 98,010	\$ 72,050	\$ 170,060	\$ 255,733



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet, City Manager **MEETING DATE:** November 3, 2022

AGENDA SECTION: CONSENT **DEPARTMENT:** Administration

TITLE OF ITEM: Purchase of +/- 0.92 Acre Lot on Williams Street – *John Connet, City Manager*

SUGGESTED MOTION(S):

I move City Council to adopt the *Resolution By The City Of Hendersonville City Council To Authorize The City Manager To Enter Into A Contract For The Purchase Of +/- 0.92 Tract On Williams Street* as presented.

SUMMARY:

City Council is requested to approve the attached Contract for Purchase and Sale of Real Property for a lot or parcel of land in the City of Hendersonville consisting of +/- 0.92 acres, being identified as Tract II-B on that plat recorded in Plat Book 2015 at Page 9941 of the Henderson County Registry, having Tax Parcel ID# 9568-98-6135, and any appurtenances thereto (collectively the “Property”). The Property is located next to the City Operations Center and will serve as a much needed expansion of the City Operations tract. An appraisal indicates that the fair market value for this tract is \$240,000, and the property owner has agreed to accept this amount for the proposed sale to the City.

A Resolution approving the purchase is attached for City Council’s consideration.

ATTACHMENTS:

Resolution
Contract for Purchase and Sale of Real Property
Survey
Tax Parcel Report

Resolution #22-____

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE
PURCHASE OF +/- 0.92 TRACT ON WILLIAMS STREET**

WHEREAS, the City is desirous of purchasing property, being a lot or parcel of land in the City of Hendersonville consisting of _/ 0.92 acres, being identified as Tract II-B on that plat recorded in Plat Book 2015 at Page 9941 of the Henderson County Registry, having Tax Parcel ID# 9568-98-6135, and any appurtenances thereto (collectively the “Property”), and more specifically described in Exhibit “A”, which is attached hereto and incorporated herein by reference; and

WHEREAS, an appraisal has been performed for the Property, indicating that it has a fair market value of \$240,000; and

WHEREAS, the City has offered to pay the fair market value as indicated, and the Property Owner is in agreement;

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

1. The Contract for Purchase and Sale of Real Property between the City of Hendersonville and Nelson & Company Investments, LLC, for the Property, having as the sale price the sum of \$240,000.00, is hereby approved as presented.
2. The City Manager is authorized to enter execute the contract, with such changes as he deems appropriate, in consultation with the City Attorney, provided such changes do not place any financial obligation on the City beyond that contemplated by the terms of the Contract as presented.
3. The Mayor, City Manager and City Attorney are authorized to execute such other contracts, and deeds and any and all other documents, and to take any and all actions, reasonably necessary to carry out the terms of the approved Contract, including but not limited to making conveyances and reasonable expenditures for costs and expenses for the purposes stated herein.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____ 20____.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form: _____ Angela S. Beeker, City Attorney

EXHIBIT A

PROPERTY DESCRIPTION

B***EING*** .92 acre more or less and being all of that property designated as Tract II-B as shown on that plat entitled "Survey for Nelson and Company" recorded in Plat Slide 9941, Henderson County Registry. Reference to which is hereby made and incorporated herein for greater certainty of description.

AND being a portion of that property in Deed Book 670, Page 152, Henderson County Registry.

Nelson and Company Partnership converted to Nelson & Company Investments, LLC as evidenced by those Articles of Organization recorded in Book 28, Page 516, Henderson County Registry.

CONTRACT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS CONTRACT to sell and purchase real property (this “Contract”) is made and entered into as of the ____ day of _____, 2022, by and between Nelson & Company Investments, LLC, a North Carolina limited liability company (hereafter “Seller” or “Nelson”), and the City of Hendersonville, a North Carolina Municipal Corporation (hereafter “City” or “Buyer”).

WITNESSETH

WHEREAS, Seller is the owner of a lot or parcel of land in the City of Hendersonville consisting of +/- 0.92 acres, being identified as Tract II-B on that plat recorded in Plat Book 2015 at Page 9941 of the Henderson County Registry, having Tax Parcel ID# 9568-98-6135, and any appurtenances thereto (collectively the “Property”), and more specifically described in Exhibit “A”, which is attached hereto and incorporated herein by reference; and

WHEREAS, the City has requested and Seller has agreed to sell the Property to the City upon the terms and conditions hereinafter set forth.

AGREEMENT

For the considerations hereafter set forth, Seller agree to sell and City agrees to buy the property hereinafter described on the following terms and conditions:

1. PROPERTY. As used herein, “Property” refers to all of that parcel of land (including improvements if any) described on Exhibit A, fronting on Williams Street, Hendersonville North Carolina, with a Tax Parcel ID# 9568-98-6135. All of the parcel and interest to be conveyed is collectively hereafter referred to as the “Property.”

2. PURCHASE PRICE OF PROPERTY. The total purchase price of the Property shall be Two Hundred Forty Thousand and no/100s Dollars (\$240,000.00), which shall be paid as follows:

(a) An Earnest Money Deposit in the total amount of Five Thousand and no/100s Dollars (\$5,000.00), which shall be paid to Sherri Brewer, Esq., with the law firm of Hogan & Brewer, as Escrow Agent (“Escrow Agent”) within five (5) business days after the Effective Date, and held in escrow and credited to the purchase price at closing, or disbursed as hereafter provided;

(b) The balance shall be paid at closing to the Seller by wire transfer of funds, or other means acceptable to such Seller.

3. EFFECTIVE DATE. The Effective Date of this Contract shall be the date of the last to occur of the following: 1) Date of the last party to sign this Agreement; or Approval by the City of Hendersonville City Council in open session, as provided in Paragraph 12 hereafter.

4. CLOSING DATE. Closing of the transfer of the Property shall occur on or before forty-five (45) days from the Effective Date at the law offices of Hogan & Brewer, Hendersonville, North Carolina, or such other place, or in such other manner as may be mutually acceptable to the parties.

5. RESERVED.

6. TRANSFER OF TITLE TO PROPERTY. At closing, Seller shall deliver to Buyer a General Warranty Deed conveying fee simple marketable title to the Property, subject only to covenants, rights of way and easements acceptable to City, zoning and other land use laws and ordinances and the lien of the then current year's *ad valorem* taxes which shall be pro-rated as of the date of closing (the "Permitted Exceptions").

7. EXAMINATION PERIOD. As used in this Contract, "Examination Period" shall mean that period of time after the Effective Date to a date which is thirty (30) days after the Effective Date. Buyer shall have the right to terminate this Agreement for any reason during the Examination Period (by delivering written Notice to the Seller prior to its expiration) and receive a refund of the Earnest Money, less \$2,000 which shall be retained by the Seller as Seller's full and complete compensation for the Buyer's cancellation during the Examination Period, including any and all extensions of the Examination Period.

8. TITLE EXAMINATION. After the Effective Date, City shall, at its expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event such title examination shall reveal that Seller's title is not fee simple marketable and insurable at regular rates, subject only the Permitted Exceptions, then City shall promptly notify Seller in writing of such title defects and exceptions. Seller shall then have thirty (30) days to cure the defect (provided that if such objection or defect is of an established monetary amount, then it may be cured by withholding and disbursing the necessary amounts at closing). Closing shall be extended for the time reasonably necessary to cure the defect; however, if Seller is unable or unwilling to cure the defect, the City shall have the option of terminating this Contract receiving a full refund of its Earnest Money Deposit (\$5,000), or taking title to the Property in its then condition without reduction of the purchase price (except for those defects that can be cured by withholding an established monetary amount). Within fourteen (14) days after the Effective Date, Seller shall deliver to City copies of any title insurance policies it has in its possession affecting the Property or any portion thereof as well as any leases of the Property or any portion thereof.

9. INSPECTIONS. During the Examination Period, separate and apart from the title examination, the City, its agents or representatives, at City's expense, shall have the right to enter upon the Property for the purpose of examining the physical condition of the Property by inspecting, examining, performing soil borings, environmental and other testing and conducting any surveys it deems appropriate (collectively, "Inspections"). Buyer shall conduct all such

Inspections in a good and workmanlike manner and shall repair any damage to the Property caused by City's entry. Inspections shall occur during reasonable hours so as to not interfere with Seller's use of the Property or the use of the Property by any tenant of the Seller. Seller shall deliver to City any studies, reports, inspections, or surveys that Seller has in its possession affecting, or relating to the Property, including without limitation any environmental studies. Seller represents that neither Seller, nor Seller's members, officers or employees, have any knowledge of any adverse environmental conditions or contamination of the Property. City shall keep as confidential any such matters furnished to it by Seller, or the result of any Inspection performed by City, to the extent permitted under Public Records laws of North Carolina. All inspections shall be completed during the Examination Period (subject to any extension granted by Seller), and if any physical conditions are not objected to within that time (as extended) the physical condition of the Property shall be deemed accepted by Buyer, except for matters occurring after that time.

10. POSSESSION. Seller can and will deliver unencumbered possession of the Property to City as of the Closing Date. The Property shall be vacant and unoccupied prior to the Closing Date.

11. PROPERTY CONVEYED "AS IS." Except as otherwise provided herein, the Property and improvements are conveyed and accepted "as is" with all faults. Seller makes no representations or warranties as to the condition of the Property, or suitability for any purpose, including for its Intended Use, except as otherwise provided herein; however, that except for normal wear and tear, Seller will deliver the Property to the Buyer in substantially the same condition as of the Effective Date of this Agreement. Prior to Closing, any risk of loss shall be upon Seller.

12. NOT WITHSTANDING ANY EXECUTION OF THIS CONTRACT, IT IS UNDERSTOOD AND AGREED BY SELLER THAT THIS CONTRACT IS SUBJECT TO APPROVAL BY CITY COUNCIL IN OPEN SESSION AS REQUIRED BY NORTH CAROLINA LAW, AND THAT THIS CONTRACT IS NOT BINDING UNTIL SUCH APPROVAL IS GIVEN AND THE CONTRACT HAS BEEN PREAUDITED AS REQUIRED BY THE NORTH CAROLINA LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

13. RISK OF LOSS. Prior to closing, risk of loss with respect to the property shall be upon the Seller.

14. CLOSING COSTS. As part of the bargained for consideration for the sale and purchase of the Property, Buyer agrees to pay for the preparation of the Deed. Seller shall pay for any other documents necessary to perform Seller's obligations under this Contract, for excise tax or other conveyance tax, any deferred tax, and all costs necessary to convey clear title. In addition to the cost of deed preparation, Buyer shall pay for recording costs, costs of title search, title insurance, survey, and any inspection costs. Each party shall pay its own attorney's and consultant's fees.

15. PRO-RATIONS. Ad Valorem taxes for the Property shall be pro-rated between the parties on a calendar year basis as of the Closing Date. If the Seller's share for that year has not been paid, the Seller's share will be withheld from the Purchase Price and paid by the Buyer. If the taxes have been paid, Buyer shall reimburse Seller for Buyer's share at closing. If the then current year's taxes have not been determined, pro-rations shall be estimated based on the prior year's taxes (or other best available information as to value), withheld from Seller and paid by Buyer.

16. BROKERAGE COMMISSION. The parties represent to each other that no real estate brokers have been engaged with respect to this transaction. Each party agrees to indemnify and hold harmless the other parties from and against any and all claims, demands and costs arising out of undisclosed or alleged brokerage commissions, if any.

17. DEFAULT. If City shall default in the performance of any of its obligations hereunder, Seller shall be entitled to cancel this Contract and receive the Earnest Money Deposit as liquidated damages. Such liquidated damages shall be Seller's sole and exclusive remedy. If Seller should default City may pursue any remedies it has in law or equity, including specific performance.

18. NOTICES. Unless otherwise provided herein, all notices and communications required to be given shall be in writing and be deemed given (i) when received if personally delivered with written acknowledgment of receipt, (ii) when deposited in the United States mail, postage prepaid, certified or register mail, return receipt requested, or (iii) when sent by a nationally recognized overnight courier, to the following address (provided that either party may change its notice address by notice to the other):

IF TO BUYER: City of Hendersonville
 Attn: John Connet, City Manager
 160 6th Avenue East
 Hendersonville, North Carolina 28792

IF TO SELLER: Nelson & Company Investments, LLC
 Attn: _____

19. APPLICABLE LAW. This Contract shall be governed by and construed in accordance with the laws of the State of North Carolina. The sole venue for any litigation hereunder shall be a State or Federal court having jurisdiction in Henderson County, North Carolina.

20. ENTIRE AGREEMENT. This Contract contains the entire understanding and agreement between the parties, and supersedes all prior oral or written agreements between the parties. No amendment to this Contract shall be effective unless the same is in writing and signed by the parties hereto.

21. BINDING EFFECT. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

22. TIME IS OF THE ESSENCE. Time is of the essence with respect to all time periods and dates for performance of this Contract.

23. COUNTERPARTS. This contract may be executed in one or more counterparts. Signed facsimiles shall constitute originals.

24. AUTHORITY. Seller and Buyer represent to each other that each is authorized to enter into and perform its obligations under this Contract, subject only to approval of this Contract by the City Council in open session.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective as of the date set forth above.

**NELSON & COMPANY INVESTMENTS,
LLC, SELLER**

Dated Signed: _____ (SEAL)

CITY OF HENDERSONVILLE

ATTEST:

City Clerk
(SEAL)

By: _____
John Connet, City Manager
Date Signed: _____

APPROVED AS TO FORM:

THIS INSTRUMENT HAS BEEN PREAUDITED IN
THE MANNER REQUIRED BY THE LOCAL
GOVERNMENT BUDGET AND FISCAL CONTROL
ACT:

Angela Beeker, City Attorney

John Buchanan, Finance Director

Acknowledgement of Escrow Agent

The undersigned, Sherri Brewer, Esquire, as Escrow Agent, agrees to hold the Earnest Money Deposit and to disburse the same according to the terms of the Agreement.

This _____ day of _____, 2022.

Sherri Brewer, Esquire
Escrow Agent

EXHIBIT A

PROPERTY DESCRIPTION

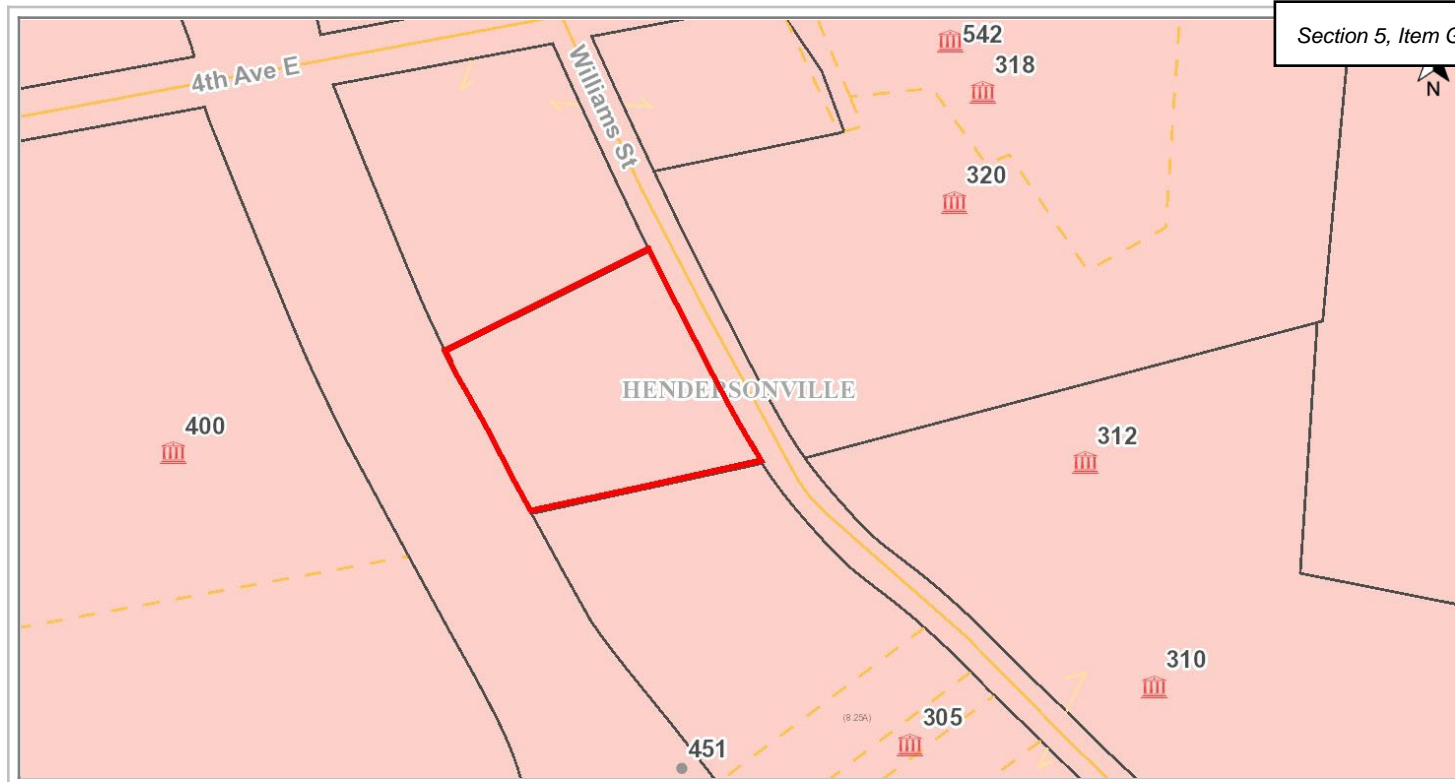
B *BEING* .92 acre more or less and being all of that property designated as Tract II-B as shown on that plat entitled "Survey for Nelson and Company" recorded in Plat Slide 9941, Henderson County Registry. Reference to which is hereby made and incorporated herein for greater certainty of description.

AND being a portion of that property in Deed Book 670, Page 152, Henderson County Registry.

Nelson and Company Partnership converted to Nelson & Company Investments, LLC as evidenced by those Articles of Organization recorded in Book 28, Page 516, Henderson County Registry.

DRAFT

Section 5, Item G.



WARNING: THIS IS NOT A SURVEY

Parcel Information

REID:	10004733	Pin:	9568986135
Listed to:	NELSON & COMPANY INVESTMENTS, LLC	Neighborhood:	MAPLE STREET
Mailing Address:	9357 PRAIRIE VIEW DR	Township:	Hendersonville
Mailing City, State, Zip:	HIGHLANDS RANCH, CO 80126	Municipality:	HENDERSONVILLE
Physical Address:	0 NO ADDRESS ASSIGNED	Tax District:	HENDERSONVILLE CITY
Deed:	003372/00473	Plat:	SLD 9941
Date Recorded:	2019-08-14 09:05:00.0	Elementary School District:	BRUCE DRYSDALE
Revenue Stamps:	0	Middle School District:	HENDERSONVILLE MIDDLE
County Zoning:	Cities	High School District:	HENDERSONVILLE HIGH
Property Description:	FOURTH AVE EAST TRII-B	Soil:	Hayesville loam, 7 to 15 percent slopes
Map Sheet:	9568.08	Voting Precinct:	Hendersonville 2
Assessed Acreage:	0.66000000	Commissioner District	2
Building Value:	\$0.00	Agricultural District	None Found
Land Value:	\$150,900.00	North Carolina House District	117
Value To Be Billed:	\$150,900.00	U.S. House District	11
North Carolina Senate District	48	Flood Zone:	Zone X, Not Shaded (Areas outside of the floodplain)



Henderson County
Geographic Information Systems (GIS)
200 North Grove Street
Hendersonville, NC 28792
P: (828) 698-5124
F: (828) 698-5122

THIS IS NOT A SURVEY.

All information or data provided, whether subscribed, purchased or otherwise distributed, whether in hard copy or digital media, shall be at the user's own risk. Henderson County makes no warranties or guarantees, including the warranties of merchantability or of fitness for a particular purpose. Map data is not appropriate for, and is not to be used as, a geodetic, legal, or engineering base system. The data is not intended as a substitute for surveyed locations such as can be determined by a registered Public Land Surveyor, and does not meet the minimum accuracy standards of a Land Information System/Geographic Information System Survey in North Carolina (21 NCAC 56.1608).



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Angela Beeker, City Attorney **MEETING DATE:** November 3, 2022
AGENDA SECTION: CONSENT **DEPARTMENT:** Legal
TITLE OF ITEM: Ordinance to Allow Electronic Meetings for Subcommittees – *Angela Beeker, City Attorney*

SUGGESTED MOTION(S):

I move City Council to adopt *An Ordinance Of The City Of Hendersonville City Council To Amend Chapter 2, Administration, Of The Code Of Ordinances For The City Of Hendersonville, Article V, Boards, Commissions And Committees, To Provide For Electronic Meetings For Subcommittees* as presented.

SUMMARY:

Attached per the Board's request is an ordinance to permit the subcommittees of the City's boards, commissions and committees to meet electronically.

.

ATTACHMENTS:

Proposed Ordinance

Ordinance #22-_____

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND
CHAPTER 2, ADMINISTRATION, OF THE CODE OF ORDINANCES FOR THE CITY OF
HENDERSONVILLE, ARTICLE V, BOARDS, COMMISSIONS AND COMMITTEES, TO
PROVIDE FOR ELECTRONIC MEETINGS FOR SUBCOMMITTEES**

WHEREAS, City Council has been asked to permit subcommittees of City boards, commissions and committees to meet electronically; and

WHEREAS, City Council finds that with the advent of streaming and video-conferencing technology, access to electronic meetings is more readily available to the general public than in times past; and

WHEREAS, permitting electronic meetings of subcommittees will foster participation by volunteers by making subcommittees more convenient; and

WHEREAS, permitting subcommittees to meet electronically is in the best interest of the City at this time.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that Chapter 2, Administration, Article V, Boards, Commissions and Committees, of the Code of Ordinances for the City of Hendersonville shall be amended to add new Sections 2-226 through 2-230 follows:

CHAPTER 2 - ADMINISTRATION

ARTICLE V. BOARDS, COMMISSIONS AND COMMITTEES

Sec. 2-226 General Provisions

The provisions of this article shall apply to all boards, commission and committees created by City Council, provided, however, that where a board, commission or committee is created pursuant to specific enabling legislation of the North Carolina General Assembly, the specific enabling legislation shall preempt any provisions of this article, applicable to such board, commission or committee, where the terms of this article and such enabling legislation are in conflict. Where specific enabling legislation or other applicable law for a board, commission or committee grants discretion to the City Council to adopt different, additional, or more or less restrictive provisions to govern a board, committee or commission, the provisions adopted by City Council shall be deemed to control.

Sec. 2-227 Definitions.

(a) The following words shall have the meanings stated when used in this article.

- (1) Board, commission or committee shall mean any appointed group of people, consisting of 2 or more members, appointed by City Council for a local government purpose, including but not limited to advisory, quasi-judicial, or administrative.**
- (2) Enabling legislation shall mean general, local, or special legislation adopted by the North Carolina General Assembly granting specific authority to the City Council for creating a particular board, commission or committee. As an example, N.C.G.S. § 160D-302 grants authority to the City Council to create a zoning board of adjustment.**

- (3) Electronic meeting shall mean a meeting where a quorum of the board, commission, or committee, or a subcommittee, is participating in the meeting through electronic means of communication, and not in person. Electronic means include any means of communication through the use of technology which enables two or more persons to engage in simultaneous communicate without being in the physical presence of one another, and includes, but is not limited to telephone conferences and video conferencing (e.g. Zoom meetings, or Microsoft Teams meetings). Email exchanges among a quorum of the members shall not be considered a electronic meeting under this article. As used herein, "electronic meetings" shall not be considered a "remote meeting" for purposes of N.C.G.S. 166A-19.24.
- (4) Quasi-judicial board, commission or committee shall mean a board, commission or committee carrying out a quasi-judicial function. Notwithstanding anything stated in this article to the contrary, except where specifically authorized by the Code of Ordinances for the City of Hendersonville, or the North Carolina General Statutes, a quasi-judicial board, commission or committee may not form a subcommittee to conduct or assist with conducting a quasi-judicial proceeding, or to provide a recommendation or perform any investigation, with respect a matter that may be the subject of a quasi-judicial proceeding before the quasi-judicial board, commission or committee.
- (5) Remote meeting shall mean a remote meeting defined by and held pursuant to the authority of NCGS § 166A-19.24, as amended, during declarations of emergency made under NCGS 166A-19.20. Nothing herein shall be deemed to impose greater requirements for remote meetings than the requirements of the North Carolina General Statutes, or to prohibit remote meetings permitted by NCGS § 166A-19.24.
- (6) Subcommittee shall mean a group of people, consisting of 2 or more members, appointed by a board, commission or committee, or by the chairperson of a board, commission or committee, for the purpose of acting in an advisory capacity to assist the board, commission, or committee in carrying out its authorized function or authority (ref. Sec. 2-228). Unless otherwise specifically authorized by City Council or specific enabling legislation, a board, commission or committee may not delegate its function or authority to a subcommittee. As an example, the Planning Board may not delegate its authority to approve a development plan to a subcommittee of the Planning Board. As another example, an advisory board to the City Council could not create a subcommittee to also be advisory to City Council. In both examples, the subcommittee would be permitted to make a recommendation to the board, commission or committee to assist the board, commission or committee in carrying out their advisory or administrative function.

Sec. 2-228 Authority of Boards, Commissions and Committees

Boards, commissions and committees shall have the only such authority and exercise only those functions specifically granted to them by City Council or by the North Carolina General Assembly through specific enabling legislation.

Sec. 2-229 Charters and Rules of Procedure

Except where specifically provided otherwise in the Code of Ordinances for the City of Hendersonville, City Council approval shall be required for all charters creating or organizing a board, commission or committee, and their rules of procedure or bylaws.

Sec. 2-230 Meetings

(a) Electronic Meetings.

(1) Boards, Commissions and Committees - (Reserved).

a. (Reserved)

(2) Subcommittees

a. Electronic meetings are authorized for subcommittees. All electronic meetings held by a subcommittee must comply with the provisions of this article.

(b) Rules Governing Electronic Meetings.

- (1) All electronic meetings must be conducted in accordance with the North Carolina Open Meetings Law, NCGS Chapter 143, Article 33C, as amended. Where these rules and the Open Meetings Law conflict, the most restrictive shall be complied with. In construing which is the most restrictive requirement, the requirement providing the greatest notice to the public, or greatest opportunity for attendance by the public, shall be deemed to be the most restrictive.**
- (2) All votes must occur by roll call of the members.**
- (3) Any documents being considered must have been provided to each member participating in the electronic meeting.**
- (4) All members must be able to hear what is said by the other members and by any member of the public permitted by the members to speak at the electronic meeting.**
- (5) The minutes of the electronic meeting must reflect that it was an electronic meeting, and must reflect the technological method used to conduct the electronic meeting. As an example, the minutes would reflect that the meeting was an electronic meeting held on Zoom.**
- (6) The electronic meeting must be simultaneously available to the general public for streaming.**
- (7) A physical location must be provided to allow members of the public to attend and listen to the meeting. The physical location must be stated in the notice of the meeting, required by the Open Meetings Law.**
- (8) Members participating by electronic means and in person shall both be counted as present, and can vote.**
- (9) During the meeting, a quorum of the membership shall not deliberate or communicate by text, email, group chat or by any other means in which a participant or member of the general public could not hear or listen to what is being communicated.**

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Becker, City Attorney



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Brendan Shanahan **MEETING DATE:** 11/03/2022

AGENDA SECTION: Consent **DEPARTMENT:** Engineering

TITLE OF ITEM: Clear Creek Greenway Professional Engineering Services Contract Execution –
Brendan Shanahan, Civil Engineer IV

SUGGESTED MOTION(S):

I move the City Council adopt a Resolution by the Hendersonville City council approving agreement with Kimley-Horn and Associates, Inc proposal to provide Engineering Services for the Clear Creek Greenway Project, as presented.

SUMMARY:

An agenda item authorizing the City Manager to execute a contract with Kimley-Horn and Associates, Inc to provide professional engineering services in support of the Clear Creek Greenway project. The City sought Letters of Interest and among the seven (7) received, City staff scored Kimley Horn highest and the NCDOT provided concurrence for the selection of Kimley Horn. Therefore, we request your approval of the attached resolution authorizing the City Manager and City Attorney to execute a contract with Kimley Horn to perform two Task Orders at services costs of \$288,042.65 (for Task Order 1) and \$470,363.59 (for Task Order 2).

BUDGET IMPACT: \$758,406.24

Is this expenditure approved in the current fiscal year budget? N/A

If no, describe how it will be funded. Funds are allocated through a Grants and Donations

ATTACHMENTS:

Resolution

Contract

Scoring Matrix

Resolution #__-____

**RESOLUTION BY THE HENDERSONVILLE CITY COUNCIL APPROVING
AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC PROPOSAL TO
PROVIDE ENGINEERING SERVICES FOR THE CLEAR CREEK GREENWAY
PROJECT**

WHEREAS, the City of Hendersonville wishes to contract for Professional Engineering Services for the Clear Creek Greenway Project; and

WHEREAS, staff has received and evaluated a letter of interest for such services from seven engineering firms, with Kimley-Horn and Associates, Inc, (“Kimley Horn”) scoring highest among the seven (7) such letters received; and

WHEREAS, based on the evaluations, staff is recommending that City Council declare Kimley-Horn to be best qualified to provide these Professional Engineering Services; and

WHEREAS, the NCDOT has provided concurrence for the determination of using Kimley-Horn for Professional Engineering Services; and

WHEREAS, a contract for Professional Engineering Services with Kimley-Horn has been presented to City Council for approval;

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

1. Kimley-Horn is declared to be the best qualified firm to provide Professional Engineering Services for the Clear Creek Greenway Project.
2. The contract for Professional Engineering Services with Kimley Horn is approved as presented.
3. The City Manager is authorized to execute the contract with Kimley-Horn on behalf of City Council in the amount of \$758,406.24 for professional engineering services for the Clear Creek Greenway Project, with such changes as he deems appropriate, in consultation with the City Attorney.
4. The City Manager is authorized to approve change orders totaling up to \$75,000.00 for the contract with Kimley-Horn, provided budgeted are available.
5. The City Manager, City Attorney and City staff are authorized take such other actions as are necessary to carry out the terms of this Resolution.

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beecker, City Attorney



THE CITY OF HENDERSONVILLE

160 6TH Avenue East
Hendersonville, NC 28792
(828) 697-3000

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

FIRM: Kimley-Horn and Associates, Inc.
A North Carolina corporation
421 Fayetteville St., Suite 600
Raleigh, NC 27601
(919) 677-2000

PROJECT: Clear Creek Greenway
PROJECT DESCRIPTION: Construction of 2-mile section of Clear Creek Greenway, Beginning near Berkely Park and running to Highland Square Regional Activity Center ("Project")

PROJECT NUMBER: COH Project # _____

This Contract for Professional Engineering Services, and all exhibits and attachments, (collectively this "Contract") is entered into this ____ day of _____, 20____ by and between, the City of Hendersonville, a municipal corporation of the State of North Carolina, (the "City") and, Kimley-Horn and Associates, Inc., a North Carolina corporation, having an address of 421 Fayetteville St., Suite 600, Raleigh, NC 27601 (the "Firm")

WITNESSETH

That for and in consideration of the mutual promises set forth in this Contract below, the sufficiency of which is acknowledged by the parties hereto, the parties do mutually agree as follows:

1. Scope of Services. The Firm agrees to perform for the City the following services according to the following requirements:

The Firm agrees to provide professional engineering services needed to complete the Project. Such professional engineering services shall constitute the "Work." The Scope of Services and Firm's Fee Schedule are attached as Exhibits B and C, which are incorporated herein by reference. Additional (extra) services are defined as any work not included in the Scope of Services in Exhibit B that are requested by the City or any review agencies ("Additional Services"). Unless otherwise specifically stated herein, all services will be provided on a lump sum, task-based basis, as specified on Exhibit C. Reimbursables for direct costs incurred (and not indirect costs) will be paid, in addition to the lump sum fee, at the rate of 1.0 times the Firm's actual costs. Any services not included in the Scope of Services in Exhibit B will be considered Additional Services. Additional Services will be identified either in writing or by verbal communication but must be approved in writing by the City before proceeding to perform such Additional Services. Additional Services will be billed at NCDOT approved rates.

The Firm will be responsible for providing properly licensed professionals to complete the Work in accordance with the standard of care ordinarily used by members of the Firm's engineering profession practicing under similar circumstances and at the same time in Henderson County. In addition to the indemnification obligations contained in the STANDARD TERMS AND CONDITIONS attached to this Contract, the Firm further agrees to indemnify and save harmless the City from claims and liabilities to the extent caused by the negligent errors or omissions of the Firm, including its engineers, technicians or subcontractors.

The Firm agrees to coordinate its Work with the work of any other separate professional services, contractors or with the work of the City's own forces to avoid delaying or interfering with their work.

The Firm must be properly registered with the North Carolina Board of Examiners for Engineers and Surveyors and

must be properly authorized to conduct business in the state of North Carolina. The engineers performing the Work, and in responsible charge of the Work, must be a licensed Engineer in the State of North Carolina and must have a good ethical and professional standing.

The City reserves the right to terminate the professional service contract of the Firm based on the Firm's breach of this Contract (ex: schedule, responsiveness, quality of design, accuracy of documents etc.) or for convenience. The City reserves the right to modify or nonperform any portion of the Scope of Work described in Exhibit B Scope of Services, and in such event the City and Firm shall negotiate in good faith to make corresponding modifications to the Fee Schedule in Exhibit C.

2. Required Insurance. Firm shall be required to purchase and maintain during its performance under this Contract insurance coverage as shown on the Insurance Requirements as stated in Exhibit A, which is incorporated herein by reference. With the exception of Worker's Compensation and Professional Liability policies, all insurance purchased shall have a specific endorsement, copy of which shall be provided to the City, naming the City as an additional insured and for all insurance purchased, an endorsement providing that such insurance will not be cancelled without providing thirty (30) days advance written notice to the City.
3. Standard Terms and Conditions. The attached Standard Terms and Conditions shall be a part of this Contract. Such Standard Terms and Conditions are hereby incorporated by reference, and all parties agree to be bound thereby.
4. Marketing Use. The use of this project for marketing and reference purposes is subject to the City's consent.
5. Time for Performance of the Work. The Work will begin within ten (10) days of receipt of the Notice to Proceed from the City and shall conclude with the conclusion of the Project, unless sooner terminated as allowed by the Contract Documents. Milestones for the purposes of completion of the Work and billing and payment have been established, and are stated in Exhibit C.
6. Payment for Services. In consideration of the above services, the City will pay the Firm lump sum, tasked-based basis, in accordance with the submitted fee schedule in Exhibit C, attached hereto and incorporated by reference, up to, but not exceeding, the not-to-exceed-sum stated in the Fee Schedule in Exhibit C. Unless otherwise specifically stated in Exhibit C, reimbursables shall be billed at the Firm's actual cost, and shall count against the not-to-exceed sum stated. Firm will submit monthly invoices for Work performed during the month based upon the Work completed during the billing period which shall be paid thirty (30) days after receipt of undisputed invoices delivered. Invoices must be detailed as to time worked and tasks performed, materials used, and reimbursables billed. Additional Services will be at NCDOT approved rates. If any invoice is disputed by the City, in whole or in part, it shall provide a written explanation for such dispute to Firm within five days of receipt of the invoice and shall pay all undisputed amounts therein. All invoices must include a Sales Tax affidavit, detailing all sales taxes paid in the performance of the Work, including amounts paid to subcontractors, during the period of time represented on the invoice. If no sales taxes were paid, the sales tax affidavit shall reflect the amount paid as "\$0.00." The City shall not be obligated to pay any invoice omitting the sales tax affidavit. The City will provide the form to use for the Sales Tax Affidavit.
7. Project Funding. The Firm acknowledges that all or a part of the Work will be paid for or reimbursed to the City from the following sources of funding:
 - a. Federal funds, through the North Carolina Department of Transportation and the Federal Department of Transportation, Federal Highway Administration, pursuant to the Surface Transportation Block Grant Program (BGDA) under Title 23 of the United States Code and Title 23 of the Code of Federal Regulations, TIP: BL-0008;
 - b. State of North Carolina funds from:
 - 1) The North Carolina Parks and Recreation Trust Fund Grant, Project 2021-926, 07 NCAC 13K.0101-.0111; and
 - 2) NC Water Resources Grant, WRDG 2019S Clear Creek Greenway, CS18280; and

c. City of Hendersonville funds.

Therefore, Firm agrees to adhere to and comply with all State and Federal and local laws, rules and regulations applicable to the Work. Federal requirements are contained within the City's Federal Funding Addendum, attached hereto and incorporated by reference as an integral part hereof.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals at Hendersonville, North Carolina, this _____ day of _____, 20_____.

KIMLEY-HORN AND ASSOCIATES, INC.

THE CITY OF HENDERSONVILLE

BY: _____ (SEAL)

Signature

Printed Name and Title

BY: _____ (SEAL)

John Connet, City Manager

This instrument has been preaudited in that manner required by the North Carolina Local Government Budget and Fiscal Control Act.

John Buchanan, Finance Director, City of Hendersonville

STANDARD TERMS & CONDITIONS

1. **Acceptance.** Firm's acknowledgment of the terms of this Contract constitutes an agreement to (i) all terms and conditions set forth or referenced herein, (ii) Exhibits A, B, & C and The City of Hendersonville Federal Funding Addendum, all of the foregoing being attached hereto and incorporated herein by reference, and (iii) any other terms and conditions of a written agreement signed by Firm and the City that deals with the same subject matter as this Contract (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Firm and the City with respect to the performance of the Work as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." Except as provided herein, no additional or supplemental provision or provisions in variance herewith that may appear in Firm's quotation, acknowledgment, invoice or in any other communication from Firm to the City shall be deemed accepted by or binding on the City. The City hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the City's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the City are subject to correction.
2. **Entire Agreement.** The Contract Documents constitute and represent the complete and entire agreement between the City and Firm and supersede all previous communications, either written or verbal with respect to the subject matter of this Contract.
3. **Changes, Additions, Deletions.** No changes, additions, deletions or substitutions of scope of work, specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges or price will be permitted without the prior written approval from the City. However, the Firm will not be liable for delays caused by circumstances beyond its control including without limitation, delays caused by acts of God, the City or its other consultants/contractors, federal, state, and local government authorities, strikes, riots, civil unrest, war, or unknown or concealed conditions, and if such delays occur, the Firm will be entitled to an equitable adjustment in the time for the performance of the Work and compensation.
4. **Relationship of the Parties.** The Firm is an independent Professional Engineering Company and not an affiliate of the City. The conduct and control of the work will lie solely with the Firm. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the Firm and the City. Employees of the Firm shall remain subject to the exclusive control and supervision of the Firm, which is solely responsible for their compensation.
5. **(RESERVED).**
6. **Taxes.** Any applicable taxes paid shall be itemized on invoices.
7. **Substitutions.** No substitutions or cancellations shall be permitted without prior written approval from the City.
8. **Indemnification.** To the greatest extent allowed by the law the Firm shall indemnify and hold harmless the City, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims"), but only to the extent the fault of the Consultant or its derivative parties (as defined in N.C.G.S §22B-1) is a proximate cause of the Claim. In the event that any portion of the Work performed under the Contract shall be defective in any respect whatsoever, the Firm shall indemnify and save harmless the City, its officers, agents, employees and assigns from all loss or the payment of all sums of money, but only to the extent the fault of the Consultant or its derivative parties (as defined in N.C.G.S §22B-1) is a proximate cause of the Claim.
9. **Invoices and Payment Terms.** Invoice and Payment Terms are set forth in Section 5 in the Contract for Professional Engineering Services. All invoices and statements shall reference the City's Purchase Order Number, Contract number (if applicable) and Project Number, and shall be submitted to: City of Hendersonville, Accounts Payable, 160 6th Avenue East, Hendersonville, North Carolina 28792.
10. **Anti-Discrimination.** During the performance of the Contract, the Firm shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
11. **Insurance.** The Firm shall provide the insurance coverages shown on Exhibit A, attached hereto and incorporated herein by reference. The Firm shall provide the City with a North Carolina Certificate of Insurance and such endorsements as may be required by the Contract Documents PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. Such certificates of insurance

shall be considered part of the Contract.

12. **Ethics in Public Contracting.** By submitting their prices and acceptance of this Contract, the Firm certifies that their proposal was made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
13. **Applicable Laws and Courts.** This Contract shall be governed in all respects by the laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, shall be governed in all respects by the laws of the State of North Carolina and exclusive venue shall be in a court of competent jurisdiction for Henderson County, North Carolina. The Firm represents and warrants that it shall comply with all applicable federal, state and local laws, regulations and orders.
14. **Strict Compliance.** The City may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
15. **Assignment.** The Firm shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of the City.
16. **General Provisions.** The City's remedies as set forth herein are not exclusive. Any delay or omission by the City in exercising any right hereunder, or any waiver by the City of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default.
17. **Obligations of the Firm.** The Firm shall adhere to all applicable laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Henderson, and the City of Hendersonville in the performance of the Work outlined in this Contract and any design documents, drawings and specifications applicable to the Work. The Work shall also adhere to all applicable federal, state and local laws, codes, ordinances, and regulations.
18. **Quality and Workmanship.** The Firm shall perform all Work in accordance with this Contract and the standard of care ordinarily used by members of the engineering profession practicing under similar circumstances and at the same time in Henderson County.
19. **Default.** Either Party may terminate the Contract, in whole or in part, upon thirty (30) days written notice upon a material breach by the other Party unless the alleged default is cured within the thirty (30) day notice period. The nonbreaching party shall have all remedies available at law or in equity in addition to any remedies provided in this Contract for material breach. In the event of a material breach by the Firm the City may procure upon such terms as the City shall deem appropriate, professional engineering services substantially similar to those so terminated, in which case the Firm shall be liable to the City for any excess costs for such similar services and any expenses incurred in connection therewith.
20. **Termination for Convenience.** The City shall have the right, without assigning any reason therefore, to terminate any Work under the Contract, in whole or in part, at any time at its complete discretion by providing ten (10) consecutive calendar days notice in writing from the City to the Firm. If the Contract is terminated by the City in accordance with this paragraph, the Firm will be paid for all Work performed and reimbursable expenses incurred at actual cost to the Firm up to the effective date of the termination. The City will not be liable to the Firm for any costs for materials acquired or contracted for, if such costs were incurred prior to the date of this Contract.
21. **Instruments of Service and Work for Hire.** All Work performed by the Firm, and all data compiled, shall be considered Instruments of Service and Work for Hire, and shall be the Property of the Owner. The Firm shall retain a license in the Work performed and data compiled to use for the Firm's own purposes, and not for the benefit of any third party without the City's consent. The terms of this Paragraph shall survive the termination of this Contract for any reason, including but limited to for a material breach of either Party, or for the convenience of the Owner. In the event this Contract is terminated for any reason, the City shall be entitled to keep and use all design work provided by the Engineer and all data compiled by the Engineer. All representations and obligations with respect to the Work by the Firm under this Contract shall survive termination of this Contract unless this Contract is terminated by the Firm for the City's material breach, in which case use by the City of the Firm's design work and data compiled shall be at the City's own risk, and without any representation by the Engineer as to its accuracy or fitness for any purpose.
22. **Assignment.** Firm may not assign, pledge, or in any manner encumber the Firm's rights under this Contract, or delegate the performance of any of its obligations hereunder, without the City's prior, express written consent.

23. **No Third Party Beneficiaries.** There shall be no intended nor incidental third party beneficiaries of this Contract. The Firm shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party beneficiaries.
24. **Valid Contract.** In order for this Contract for Professional Engineering Services to be valid, it must be executed by the City Manager or his or her authorized designee, and must be pre-audited in that manner required by the Local Government Budget and Fiscal Control Act, as the same may be amended.
25. **Verification of Work Authorization.** The Firm shall comply with, and require all contractors and subcontractors to comply with, the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," sometimes known as E-verify for all contractors and subcontractors.
26. **Iran Divestment List.** With the execution hereof, Firm, certifies that they are not on the Iran Final Divestment List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.58, and will not contract with anyone on such List in performance of the work hereunder.
27. **Severability.** If any provision of this Contract is found to be invalid or unlawful, then remainder of this Contract shall not be affected thereby, and each remaining provision shall be valid and enforced to the fullest extent permitted by law.
28. **Companies that Boycott Israel List.** With the execution hereof, Firm, certifies that they are not on the Companies that Boycott Israel List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.80, and will not contract with anyone on such List in performance of the work hereunder.

EXHIBIT A

MINIMUM INSURANCE REQUIREMENTS

The Work under this Contract shall not commence until the Firm has obtained all required insurance and verifying certificates of insurance have been approved in writing by the City. The City shall be named as additional insured on all policies, except Worker's Compensation and Professional Liability policies. These certificates shall document that coverages afforded under the policies will not be cancelled until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the City of such cancellation. If endorsements are needed to comply with the notification or other requirements of this article copies of the endorsements shall be submitted with the certificates.

a. Worker's Compensation and Employer's Liability

The Firm shall provide and maintain, until final acceptance, workmen's compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

b. Comprehensive General Liability Insurance

The Firm shall provide and maintain, until final acceptance, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the Firm or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury: \$1,000,000 per occurrence / \$2,000,000 aggregate

Property Damage: \$100,000 per occurrence / \$300,000 aggregate

Or,

Bodily Injury and Property Damage, combined single limit (CSL): \$1,000,000 per occurrence / \$2,000,000 aggregate

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the Work performed under the contract.

c. Deductible

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the Firm.

d. Other Insurance

The Firm shall obtain such additional insurance as may be required by the City or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

e. Proof of Carriage

The Firm shall furnish the City with satisfactory proof of carriage of the insurance required before written approval is granted by the City

EXHIBIT B

FIRM'S SCOPE OF SERVICES

KIMLEY-HORN & ASSOCIATES, INC., will provide the following engineering services in coordination with City staff and other contractors:

Project Understanding

Kimley-Horn understands that the Client wishes to contract with Kimley-Horn and its subconsultants for engineering services for 2 miles of greenway along Clear Creek and Allen Branch. This project is funded through 3 grants: Surface Transportation Block Grant Program (BGDA), NC Water Resources Development Grant, and NC Parks and Recreation Trust Fund (PARTF). Kimley-Horn understands the negotiation of this Agreement shall be conducted in accordance with all NCDOT requirements and guidelines.

TASK ORDER NUMBER 1

Scope of Services

TASK 1 SURVEY – WETHERILL ENGINEERING

Wetherill Engineering, Inc. (WEI), as a subconsultant to Kimley-Horn, will perform all conventional survey services for this project. All survey services shall be performed in accordance with, and shall conform to, accepted Surveying and Engineering general practices and procedures with the detailed scope of work as set forth and described below. General limits of survey coverage along the mainline are described as follows: Approximately 11,750' +/- along the proposed alignment for the greenway 11,750 LF X Variable Width Corridor. Most of the corridor is 100-foot width centered on the alignment with additional areas added as needed.

Being the same area shown on the Microstation design file entitled "BL-0008_rdy_SurveyLimits.dgn". This file was sent from Kimley-Horn to Wetherill on 3-23-2022.

TASK 1A PROPERTY AND COURTHOUSE RESEARCH

WEI will obtain current deeds, maps, plats, and easement documents for all parcels adjacent to the project and for which right of way acquisition shall be required. There are approximately 10 parcels along the proposed corridor to be researched. WEI will provide a copy of all property information compiled during this task to the City. The City will be responsible for contacting the property owners prior to field surveys.

TASK 1B ESTABLISH HORIZONTAL AND VERTICAL CONTROL NETWORK

WEI will provide a horizontal and vertical traverse throughout the entire Project. Horizontal Control will be referenced to North Carolina Geodetic Survey datum, NAD83/2011 adjustment. Six (6) primary control GPS points will be established in accordance with NCDOT Standards. Secondary baseline control will consist of a "random baseline traverse" monumented by 18" lengths of #5 rebar with Plastic caps set flush with the ground, or MAG pavement nails where appropriate. Each control point will have x, y, and z coordinate values. Points will be set outside of disturbance limits as much as possible to ensure their longevity through construction. Vertical Control will be based upon United States Geodetic Survey NAVD88 datum. WEI will set benchmarks at 2,000-foot intervals throughout the project. Benchtie Nails placed in the base of trees shall be utilized where possible and shall be placed outside of the proposed construction limits. The benchmark locations and descriptions shall be shown on the final plans.

TASK 1C PAVEMENT DIGITAL TERRAIN MODEL

Sufficient horizontal and vertical data points will be collected throughout the project corridor to create a digital terrain model to accurately define topography and grades for all paved surfaces within the project limits as described above.

TASK 1D PLANIMETRIC MAPPING

WEI will field locate and map planimetric information not shown on Photogrammetry base mapping throughout the project limits as described above. Base mapping classification and labeling of the Photogrammetry data is included. Said information will include, but is not limited to the following:

- Drives - location, type, width
- Buildings - location, type and size
- Parking Lots - location and layout
- Signs - location, type and size
- Fences - location, type and size
- Utilities*
 - Storm drainage - location, size, type, top and invert elevations, inlet and outlet location both inside and outside planimetric limits.
 - Gravity sanitary sewer - location, size, type, top and invert elevations
 - Water - location, valves (including top of nut elevations where accessible), meters, hydrants, wells (as surveyed and/or identified by Wake County records), and associated appurtenances.
 - Gas - location, valves, meters, vents and associated appurtenances.
 - Telephone – above ground appurtenances such as poles, pedestals, manholes and vaults.
 - Overhead transmission - location, poles, guys, markers, pedestals, pole number, equipment, vertical clearance at grade crossings, and type to include power, telephone, cable TV, traffic signal and other telecommunications/communication lines.
 - Underground utilities - location, pedestals, markers, and type to include power, telephone, cable TV traffic signal and other telecommunications/communication lines.
 - Owner names, addresses, phone numbers and contact persons will be provided for all utilities when available.
 - Bridges will include end bent elevations, location of the bridge deck, interior bent elevation and locations.
- *Gravity utilities (drainage and sanitary sewer) location will be based on above ground appurtenances and visual inspection and depth measurements to determine invert elevations that may be accomplished from the surface. WEI will not enter the manhole to determine inverts and confined space investigations shall be considered as Additional Services (Article II). This scope does not include Tree Surveys. Tree surveys can be completed as an Additional Service.

TASK 1E SUPPLEMENTAL (OBSCURED) AREAS

WEI will perform field surveys of existing features in obscured areas (approximately 6.0 acres). Data will include all horizontal and vertical information for all planimetric features in the

obscured areas.

TASK 1F STREAM SURVEYS

WEI will collect sufficient horizontal and vertical data points along the tops of banks, toes of banks, and centerline of the stream for streams located at proposed crossings and will cover to the extents of the limits. Streams within the limits, but not at crossing locations, will not be surveyed and will be shown according to Photogrammetry mapping.

TASK 1G BOUNDARY TIES AND EXISTING BOUNDARY MAPPING

Locate the existing right of way and recorded easements for all roadways within the project limits.

Perform sufficient fieldwork to complete boundary surveys for simultaneous conveyances and other small parcels, less than one (1) acre in area, within the project limits.

Larger parcels one (1) acre in size and larger will be located by front corners and sufficient data to establish sidelines showing property corner ties. Complete boundary surveys on these parcels will be considered Additional Services (Article II).

TASK 1H RIGHT-OF-WAY PLAT PREPARATION

WEI will prepare recordable 8" x 14" legal size exhibits (in accordance with NC GS 47-30) for use in the conveyance of easements and rights-of-way necessary for the construction of the Project. It is estimated that 10 exhibits will be required to fully map the property impacts throughout the project corridor. Exhibit will contain calls around new rights-of-way and easements, areas, tie to nearest survey control and NC Grid Coordinates (NAD83/2011). Written legal descriptions are not included, but can be provided as an additional service. The Agreement includes two (2) preliminary submittals (bond plots for review) and one final submittal in PDF format.

The first preliminary exhibit submittal will be included with the 75% design submittal. The second preliminary submittal will occur after completion of the initial round of negotiations with property owners. Final exhibit submission will be in accordance with the schedule developed by the City and Kimley-Horn.

TASK 1I RIGHT-OF-WAY AND EASEMENT MONUMENTATION

This service is not part of this scope and will be addressed in a future task order once design is completed and the number of points is known.

TASK 1J PHOTOGRAMMETRIC PANELS AND CONTROL

WEI will set, locate and localize Photo Control Panels according to the Panel Plan provided by the Photogrammetry consultant. For the purpose of this scope and estimate, the number of control panels is assumed to be 15+/- panels. Panels will be located utilizing GPS RTN methods. Points will be collected a minimum of two times and must be within a tolerance of 0.07' horizontally and vertically. These observations will be averaged and localized to the project datum description according to NCDOT Location & Surveys Standards. Text files of the Panel Grid & Local coordinates will be provided to the Photogrammetry consultant and will contain the Localization information.

TASK 1K SUBSURFACE UTILITY LOCATION (VACUUM EXCAVATION)

Not Applicable – This service can be provided as an additional service if needed.

TASK 1L SURVEY DELIVERY ITEMS

WEI will compile and plot all planimetric and property line information at a scale of 1 inch equals 20 feet. This mapping shall be delivered in a MicroStation V8i file format for use in the development of final design plans. Drawing element symbology and text sizes shall follow North Carolina Department of Transportation NCMAP 3.3 or 4.0 standards.

WEI will provide Digital Terrain Model in a 3-D digital radial break-line survey format with x, y, and z digital coordinate information for each survey point, break-line, and triangular irregular network (TIN) line.

WEI will provide the City with one copy of all deeds and plats obtained during the courthouse research in PDF format.

TASK 2 PHOTOGRAMMETRY – SPATIAL DATA CONSULTANTS

Spatial Data Consultants (SDC) will perform the following services:

TASK 2A GPS GROUND CONTROL

Targeting and GPS ground control survey for a minimum of twenty (20) ground control stations will be accomplished using appropriate techniques to provide horizontal and vertical control. This control will be in accordance with the configuration on the attached project flight and control point diagram and will be furnished by Wetherill Engineering, Inc. (WEI). The ground control datum will be North Carolina State Plane grid coordinates, NAD83 (2011) horizontal and NAVD88 (Geoid 18) vertical, US Survey Feet, unless otherwise specified by Kimley-Horn and Associates, Inc., (KHA).

TASK 2B DIGITAL AIRBORNE IMAGERY

Digital aerial imagery will be obtained with an unmanned airborne system (UAS) consisting of a Sony RX1R-II Professional Compact Camera and Microdrones md4-3000 unmanned aircraft vehicle (UAV).

Upon notice to proceed and weather permitting, color (RGB) aerial imagery will be flown of the site at approximately 328' (100 meters) above mean ground level (AMGL), resulting in an approximate ground sampling distance of 1.3 centimeters (0.04'). Upon completion of the UAS mission, the digital airborne imagery will be reviewed prior to leaving the project site to ensure flight tracking and coverage are correct.

The project flight and control point diagram provided with this proposal is considered preliminary. Flight line orientation relative to the project area of interest may change once the project area of interest has been assessed for possible line of site and terrain deviation issues. SDC operates in complete compliance with all FAA and NCDOT Aviation Division regulations for commercial UAS operations.

TASK 2C DIGITAL AERO-TRIANGULATION

Fully analytical aero-triangulation will be performed to both verify the existing ground control and extend the ground control network and process absolute orientation of the stereo-imagery. This task will be accomplished utilizing Agisoft Metashape Professional software.

TASK 2D LiDAR ACQUISITION

LiDAR point cloud data will be obtained with a Riegl miniVUX-DL LiDAR sensor and Microdrones md4-3000 UAV equipped with an Applanix APX-20 IMU. The LiDAR point cloud data will be collected at approximately four hundred fifty (450) points per square meter (ppsm), simultaneously with the digital airborne imagery referenced above at approximately 328' (100 meters) AMGL. The unadjusted laser point cloud data will be reviewed in the field prior to leaving the site to ensure flight tracking and coverage are correct.

TASK 2E LiDAR PROCESSING

Trajectory data from the Applanix APX-20IMU will be processed using Applanix POSPac UAV software. The laser point cloud data will be fully calibrated, georeferenced, and adjusted to the project specific ground control using Microdrones mdLiDAR and Terrasolid post processing software. The final adjusted laser point cloud will be colorized utilizing Global Mapper software.

TASK 2F DIGITAL MAPPING

Digital terrain model (DTM), planimetric and topographic mapping for the area indicated on the attached flight and control point diagram, approximately fifty-two (52) acres, will be captured at a horizontal scale of one inch equals fifty feet (1"=50'), with one foot (1') contours as requested by KHA. This digital mapping will be produced utilizing our DATEM Summit Evolution Pro Softcopy Workstations. All visible planimetric features appropriate for this scale of mapping will be captured.

TASK 2G OBSCURE AREA - SUPPLEMENTAL FIELD SURVEY

Areas within the survey limits obscured by vegetation, shadows, view angle or any other natural condition will be left void of mapping unless the LiDAR point cloud density in such areas is sufficient to model the ground surface and meet the required contour vertical accuracy.

TASK 2H DIGITAL ORTHOIMAGE

A color-RGB digital orthoimage of the area indicated on the attached flight and control point diagram will be produced at 0.1-foot pixel resolution. This digital orthoimage will be processed using Agisoft Metashape Professional and Adobe Photoshop software. The final composite orthoimage will include full exploitation image coverage in TIFF and MrSID image formats.

TASK 2I STANDARDS OF ACCURACY

Digital mapping will conform to American Society of Photogrammetry and Remote Sensing (ASPRS), Positional Accuracy Standards for Digital Geospatial Data (Edition 1, Version 1.0, dated November, 2014) and Federal Geographic Data Committee (FGDC) Geospatial Positioning Accuracy Standards.

In addition, all digital mapping compiled under this scope will comply with North Carolina Administrative Code 56.1606 (21 NCAC 56.1606), Specifications for Topographic and Planimetric Mapping, Including Ground, Airborne and Spaceborne Surveys.

TASK 2J DELIVERABLES

- Image Post Processing Report in PDF Format
- Digital Mapping delivered in Microstation V8i Format (Separate DTM and Plan-Topo files)
- Digital Terrain Model (DTM) in Microstation TIN Format
- Color Digital Orthoimage in TIFF and MrSID Format
- Colorized LiDAR Point Cloud in LAS Format
- LiDAR Post Processing in PDF Format
- Signed and Sealed (PLS) Project Certification Letter in PDF Format

TASK 3 WETLAND AND STREAM DELINEATION

Kimley-Horn understands the project area is an approximately 125-acre corridor with a planned greenway. Clear Creek extends east to west throughout the corridor. Allen Branch joins Clear Creek from the southeast at the eastern edge to the area. Mud Creek and Cherry Creek are tributaries that join Clear Creek on the south side. Land use is varied adjacent to and within the corridor, including utility services, commercial, residential, and government uses as well as forested areas.

In addition to the mapped streams, National Wetland Inventory (NWI) mapping shows a wetland near the confluence of Mud Creek and Clear Creek. Based on a preliminary review of the USDA Soil Survey, soils are a mix of hydric and nonhydric throughout the corridor.

TASK 3A PREPARE BASE MAPPING

Kimley-Horn will prepare the following natural resource figures:

- Vicinity Map
- USGS Topographic Map
- Soil Survey Map
- National Wetland Inventory (NWI)
- LiDAR (to show topography)

TASK 3B DELINEATION OF AQUATIC RESOURCES

Kimley-Horn will field locate and delineate the extent of wetlands and streams within the project area. Kimley-Horn will delineate wetlands using the three-parameter methodology set

out in the 1987 Wetland Delineation Manual and the Eastern Mountains and Piedmont Regional Supplement. Kimley-Horn will flag GPS locate the boundaries and will complete wetland and upland data forms for each delineated area. Kimley-Horn will complete the North Carolina Division of Water Quality Stream Identification form for each distinct stream reach.

TASK 3C USACE CONCURRENCE ON AQUATIC RESOURCE BOUNDARIES

Kimley-Horn will submit the delineation prepared in Task 3B to the USACE for a Preliminary Jurisdictional Determination (PJD). An agency field visit and one set of figure revisions has been accounted for in this task.

TASK 3D SECTION 401/404 PERMITTING

Kimley-Horn will coordinate with both USACE and NCDEQ. The field delineation will be incorporated into project design files so that impacts to regulated resources can be minimized. Unavoidable impacts will be submitted for Section 404/401 permitting with USACE and NCDEQ. The permit application will quantify impacts and have an accompanying narrative that describes the avoidance and minimization efforts and any required compensatory mitigation as well as existing conditions and constraints. It is anticipated that an additional agency field visit will be necessary during this task.

TASK 4 HISTORICAL ARCHITECTURAL SURVEY – ACME PRESERVATION SERVICES

Acme Preservation Services (APS) will provide these services on a cost-plus basis. APS will complete this work, including reporting, within two weeks of Notice-to-Proceed. If the North Carolina State Historic Preservation Office (HPO) determines that no additional survey or evaluation is needed in response to the information obtained for the below-listed tasks, APS will not conduct any further work, but remain on call to assist the project if needed. Should any additional historic architecture investigations or property evaluation be required, APS will provide those items under a separate scope of services.

TASK 4A BACKGROUND RESEARCH

APS will review readily available historical information for the project area to identify previously recorded historic architectural resources within, or adjacent to, the project corridor. The review will include examination of GIS data and HPO survey site files, environmental review reports, historical maps, and other data available in APS's collection and/or other local repositories.

TASK 4B FIELDWORK

APS may conduct a limited reconnaissance field survey of the trail corridor to identify any additional resources over 50 years of age adjacent to the abandoned railroad right-of-way.

TASK 4C REPORT PREPARATION

The results of the background study, possible reconnaissance field survey, and any communication with knowledgeable local individuals or organizations will be combined into a letter or brief summary report. This report will provide a detailed inventory of previously identified historic architectural resources within, or adjacent to, the trail corridor, as well as recommendations for any additional study needed. This report will be prepared for Kimley-Horn to use in coordination with the HPO and other appropriate stakeholders. Should any intensive property investigations or other services be required, APS will provide those services under a separate scope of services.

TASK 5 THREATENED AND ENDANGERED SPECIES SURVEYS – THREE OAKS ENGINEERING

Three Oaks Engineering, Inc. (Three Oaks), will provide protected species services associated with the subject project, Project No. BL-0008. Three Oaks will be performing this work as a subconsultant to Kimley-Horn and Associates, Inc. (Kimley-Horn), who is under contract with the City of Hendersonville, North Carolina. The North Carolina Department of Transportation (NCDOT) will also be reviewing this project. The work will be performed in accordance with the latest policies and procedures of the State of North Carolina Department of Transportation (State) and the Guidelines laid out and referenced in this Scope of Work.

ASSUMPTIONS

- Bat work will NOT include an emergence count, acoustic survey, mist netting, or species ID via guano sampling. If bats are present but cannot be identified to species visually and additional work is required, it will be scoped separately in the future. This statement excludes the I-26 bridge, which will require either an emergence count or placement of bat detectors to safely assess the structure; this will be completed under this scope for this structure only.
- Habitat assessments and/or surveys will be performed by Three Oaks. Assuming NTP by early May, all non-bat species can be surveyed for during one (1) field visit. If NTP is received after the end of May and swamp pink habitat is present, an additional survey visit will be required; that additional visit will be scoped separately in the future.
- Neither Informal (i.e., informal concurrence or self-certification) nor Formal Consultation (i.e., Biological Assessment and corresponding Biological Opinion) are included in this scope. If either are required, they will be scoped separately in the future.
- This Task Order has an expected duration of twelve (12) months from the issuance of the Notice to Proceed (NTP).
- This Task Order will be processed as a LUMP SUM contract.

PROTECTED SPECIES SURVEYS AND REPORTING

Data Collection and Report Preparation

Unless otherwise specified in this scope, Three Oaks will reference the NCDOT Environmental Coordination and Permitting Group (ECAP) template and guidance protocols presented on the following NCDOT website as of the date of this scope:

<https://connect.ncdot.gov/resources/Environmental/EAU/ECAP/Pages/default.aspx>

Data collection will follow:

- The NRTR Guidelines website as mentioned above. Reference will be made to:
 - Pre- Field Work and Field Work as listed in the guidance for Preparing Natural Resource Technical Reports, Version 4.2, updated September 3, 2021, and NRTR Guidance and Template, updated September 2021.
- United States Fish and Wildlife Service (USFWS) survey protocols and survey windows for relevant species.

The following tasks will also be included in the cost estimate spreadsheet:

- Pre-Field work
 - Preparation for field work will include creation of mapping, setup of equipment, review of North Carolina Natural Heritage Program (NCNHP) data, and noting of known reference populations, if the latter is possible.
- Protected Species Surveys
 - County-appropriate protected species surveys will be performed per the Preparing Natural Resource Technical Reports document on the website. Travel is included for this task. As of the date of this scope, the USFWS Information for Planning and Consultation (IPaC) website lists the following species for this project:
 - Bald eagle (Bald and Golden Eagle Protection Act; year-round)
 - Gray bat (Endangered; May 15-August 15)
 - Northern long-eared bat (Threatened; May 15-August 15)
 - Bog turtle (Threatened Due to Similarity in Appearance; April 1-October 1)
 - Bunched arrowhead (Endangered; mid-May-July)
 - Mountain sweet pitcher-plant (Endangered; April-October)

- Small whorled pogonia (Threatened; mid-May-early July)
- Swamp pink (Threatened; April-May)
- White irisette (Endangered; late May-July)
- Habitat assessments and/or surveys will be performed by Three Oaks. Assuming NTP by early May, all non-bat species can be surveyed for during one (1) field visit. If NTP is received after the end of May and swamp pink habitat is present, an additional survey visit will be required; that additional visit will be scoped separately in the future.
- A bat habitat assessment will also be completed for the project. The assessment and reporting will follow the most up to date NCDOT bat habitat assessment protocols, located here:
 - <https://connect.ncdot.gov/resources/Environmental/EAU/BSG/Documents/NCDOT%20SOP%202021%20Prelim%20Bat%20Habitat%20Assessment%20Struc%20Cave%20Mine.pdf>
- A bat habitat assessment form will be completed for each structure inspected and will accompany the Protected Species Survey Report.
- Bat work under this scope will NOT include an emergence count, mist-netting, an acoustic survey, or species ID via guano sampling. If bats are present but cannot be identified to species visually and additional work is required, it will be scoped separately in the future. This statement excludes the I-26 bridge, which will require either an emergence count or placement of bat detectors to safely assess the structure; this will be completed under this scope for this structure only.
- Draft Protected Species Survey Report
 - A Draft Protected Species Survey Report will be prepared for the project. Internal quality assurance using three-signature sign-off by the preparer, technical reviewer and quality assurance reviewer will be documented and provided with the DRAFT report.
- Review Comments and Final Protected Species Survey Report
 - Three Oaks will incorporate City and Kimley-Horn comments on the DRAFT report to create the FINAL Protected Species Survey Report. Internal quality assurance using a three-signature sign-off by the preparer, technical reviewer, and quality assurance reviewer will be documented and provided with the FINAL report.
- Project Management
 - This will involve project coordination, safety compliance, project billing, and coordination with the City and Kimley-Horn (including any meetings that will need to be coordinated).

Deliverables

- DRAFT Protected Species Survey Report, including all figures and appendices
- FINAL Protected Species Survey Report, including all figures and appendices – one bound hard copy (if requested) and electronic copies in Word and PDF format
- Bat survey form(s)
- One copy of all field notes in PDF format, if requested
- GPS files, if required
- A copy of all shapefiles used to create the figures
- QA/QC form with signatures

TASK 6 ENVIRONMENTAL DOCUMENTATION

Kimley-Horn will prepare a Scoping/Start of Study Letter and accompanying figures. The letter will include the project description, the TIP number, anticipated project schedule, and the type of documentation proposed for the project. Kimley-Horn will distribute the letter to appropriate federal, state, and local agencies and summarize comments received from agencies. If scoping letter responses received from the respective agencies warrant further investigation and coordination or archaeological investigation, it will be considered Additional Services.

Kimley-Horn will prepare environmental documentation in compliance with the National Environmental Policy Act (NEPA). A Categorical Exclusion (CE) Type I-A document is expected for this project. A CE is a category of federal actions that do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.

Kimley-Horn will complete a CE Action Classification Form which will determine if this project requires FHWA approval. FHWA approval is not expected to be required for this project. Coordination with NCDOT is required for approval of the CE. FHWA and NCDOT have entered into a Programmatic Agreement that enables NCDOT to approve Type I-A, and other types of, CE actions. The CE Type I-A classification will be verified after studies are completed and prior to approval of the CE. Kimley-Horn will distribute the CE electronically to appropriate parties after approval.

TASK 7 GREENWAY DESIGN PLANS

TASK 7A 30% PRELIMINARY PLANS AND ESTIMATE

Kimley-Horn will conduct an in-person Kickoff meeting with the City and NCDOT and conduct an initial field visit with two Kimley-Horn employees.

Kimley-Horn will prepare 30% Preliminary Plans which will consist of:

- Title Sheet
- Typical Sections including the preliminary pavement schedule
- Plan Sheets (1-inch = 20-feet horizontal)
 - Proposed design for the trail and crossing locations
 - Proposed designs for two trailheads – one at Clear Creek Road and one in front of the post office
 - Horizontal curve data
 - Superelevation
 - Preliminary slope stake lines
- Profile Sheets (1-inch = 10-feet vertical)
 - Existing and Proposed Profile for the greenway
 - Vertical curve data
- Cross Sections (1-inch = 10-feet)
 - Cross Sections every 50' for the greenway alignment
 - Station labels, cross slope labels and existing ground labels for each cross section
- Preliminary Stream Restoration Designs
- Conceptual Landscape and Hardscape Package
- Preliminary Opinion of Probable Construction Costs (OPCC)

Kimley-Horn will use the GEOPAK V8i Corridor Modeler to create design cross-sections. All plans, designs, specifications, and estimates shall conform to the latest edition of AASHTO and NCDOT standards and practices for highway construction. Prior to submitting the 30% Plans, Kimley-Horn will conduct a 30% Plans-In-Hand Field Review with two Kimley-Horn employees. Kimley-Horn will submit the 30% Plans in electronic (PDF) format to the City. The City will submit the 30% Plans in electronic (PDF) format to the NCDOT for review. Kimley-Horn will

provide a Quality Control/Quality Assurance review of the 30% Plans prior to submittal. After submitting the 30% Plans, Kimley-Horn will conduct a virtual meeting with the City and NCDOT to discuss their comments with two Kimley-Horn employees.

Kimley-Horn has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. All provided opinions of probable costs are based on the information known to Kimley-Horn at the time and represent only Kimley-Horn's judgment as a design professional familiar with the construction industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

TASK 7B PROJECT MANAGEMENT & COORDINATION

Kimley-Horn will conduct miscellaneous coordination with City staff and provide project administration through the anticipated duration of this contract (3 months, September 2022 – November 2023). The coordination will include regular transmittals of project correspondence and records; review of analyses, documents, and designs; and telephone contact for items requiring attention.

Kimley-Horn will also conduct miscellaneous coordination with the three grant agencies (Surface Transportation Block Grant Program (BGDA), NC Water Resources Development Grant, and NC Parks and Recreation Trust Fund (PARTF)) and the Stewardship Program (conservation easement coordination) through the anticipated duration of this contract (3 months, September 2022 – November 2023). The coordination will include regular transmittals of project correspondence and records; review of grant requirements and potential grant extensions; and telephone contact for items requiring attention.

Kimley-Horn will conduct virtual bi-weekly meetings to coordinate with City staff for the first 3 months of the project (September 2022 – November 2023) for a total of 6 meetings with up to six Kimley-Horn employees in attendance.

Kimley-Horn will prepare and submit monthly progress reports through the anticipated duration of this contract (3 months, September 2022 – November 2023).

Kimley-Horn will create a Microsoft Project schedule for key deliverables listed in this scope. The schedule will be updated as needed, approximately monthly through the anticipated duration of this task order (3 months, September 2022 – November 2023).

TASK 8 SIGNAL WARRANT ANALYSIS

Kimley-Horn will perform an existing year and future year signal warrant analysis for the vehicular and pedestrian volume warrants (Warrants 1, 2, 3, and 4) at the intersection of Lakewood Road at Highlands Square Drive. A 13-hour traffic count will be performed to determine the existing traffic volumes at the intersection, and this will be used to perform the existing year warrant. To perform the future year warrant, traffic volumes will be projected using an annual growth rate and any known development in the vicinity of this location. Future year projected pedestrian volumes will be determined by performing a pedestrian count at the existing Oklawaha Greenway at Glover Road crossing. Kimley-Horn will summarize the findings of the signal warrant analysis in a letter report to the City.

TASK 9 UTILITY COORDINATION AND UTILITY BY OTHERS PLANS

Private Utilities Coordination

Kimley-Horn will identify ownership of private utilities (dry utilities) within the Project corridor and coordinate with the utility owners on what will need to be relocated, adjusted, or abandoned. The design and adjustment of privately owned utilities will be the responsibility of the respective owners. Kimley-Horn will review utility relocations to make sure they do not conflict with greenway design or each other. Kimley-Horn will contact the private owners and request the utility owners provide private utility relocation plans. Kimley-Horn will develop Utilities by Others (UBO) plans which will be used in the field to verify existing utilities, locations, types, available sizes, and available services to buildings. Existing and proposed private utility locations will be shown on the UBO plans. The UBO plans will include retaining or removing existing utility poles and hand holes, and relocating utility services, provided by utility companies. Kimley-Horn will

utilize information provided by private owners to determine restrictions to relocations. Such information will be utilized to determine the costs and benefits of shifting the alignment(s) versus relocating the private utility facilities.

Prior to the completion of the 30% Design phase of the Project, Kimley-Horn will conduct a preliminary utility coordination meeting to review the proposed design with utility owners, including up to two (2) Kimley-Horn employees visiting the project site. The utility owners will be asked to begin drafting their conceptual private utility relocation plans at this time.

During the 75% Design phase of the Project, Kimley-Horn will provide drainage design plans to all private utilities. Kimley-Horn will coordinate with utility owners to determine restrictions to relocations, and to identify cost-prohibitive adjustments. This will occur such that development of private utility relocation plans, and any necessary easements may be coordinated and included in the 75% Design submittal. Kimley-Horn will work with utility owners to identify areas that may require additional permanent utility easements (PUE), advanced excavation (fill or cut) and/or tree clearing to prepare site for new pole locations. Kimley-Horn will conduct a final utility coordination meeting to review the proposed utility design with utility owners, including up to two (2) Kimley-Horn employees visiting the project site.

Utility Construction Plans consisting of any water and sewer relocation design, as well as the construction coordination of these relocations (both dry and wet utilities) are considered Additional Services. Kimley-Horn will continue to assist with utility coordination efforts through the Bid Opening. Street Lighting Coordination with the Town or Duke Energy progress will be considered Additional Services.

TASK ORDER NUMBER 2

SCOPE OF SERVICES

Kimley-Horn and its subconsultants will provide the services specifically set forth below.

TASK 1 STREAM RESTORATION – WILDLANDS ENGINEERING

Wildlands Engineering will perform the following services:

TASK 1A MEETINGS & COORDINATION

Two Wildlands staff will attend an on-site kickoff meeting and site walk to review portions of the project pertaining to Wildlands scope and to convey any background information to Kimley-Horn (KH) and the project team (from prior projects that Wildlands has been involved in within the corridor).

When requested by KH, Wildlands will attend biweekly call-in meetings that are pertinent to Wildlands scope of work. Wildlands has assumed 12 hours of meeting attendance and follow-up, roughly equivalent to 30-40% of the anticipated meetings over the 1-year duration of this phase of the project.

On an as needed basis (as requested by KH), Wildlands Asheville Office staff will assist with local coordination due to their proximity to the project and familiarity with the various project components. Potential local coordination tasks may include such things as meeting subconsultants or stakeholders for review of field needs/conditions, reviewing and documenting field conditions for design team, or other activities. 24 hours have been reserved for this purpose. Additional assistance would be negotiated as supplemental services.

Wildlands will compile and provide existing topographic and hydraulic modeling data for Allen Branch segment of the proposed greenway. Hydraulic modeling data will be best available data based on the progress of the on-going Letter of Map Revision for the Multi-area Streambank Restoration (MASR) Project which includes the stream restoration work and in-progress sanitary sewer upgrades (and associated potential minor grading of streambed). The model will also be required to account for NCDOT embankment grading and riprap placement that were not originally proposed under the MASR but which are part of the current conditions that will be captured in as-built topographic data.

TASK 1B STREAM STABILIZATION

UT to Clear Creek

Wildlands has reviewed the DWR grant for stream and greenway-related activities. The proposed stream work is to stabilize a short segment of an Unnamed Tributary (UT) to Clear Creek just downstream of the I-26 crossing on the left bank. The tributary was stated to have existing headcutting and vertical instability. From City drawings, the work appears to require 50-150 LF of streambed and bank restoration activities. The total distance of stream leading uphill to the existing development is approximately 450 LF. The upper 300 LF will be observed, but assessment and design work is assumed to be focused on the downstream 150 LF of the UT. Wildlands will conduct an initial assessment to identify the exact limits of work, conceptual design approaches, and future assessment, design and coordination needs. Wildlands will request through KH any specific stream-related topographic survey needs. It is anticipated that the design team surveyor will need to provide 150 LF of detailed topographic survey of the channel, including any and all constraints (utilities, roads, structures, etc.), locating these both horizontally and vertically, where relevant.

Wildlands will coordinate activities on UT to Clear Creek with the greenway and crossing designers in order to develop an integrated approach to the crossing and stream stabilization work. Wildlands has allowed 2-4 hours for coordination time with the design team and an equal

amount of time for internal communication within the stream design team.

Wildlands will complete a 30% design with a plan-profile sheet and preliminary grading. KH will provide design mapping for the greenway and crossing to be shown with the proposed stream stabilization activities that will address vertical stability and streambank erosion within the <= 150 LF tie-in reach.

Wildlands will incorporate comments from 30% and develop a 75% set of plan sheets to include update and refinement of the plan-profile sheet, draft final grading, the majority of any necessary project detail sheets for stream work, and typical sections if necessary. The refinement of the design will be supported by final assessment and design work which may include a combination of follow-up field data collection and geomorphic design based on typical design ratios or reference reach data. No walls, crossing design, or FEMA coordination are anticipated under this task (the stream is in the hydraulic shadow of I-26 and there appears to be sufficient space to address bank concerns with grading and benching, as necessary).

Wildlands will prepare 90% and final plans based on 75% comments and internal coordination with greenway and crossing designers. Wildlands will prepare supplemental specifications for stream stabilization elements and will provide quantity and cost estimate information at 75%, 90% and 100%.

TASK 1C GEOMORPHIC ASSESSMENTS AND DESIGN CONCEPTUALIZATION AND REVIEW

Wildlands will assess and evaluate the following stream-design related design alternatives that influence greenway alignment and cost considerations:

Clear Creek Kayak Launch

The City desires to evaluate the potential for a river access location near the trailhead off Clear Creek Road. Wildlands will complete an initial feasibility assessment of siting, probable type, and cost magnitude estimate to design and implement the access.

Wildlands will visit the site with City staff and will work with the greenway design team to integrate the river access into the proposed greenway alignment and other improvements. Wildlands will assess the alignment and profile of the proposed river access and prescribe options for the type of structure (ramp, staircase), construction materials, and related considerations. Wildlands will produce a plan-profile sheet (figure) in 11x17 or 22x34 .pdf format to depict the concept design. A cost estimate will be prepared to estimate the design and construction costs based on the preliminary river access concept.

Clear Creek Underpass

The City desires to evaluate the feasibility and major design considerations associated with a potential greenway underpass at Clear Creek Road. Wildlands focus will be the bank grading and stabilization requirements associated with implementation of an underpass.

Wildlands will coordinate survey needs and obtain base mapping from KH and surveyor and review parcel data, ROW, and conservation easement language. Topographic data will be provided in Civil 3D .dwg or .xml format. Wildlands will evaluate bankfull bank geometry versus existing geometry, bank toe and face protection measures and upstream and downstream tie-in grading to help evaluate limits of impact, geometry & vertical clearance, existing conservation easement impacts, and approximate cost of work.

Wildlands will provide preliminary grading contours, plan view structure/stabilization layout, and will cut 1-2 cross sections to show existing versus proposed ground conditions in order to accommodate the underpass from a streambank perspective.

The deliverable will be plan and section information in Civil 3D along with a preliminary sheet layout depicting relevant streambank work, or this information can be provided as a 11x17 or 22x34 pdf.

Wildlands will provide a 1-page summary of streambank geometric and stabilization considerations related to the underpass design, including cost information for the proposed stream grading and practices if the proposed underpass appears reasonably feasible. KH will integrate these with other considerations as part of completing the underpass feasibility

assessment.

Mud Creek Geomorphic Review of Proposed Crossing

The City desires to evaluate streambank stability in the vicinity of the Mud Creek greenway crossing in order to identify any long-term stability concerns that could affect the proposed bridge.

Wildlands will evaluate the bridge site location and the streambank condition of Mud Creek and Clear Creek for a distance of 150' upstream on Clear Creek and 400' upstream on Mud Creek. Cherry Branch conditions will also be reviewed. Evaluations will consist of visual review of bank conditions to include an assessment of bank erosion, toe erosion, potential for tree loss, and subsequent risk to the proposed structure.

Wildlands will provide review and comment or an equivalent amount of design time at the 75% and 90% design stages. The focus is anticipated to be approach and exit grading of the streambanks to ensure that any existing stability from dense bank vegetation is maintained through appropriate bank grading and revegetation measures under proposed conditions. If the need for more extensive treatment or assessment of alternative crossing siting locations, modifications to or supplement of this proposed scope will be required.

TASK 2 PUBLIC INVOLVEMENT AND ENGAGEMENT

Kimley-Horn will coordinate with the City concerning postcard distribution, workshop set-up, and workshop announcements. Kimley-Horn will prepare one (1) postcard mailer and facilitate distribution of up to 200 copies. The postcard will describe the project elements and announce the Citizen Informational Workshop (CIW). The draft postcard will be submitted electronically to the City for review prior to finalization. Kimley-Horn will prepare materials including one hundred (100) handouts and two (2) roll plots of one (1) build alternative for the CIW. A draft handout will be submitted electronically to the City for review prior to the CIW. The City will be responsible for arranging the meeting facilities and advertising the CIW. Kimley-Horn will provide four (4) project members in attendance. Kimley-Horn will also prepare meeting minutes in coordination with the City.

TASK 3 GREENWAY DESIGN PLANS

TASK 3A 75% RIGHT-OF-WAY PLANS AND ESTIMATE

Kimley-Horn will incorporate comments from the City and NCDOT on the 30% Plans. The 75% Right-of-Way Plans will include an index of sheets, typical sections, revised plan sheets with storm drainage design and proposed right-of-way and easements, profile sheets, streetscape plans and details, erosion control plans, stream restoration plans, traffic control plans, utilities by others plans, pavement marking plans, signing plans, construction details, and cross sections. Kimley-Horn will submit the 75% Plans in electronic (PDF) format to the City as well as an updated OPCC. The City will submit the 75% Plans in PDF format to the NCDOT for review. Kimley-Horn will provide a Quality Control/Quality Assurance review of the 75% Plans prior to submittal. After submitting the 75% Plans, Kimley-Horn will conduct a virtual meeting with the City and NCDOT to discuss their comments with two Kimley-Horn employees. Kimley-Horn will submit revised 75% Plans in electronic (PDF) format to the City for right-of-way acquisition.

TASK 3B 90% PLANS, SPECIFICATIONS, AND ESTIMATE

Kimley-Horn will submit 90% Final Plans, including structure plans, technical specifications, final OPCC, and bid documents to the City in electronic (PDF) format. The City will submit 90% PS&E in electronic (PDF) format to the NCDOT for approval. Kimley-Horn will provide a Quality Control/Quality Assurance review of the 90% Final Plans prior to submittal. After submitting the 90% Plans, Kimley-Horn will conduct a virtual meeting with the City and NCDOT to discuss their comments with two Kimley-Horn employees.

TASK 3C 100% PLANS, SPECIFICATIONS, AND ESTIMATE

Kimley-Horn will incorporate comments from the City and NCDOT on the 90% PS&E and submit

the 100% final signed and sealed PS&E in electronic (PDF) format for use by the City in the bidding and construction phases. Reproducible drawings will be 22-inch by 34-inch in accordance with NCDOT standards. Kimley-Horn will provide applicable CADD files to the City in DGN and/or DWG format if requested.

TASK 3D BID PHASE SERVICES

The City will be responsible for developing and issuing the bid advertisement on the City website and in the local newspaper. The City will also develop the front-end bid documents for the Bid Package and provide them to Kimley-Horn.

Kimley-Horn will be responsible for:

- providing Final 100% Plans and Specifications to the virtual plan room for review by Contractors
- conducting one mandatory in-person Pre-Bid Conference
- maintaining a bidder's log
- responding to up to five (5) Contractors' requests for information and clarification
- issuing up to three (3) formal addenda. One of the addenda will include minutes for the Pre-Bid Conference
- conducting the virtual bid opening of sealed bids
- tabulating the bids received
- evaluating the compliance of the bids received with the bidding documents

TASK 3E PROJECT MANAGEMENT & COORDINATION

Kimley-Horn will conduct miscellaneous coordination with City staff and provide project administration through the anticipated duration of this contract (9 months, December 2022 – August 2023). The coordination will include regular transmittals of project correspondence and records; review of analyses, documents, and designs; and telephone contact for items requiring attention.

Kimley-Horn will also conduct miscellaneous coordination with the three grant agencies (Surface Transportation Block Grant Program (BGDA), NC Water Resources Development Grant, and NC Parks and Recreation Trust Fund (PARTF)) and the Stewardship Program (conservation easement coordination) through the anticipated duration of this contract (9 months, December 2022 – August 2023). The coordination will include regular transmittals of project correspondence and records; review of grant requirements and potential grant extensions; and telephone contact for items requiring attention.

Kimley-Horn will conduct virtual bi-weekly meetings to coordinate with City staff for the first 3 months of the project (December 2022 – February 2023) with up to six Kimley-Horn employees in attendance. The meetings will shift to monthly for the final six months of the project (March 2023 – August 2023) for a total of 12 meetings.

Kimley-Horn will prepare and submit monthly progress reports through the anticipated duration of this contract (9 months, December 2022 – August 2023).

Kimley-Horn will create a Microsoft Project schedule for key deliverables listed in this scope. The schedule will be updated as needed, approximately monthly through the anticipated duration of this task order (9 months, December 2022 – August 2023).

TASK 4 HYDROLOGIC AND HYDRAULIC DESIGN

Stream Modeling and FEMA Coordination

Within the proposed project area, there are three FEMA-regulated streams. Clear Creek and Mud Creek are FEMA detailed studied streams with a regulatory floodway. Allen Branch is a FEMA limited detailed study stream with established non-encroachment areas. Based on Kimley-Horn's preliminary investigation, it is anticipated that the proposed greenway and the two anticipated bridge crossings will encroach into the regulatory floodway, non-encroachment, and floodplain areas along the streams and will require a hydraulic

analysis to be performed for the calculation of potential impacts to base flood levels. Encroachments into the FEMA-regulated floodways and non-encroachment areas will be minimized to the maximum extent practical to aid in the approval process. The design of the greenway will involve consideration for limiting natural grade changes within the floodway areas to reduce impact to base flood levels. Based on the work proposed and the amount of encroachment within regulated areas, it is anticipated that the project will result in increases in the base flood levels, therefore this Scope of Services assumes that a Conditional Letter of Map Revision (CLOMR) must be prepared for the project. It is assumed that there will be two bridge crossings over the FEMA regulated streams, one over Allen Branch and one over Mud Creek. Sizing and design of additional crossings is considered an additional service. Bridge Survey Reports (BSRs) are not included in this Scope of Services and are considered an additional service. FEMA hydrologic data will not be revised as a part of this study. The hydraulic analysis and CLOMR reporting process will include the following steps:

- Review NCFMP hydraulic modeling data for Clear Creek, Mud Creek, and Allen Branch, including previously approved LOMRs, if available. It is assumed that the HEC-RAS models will be available from NCFMP. All three FEMA regulated streams were most recently mapped in 2008, and models appear to be available online. It is assumed that the FEMA effective HEC-RAS model will be the base model for this hydraulic analysis.
- Perform a field investigation and gather supplemental hydraulic survey.
- Develop duplicate effective, corrective effective, and existing conditions HEC-RAS modeling plans. Corrected effective and existing conditions modeling geometry will incorporate corrections to the received effective model based on survey and field investigation data.
- Coordination with greenway, structural, and stream restoration design teams during design.
- Revised conditions HEC-RAS modeling plans will be developed to evaluate the proposed improvements that encroach into the floodplain and floodway. Proposed project alternatives will be simulated to assist in the development of a design which minimize floodplain impacts.
- The scour potential for the two proposed bridge will be evaluated under effective FIS 100-year flow conditions for the FEMA crossings.
- A CLOMR application package will be submitted to the City's floodplain administrator for review. A CLOMR submittal will include a project narrative, modeling comparison tables, certified topographic work map, annotated FIRM, design plans, NFIP Part 65.12 evaluation of alternatives, insurable structure no-impact certification, and impacted property owner notifications, revised flood profiles, revised floodway data table, applicable MT-2 forms, supporting FIS data, and hydraulic modeling and GIS mapping files associated with the analysis. The Client shall be responsible for application fees effective at time of submittal associated with this Task (currently \$6,750, subject to change). Upon authorization from the administrator, Kimley-Horn will submit the CLOMR to NCFMP, which has a maximum of 90 days to review the submittal. NCFMP will also have 90 days to review any comment responses prepared by Kimley-Horn. It is assumed that all map revisions will fall within City of Hendersonville jurisdiction and will not require coordination with other jurisdictions.
- Kimley-Horn will coordinate with the local Floodplain Administrator and NCFMP to facilitate the review and approval of the CLOMR.
- Once project construction is complete, a Letter of Map Revision (LOMR) will be required. This would be considered an additional service and is not included as part of this task.

Hydraulic Analysis

Kimley-Horn will perform hydraulic analysis for drainage pipe crossings and linear ditches along the proposed alignment of the greenway and evaluate and design necessary revisions to existing hydraulic structures (drop inlets, cross pipes, headwalls) that may be impacted by the proposed greenway for

incorporation into the 75% right of way plans. This analysis will be based upon the topographical information included in the survey and base information available for drainage designs such as GIS contour information, USGS Quad maps, and FEMA information. All hydraulic designs will be completed in accordance with the City of Hendersonville and NCDOT requirements for Hydraulic Design, whichever is more stringent. The anticipated tasks associated with the drainage design concurrent with the 75% plans include:

- Conduct field reconnaissance of existing and proposed drainage features and patterns associated with proposed greenway pipe crossings and existing ditches. Supplemental hydraulic surveys will be performed in addition to the provided survey, to be used to set proposed bridge elevations and proposed culvert inverts.
- Size all cross pipes along greenway alignment and determine critical greenway profile minimums to allow for the proposed cross pipes. Communicate these critical profile control points to the greenway design staff to facilitate establishing the vertical profile grade. No cross pipes over 72" in diameter are anticipated. If a culvert over 72" is required, a Culvert Survey Report would be required by NCDOT and will be considered additional services. Culverts will be sized using HY-8 software by FHWA.
- Design proposed ditches necessary to appropriately drain low areas adjacent to proposed greenway and to replace existing ditches impacted by the proposed greenway. Design proposed storm drain systems (drop inlets, open end pipes, catch basins, etc.) if necessary utilizing Geopak Drainage software.
- Evaluate and design necessary revisions to existing hydraulic structures (drop inlets, cross pipes, headwalls) that may be impacted by the proposed greenway.
- Finalize hydraulic designs for ditches, storm drainage systems, drop inlet locations, outfall analyses, and final cross pipe designs.
- Draft the proposed drainage features (ditches, cross pipes, inlets, etc.) and associated labeling.
- Draft the proposed ditches and final cross pipes into the greenway profile sheets. These ditch profiles will be processed in Geopak to generate the proposed ditches in cross section.
- Design two (2) BMPs for parking lot facilities.
- Prepare Permit Drawings.
- Complete Drainage Summary Sheet.

TASK 5 EROSION CONTROL DESIGN

Kimley-Horn will design and specify erosion control measures in accordance with the requirements of NCDEQ and the County. These measures will include silt fence along any channel banks and low areas to capture sediment-laden runoff, as well as rock silt check dams to decrease runoff velocities in channelized drainage areas.

Kimley-Horn will show erosion control measures and special details not shown in the Erosion Control Manuals as part of the construction plan set. Following an initial review by the Client, Kimley-Horn will submit erosion control plans and supporting documentation to NCDOT. It is anticipated that the County will not review the plans. This Scope of Services includes responding to one round of comments from NCDOT before submitting to NCDEQ. After approval from NCDOT, Kimley-Horn will coordinate with the Regional Office of NCDEQ for review and approval prior to approval of the final greenway. This Scope of Services assumes one round of comments from NCDEQ. Upon approval of the erosion control plans, Kimley-Horn will apply for the NCG01 permit. All application fees will be the responsibility of the Client. Based on NCDEQ's current review standards, a land disturbance permit will not be issued until documentation of permit approvals and right of way and easement acquisition can be provided.

TASK 6 WORK ZONE TRAFFIC CONTROL DESIGN

Kimley-Horn will develop Transportation Management Plans in accordance with the Guidelines for Transportation Management Plan Development, dated January 2010. The Transportation Management

Plans and quantities will be submitted to the City and NCDOT for review at the 75%, 90% and 100% submittals.

Project Information

- Greenway crosses Clear Creek Road and Lakewood Road
- Project Length: Estimated (2± miles)
- L-Lines: 1
- Y-Lines: 2
- Existing Signalized Intersections: 0

Assumptions

- Temporary Shoring: None
- Temporary Pavement: None
- Off Site Mainline Detours: None
- Number of Phases: 2

Final Work Zone Traffic Control (WZTC) Design Plans

The Transportation Management Plans will consist of a title sheet, general notes, and phasing notes as required. Standard NCDOT WZTC details will be referenced in the plans. Kimley-Horn will calculate WZTC quantities.

- Estimated Number of Sheets:
 - Title Sheet/ General Notes/ Phasing: 4
 - Details per Phase: 0
 - Special Details: 0
 - Total Sheets: 4

TASK 7 GEOTECHNICAL – FALCON ENGINEERING

Falcon Engineering's scope of geotechnical services will include subsurface investigation and recommendations for paved greenway trail and bridge structures.

TASK 7A STRUCTURE INVESTIGATION

Falcon will perform one Standard Penetration Test (SPT) boring near each end of each bridge structure (total 4 borings). Bridge borings will be advanced to depths sufficient for driven pile or spread footing design. Generally, we assume an average depth of 30 feet will be sufficient for bridge borings. If auger refusal is encountered at depths less than 10 feet, limited rock coring may be performed to assess rock excavation characteristics. Based on aerial photography it appears that access to one side or the other of each crossing may be excessively difficult. We will endeavor to access both sides of each bridge with SPT drilling equipment; however, if access proves excessively difficult, we will instead perform hand augers with rod soundings on the difficult access side. Based on consistency of data from the provided previous subsurface investigations, we believe this approach will provide a suitable level of confidence for provision of structure foundation recommendations.

TASK 7B GREENWAY INVESTIGATION

Based on the provided previous subsurface investigations, and the assumption that backfill placement and compaction was monitored/tested throughout sewer construction, we do not propose a comprehensive subsurface investigation of the greenway alignment. Instead, we will perform five (5) shallow hand auger borings (3 feet) with dual-mass dynamic cone penetrometer (DCP) testing as a spot check to verify typical subgrade support in backfilled and virgin soil areas.

TASK 7C FIELD INVESTIGATION PROCEDURES

Falcon will contact the NC811 to request the location of subscriber utilities in the vicinity of

the proposed boring locations. We will also coordinate with City staff to identify and locate any additional utilities in the area if needed and to provide access through easement gates. Falcon will locate the test borings in the field using a handheld GPS capable of sub-meter accuracy and coordinates obtained from georeferenced project drawings provided by others. Following completion of the borings, Falcon will utilize existing survey information to determine approximate test boring elevations.

Representative soil samples will be collected from hand auger cuttings, stratified, visually classified in the field in general accordance with the AASHTO Soil Classification System, sealed in moisture-proof containers, and transported to our laboratory. We will also collect bulk soil samples of hand auger cuttings from areas of proposed roadway cut or near-grade construction for laboratory compaction and CBR testing.

TASK 7D LABORATORY TESTING

Select split spoon and bulk samples will be transferred to our laboratory and tested for Atterberg limits, grain size analysis, moisture content (Qty. 4 each), standard Proctor compaction, and soaked California Bearing Ratio (Qty. 2 each). Laboratory testing will be performed in general accordance with the applicable test method noted in the attached manday estimate.

TASK 7E GEOTECHNICAL REPORTING AND RECOMMENDATIONS

After completion of our Field and Laboratory Investigation, Falcon will prepare the following documents in general accordance with NCDOT GEU formats:

- Subsurface Investigation – Inventory (11x17, adopted from roadway format), and including investigation data for boardwalk structure
- Written Roadway Recommendations and Summary of Quantities (8.5x11) – graphic recommendations (plan/profile/cross sections) are not proposed
- Structure Foundation Recommendations (8.5x11 written recommendations)

Additional services including but not limited to excessive coordination efforts required to gain site access to the site or necessary portions of the site, subscriber utility location delays, owner imposed delays to performing our work on-site, additional or deeper borings or other testing not explicitly included herein, investigation or recommendations for additional project elements not included in the project as described herein, attendance at design team meetings, review of project documents following completion of our report, and observation/testing/inspection services during construction will be invoiced on a time and materials basis in accordance with attached unit rate schedule.

TASK 8 STRUCTURE DESIGN

Kimley-Horn will perform the structural design of the pedestrian bridges (two (2) sites, assumed single span bridges of varying span length – to be determined in final design) in accordance with the AASHTO Guide Specification for the Design of Pedestrian Bridges, and the AASHTO LRFD Bridge Design Manual; and based on the foundation recommendations, provided by the project Geotechnical subconsultant, and the hydraulic analysis. It is assumed that each of the pedestrian bridges will consist of a prefabricated superstructure (designed by others), supported by cast-in-place concrete on steel H-Piles designed by Kimley-Horn. Geotechnical recommendations were not available at the time of this scope and fee. If a different substructure unit or foundation type is recommended than that assumed above, Kimley-Horn will develop a new scope and fee for any additional effort.

Preliminary Structure Plans

Kimley-Horn will develop Preliminary Structure Plans, which will include two (2) plan sheets for each crossing showing plan, profile, and typical section. Preliminary Structure Plans will be submitted to the City and NCDOT for review at the 75% plan phase.

Kimley-Horn will incorporate any comments on the Preliminary Structure Plans provided by the City and NCDOT prior to moving to the final design and plan production phase.

Final Structure Plans

Kimley-Horn will finalize the design of the pedestrian bridge substructures and develop Final Plans and Specifications. Limited prefabricated pedestrian bridge superstructure details will be provided for illustrative purposes only to convey the bridge concepts for the City's approval. The Final Structure Plans and Specifications will be submitted to the City and NCDOT for review at the 90% plan phase.

Kimley-Horn will incorporate City and NCDOT 90% review comments and finalize the 100% Final Construction Document Bridge Plans and Specifications, and calculations.

Pedestrian Bridge Basis of Design

- Bridge length, span options, and height above creek/stream shall be based on hydraulic requirements.
- The maximum walkway (clear) width for the pedestrian bridges shall be 10 feet.
- The maximum vehicular live load on the pedestrian bridges shall be H-5.
- The anticipated span range for the pedestrian bridges is 60 to 80 feet, all single span structures.
- Pedestrian bridge superstructure will be prefabricated structures designed by others, based on the details and performance specification in the contract documents.
- The anticipated substructure units will consist of reinforced concrete founded on steel H-Piles.

Timber Boardwalk Feasibility Analysis

Kimley-Horn will provide structural due diligence concerning the constructability and probable construction cost associated with low-level timber boardwalk in flood prone areas along the project corridor. The study will require special attention to hydraulic, geotechnical, and geometric limitations. Kimley-Horn will provide to the City the proposed costs associated with each option as well as the viability of low-level timber boardwalk.

Timber boardwalk design and detailing are not included in this scope of work since the need for timber boardwalk is unknown at this time and will not be determined until final design. The addition of timber boardwalk during Preliminary Design will be considered additional services.

Reinforced concrete box culvert design and detailing are not included in this scope of work since Kimley-Horn does not anticipate the need for box culvert in the design. The addition of reinforced concrete box culvert during Preliminary Design will be considered additional services.

Construction phase services are not included in this scope of work.

TASK 9

LANDSCAPE AND HARDSCAPE DESIGN

Kimley-Horn will develop landscape and hardscape design plans in tandem with the overall project design schedule. The plans will consider all results discovered during the public engagement phase of the project and will work to incorporate program findings throughout the design. All plan sheets will be drawn to a scale which is consistent with the overall plan set, but are at a scale large enough for pricing takeoffs and construction guidance. It has been assumed that the scope of design work will include up to twelve (12) bench / fitness station locations along the alignment, trailhead layout and design, and up to two (2) enhanced pocket park areas along the alignment. Each area will be designed, drawn, and detailed individually.

Kimley-Horn will present drawings in the following design process:

- 30% Concept Package – Kimley-Horn will prepare a hand drawn graphic concept package for presentation and review by the Client team for decision making. Kimley-Horn will respond and revise the package up to one (1) round of comments prior to moving forward to the next deliverable
- 75% Design Development Plans – Kimley-Horn will create a drawing package in a computer-generated format based upon the concept package feedback and approval. This package will be suitable for cost estimation and construction feasibility. Kimley-Horn does not anticipate any major design changes at this phase and additional revisions will be considered additional services.

- 90% - 100% Construction Drawings – After approval and in tandem with the overall greenway plans, Kimley-Horn will develop Construction Ready drawings for incorporation in the bid package. These drawings will be prepared for bidding and construction.

Any changes to the design above and beyond the scope provided above will be considered additional services.

TASK 10 SIGNING AND PAVEMENT MARKING DESIGN

Kimley-Horn will develop Signing and Pavement Marking Plans at a scale of 1"=20' and as outlined for a Category III project in the NCDOT "Signing and Delineation Unit Design Guidelines", dated September 2019.

The plans will:

- Delineate the Final proposed pavement markings
- Identify curb ramp locations and types
- Identify all existing signs and note their disposition (remove, reset, dispose, etc.).
- Identify all proposed warning and regulatory installations. It is Kimley-Horn's understanding that LED flashing signs with push buttons will be installed at the Clear Creek Road and Lakewood Road crossings, though this may change based on the Signal Warrant Analysis included in the scope of services.
- Determine all signing and pavement marking quantities.

All designs and details will be in accordance with MUTCD, NCDOT, and applicable local standards as appropriate.

- Estimated Number of Sheets
 - Title Sheet: 1
 - Detail Sheets: 2
 - Plan Sheets: 2
 - Total Sheets: 5

TASK 11 RIGHT-OF-WAY ACQUISITION

Right of Way Consultants (RWC) will perform the following tasks:

Negotiation

- A detailed study of the greenway plans to include a field study for items such as property lines, improvements, out-conveyances, and others to assure correctness of the plans. It shall further compare the property in relation to the approved plans and the approved claim report valuation (or appraisal) after, for which necessary documents are to be prepared by RWC in the required format.
- All negotiations will be in compliance with the NCDOT's Right of Way Manual and/or Federal/State Guidelines.
- RWC will make research ownership of each property. An initial contact with each property owner, and/or their representative as may be required, for the purpose of providing the property owner with information about the project and its effect upon their property.
- If applicable or if condemnation is needed or if the property is damaged, RWC will request or provide appraisals containing the necessary and required information regarding the property and its ownership as affected by the project. RWC will provide information for title investigations on each individual as necessary.
- If required, RWC will prepare all deeds, agreements, and instruments of conveyance necessary to acquire the appropriate right of way.

- RWC will make offers based on the approved appraisals or claim report valuations, to the owner(s) of each property for the proposed right of way and advise said owners of applicable relocation benefit entitlements.
- RWC will conduct follow-up negotiations as may be appropriate and necessary. RWC will prepare negotiation reports and documentation; and coordinate the retention of improvements with applicable owners.
- When settlements have been reached with owners, RWC will submit final reports on each property claim containing the instruments of conveyance, requests for payment, and the required documentation to the Client for processing and issuance of a check for payment.
- If negotiations are unsuccessful, RWC will submit a request for condemnation on each involved parcel, with appropriate documentation, for processing and the initiation of litigation through condemnation on said claim. RWC appraisers and staff will not provide any testimony as part of this scope.
- RWC will provide a monthly status report of projects/parcels, negotiation, and improvement disposition.

Appraising

RWC will provide formal appraisals and/or appraisal reviews that comply with NCDOT's Uniform Appraisal Standards and General Legal Principles for Highway Right-of-Way Acquisitions to determine that the appraisal meets NCDOT's guidelines and requirements, conforms to acceptable appraisal standards and techniques, does not include any non-compensable items or exclude any compensable items, and that the value conclusions are reasonable and based on facts presented in the appraisal.

Relocation

There are no known improvements that need to be relocated at this time.

Closings

Closing of each claim will involve:

- Updating title information to date where title has been obtained.
- Recordation of the instruments of conveyance, with appropriate documentary stamps attached to the Register of Deeds Office in the County where the project is located.
- Delivery of the check for the purchase of right of way to owner by parcel post (return receipt requested), or by personal delivery with signed acknowledgement of acceptance.
- Notification of tax proration for the part taken.
- Submittal of closing package including the above documents to the Client.

Legal Staff

RWC will provide title opinions on all parcels as required.

CADD Descriptions / Surveying

All right of way staking and CADD descriptions are to be provided by the Wetherill Engineering as a part of Task 1.

FUTURE SERVICES TO BE INCLUDED IN THIS CONTRACT

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. The City has requested the following services be included in this contract but under a separate Task Order to be negotiated at a later point. The City reserves the right to not contract with Kimley-Horn for any or all of the services listed below. The City also reserves the right to go through a competitive process for any or all of the services listed below. It is understood and agreed that addition of any of the services listed below to this contract may require the express written permission of NCDOT.

- Construction Phase Services (Only with express permission of NCDOT)
- Construction Engineering and Inspection (CEI) (Only with express permission of NCDOT)

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current NCDOT approved hourly rates. Additional services we can provide include, but are not limited to, the services listed below. The City reserves the right to not contract with Kimley-Horn for any or all of the services listed below. The City also reserves the right to go through a competitive process for any or all of the services listed below. It is understood and agreed that performance of any of the following additional services may require the express written permission of NCDOT.

- Tree Surveys
- Subsurface Utility Location (Vacuum Excavation)
- Investigations regarding hazardous materials, waste, or contamination
- Groundwater studies or analysis
- Bat emergence counts, mist-netting, acoustic surveys or species ID
- Phase I or Phase II archaeological investigations
- Traffic Noise Analysis
- Project Level Air Quality Analysis
- Environmental Justice Analysis
- Cultural Resources Survey
- Section 6(f) Coordination
- Formal 4(f) Coordination
- Significant modification or redesign based on agency comments
- Section 7 Consultation with the USFWS
- Limited English Proficiency (LEP)
- Bridge Survey Reports (BSRs) and Culvert Survey Reports (CSRs)
- Letter of Map Revision (LOMR)
- On-site mitigation design
- Water and Sewer Relocation Design
- Utility Relocation/Construction Coordination
- Restroom Facility/Building Design at Trailheads
- Lighting and Electrical Design and Coordination
- Asbestos Inspections
- Asbestos Abatement
- Well Abandonment
- Construction Materials Testing (CMT)

INFORMATION PROVIDED BY CLIENT

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- Existing record information, investigations and reports including previous roadway construction plans, utility plans and inventories available within the project corridor
- Documentation for Grant Agreements
- Record drawings for water and sanitary sewer systems
- Project advertising and permitting fees
- Timely review of submittals and responses to requests for information

EXHIBIT C

Lump Sum, Task-Based Fee Schedule for the Work

TASK ORDER 1

Kimley-Horn will perform the services in Tasks 1 – 9 for the total lump sum fee below.

Task 1	Survey	\$ 67,586.56
Task 2	Photogrammetry	\$ 17,288.52
Task 3	Wetland and Stream Delineation	\$ 51,080.34
Task 4	Historical Architectural Survey	\$ 2,765.10
Task 5	Threatened and Endangered Species Surveys	\$ 15,460.38
Task 6	Environmental Documentation	\$ 25,431.22
Task 7	Greenway Design Plans	\$ 83,985.57
Task 8	Signal Warrant Analysis	\$ 7,158.55
Task 9	Utility Coordination and Utility By Others Plans	\$ 17,286.41

Total Lump Sum Fee	\$ 288,042.65
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TASK ORDER 2

Kimley-Horn will perform the services in Tasks 1 – 11 for the total lump sum fee below.

Task 1	Stream Restoration	\$ 29,517.82
Task 2	Public Involvement and Engagement	\$ 10,656.79
Task 3	Greenway Design Plans	\$ 118,470.63
Task 4	Hydrologic and Hydraulic Design	\$ 99,264.84
Task 5	Erosion Control Design	\$ 16,414.74
Task 6	Work Zone Traffic Control Design	\$ 14,193.56
Task 7	Geotechnical	\$ 24,796.11
Task 8	Structure Design	\$ 63,049.19
Task 9	Landscape and Hardscape Design	\$ 26,959.42
Task 10	Signing and Pavement Marking Design	\$ 17,040.49
Task 11	Right-of-Way Acquisition	\$ 50,000.00

Total Lump Sum Labor Fee	\$ 470,363.59
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Individual task amounts are also provided. Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at actual cost. Indirect costs will not be billed. All permitting, application, and similar project fees will be paid directly by the Client. Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

XXX Please email all invoices to: accountspayable@hvlnc.gov

XXX Please copy cconard@hvlnc.gov; bshanahan@hvlnc.gov; bdetwiler@hvlnc.gov



THE CITY OF HENDERSONVILLE FEDERAL FUNDING ADDENDUM

This **FEDERAL FUNDING ADDENDUM** (this "Addendum") is entered into by and between [_____] , a [_____] ("Contractor"), and [_____] , a [_____] ("Unit"), and forms an integral part of the Contract (as defined in Section I hereof).

RECITALS

WHEREAS, Unit has received, either as a Recipient or Subrecipient (as each such term is defined in Section I hereof) a payment from the _____ Fund ("Federal Fund" or "Fund") established pursuant to [Insert name and legal citation of federal law governing funding] ("Federal Funding Act"); and

WHEREAS, Unit intends to pay, in part or in whole, for the cost of the Contract (as defined in Section I hereof) using monies received from the Federal Funds; and

WHEREAS, in using such funds, Unit must comply with the terms of Federal Funding Act, regulations issued by the U.S. Department of Transportation, Federal Highway Administration, operating through the North Carolina Department of Transportation ("Federal Administering Agency" or "Agencies") found at Title 23 of the Code of Federal Regulations and Title 23 of the U.S. Code, and the Locally Administered Project – Federal, grant Agreement, TIP# BL-0008, Federal Aid Number: CFDA# 20.205, governing the expenditure of monies distributed from the Federal, the Award Terms and Conditions applicable to the Federal Funds, and such other guidance as the Federal Administering Agency or Agencies has issued or may issue governing the expenditure of monies distributed from the Federal Funds (collectively, the "Regulatory Requirements"); and

WHEREAS, pursuant to the Regulatory Requirements, Unit must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as the Federal Administering Agency or Agencies has determined or may determine are inapplicable to the Federal Funds; and

WHEREAS, pursuant to 2 C.F.R. § 200.327, Unit must include within the Contract applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Addendum; and

WHEREAS, Unit shall not enter into the Contract or make any distributions of funds to Contractor using monies from the Federal Funds absent Contractor's agreement and adherence to each term and condition contained herein.

NOW THEREFORE, Contractor and Unit do mutually agree as follows:

AGREEMENTS

I. Definitions

- A. Unless otherwise defined in this Addendum, capitalized terms used in this Addendum shall have the meanings ascribed thereto in this Section I.
 1. "Federal Funding Act" shall mean Title 23 of the United States Code, and regulations promulgated pursuant thereto, including Title 23 of the Code of Federal Regulations, as amended.
 2. "Administering Agency" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[a]ny department, agency and establishment in the executive branch of the [United States] government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts."). The Administering Agency is the U.S. Department of Transportation, Federal Highway Administration, the North Carolina Department of Transportation.
 3. "Applicant" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.").
 4. "Construction Work" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[T]he construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.").
 5. "Contract" shall mean the legal instrument by which Unit, as a Recipient or Subrecipient, shall purchase from Contractor property or services needed to carry out a project or program under a federal award, and of which this Addendum shall constitute an integral part. **For this Addendum, the Contract includes that Contract for Professional Engineering Services, made and entered into between the Contractor and the Unit for the following Project: Clear Creek Greenway, Construction of 2 mile section of Clear Creek Greenway, Beginning near Berkely Park and running to Highland Square Regional Activity Center, dated _____.**
 6. "Contractor" shall mean the entity named as "Contractor" in this Addendum that has received a Contract from Unit. As used herein "Contractor" includes consultants, and "subcontractor" includes "subconsultants."
 7. "Federally Assisted Construction Contract" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[A]ny agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the government of the United States of America for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.").

8. "Government" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[T]he government of the United States of America.").
9. "Laborer" or "Mechanic" shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference: ("The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.").
10. "Recipient" shall mean an entity that receives a federal award directly from a federal awarding agency. The term does not include subrecipients or individuals that are beneficiaries of an award.
11. "Subcontract" shall mean any agreement entered into by the Contractor, or by a Subcontractor, to furnish supplies or services for the performance of this Contract or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
12. "Subcontractor" shall mean an entity that receives a Subcontract.
13. "Subrecipient" shall mean an entity that receives a subaward from a pass-through entity to carry out part of a federal award; but it does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
14. "Tier" shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.
15. "Unit" shall have the meaning indicated in the preamble to this Addendum.

II. Equal Employment Opportunity

- A. If this contract is a Federally Assisted Construction Contract exceeding \$10,000, during the performance of this Contract, Contractor agrees as follows:
 1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
 4. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 6. Contractor will furnish to the Administering Agency and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Contractor may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 8. Contractor will include the portion of the sentence immediately preceding paragraph A.1. of this Section II and the provisions of paragraphs A.1. through A.7. in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Contractor will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Unit further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if Unit so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

9. Unit agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Contractor and any Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.
10. Unit further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractor and any Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Unit agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

- B. If this Contract is not a Federally Assisted Construction Contract exceeding \$10,000, the provisions of Section I.A. of this Addendum shall not apply.

III. Davis-Bacon and Copeland "Anti-Kickback" Act

- A. For all prime construction, alteration or repair contracts in excess of \$2,000, the Contractor, and Contractor's subcontractors, shall comply with the Davis-Bacon Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week.
- B. Contractor and any Subcontractors performing work under the Contract shall comply with the "Copeland Anti-Kickback Act", 18 U.S.C. § 874. The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
- C. Unit shall report all suspected or reported violations of the Davis-Bacon Act and the Copeland Anti-Kickback Act to the Federal Administering Agency or Agencies.
- D. Exception: This Article III Paragraph A shall not apply where the Federal Administering Agency or Agencies has indicated that Davis-Wage Act wage requirements are not applicable.

IV. Contract Work Hours and Safety Standards Act

- A. *Overtime Requirements.* No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the clause set forth in Section IV.A. (Overtime Requirements), above, Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in Section IV.A. (Overtime Requirements), above, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section IV.A. (Overtime Requirements), above.
- C. *Withholding for Unpaid Wages and Liquidated Damages.* Unit shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold, or cause to be withheld, from any moneys payable on account of work performed by Contractor or Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in Section IV.B. (Violation; Liability for Unpaid Wages; Liquidated Damages) of this Section.
- D. *Subcontracts.* Contractor or Subcontractor shall insert in any Subcontract the clauses set forth in Sections IV.A. through IV.D. and also a clause requiring Subcontractors to include these clauses in any lower-Tier Subcontracts. Contractor shall be responsible for compliance by any first-Tier Subcontractor or lower-Tier Subcontractor with the clauses set forth in Sections IV.A. through IV.D.
- E. *Payroll and Records.* Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, Social Security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by

Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Federal Administering Agency or Agencies and the Department of Labor, and Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.

- F. **Exceptions.** None of the requirements of Section IV of this Addendum shall apply if this Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence; (3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

V. Rights to Inventions Made Under a Contract or Agreement

- A. The Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below. "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.
1. Any subject data developed under the Contract, whether or not a copyright has been obtained, and
 2. Any rights of copyright purchased by Contractor using federal assistance funded in whole or in part by the Federal Administering Agency or Agencies.
- B. Unless Federal Administering Agency or Agencies determines otherwise, a Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit the Federal Administering Agency or Agencies to make available to the public either (1) Federal Administering Agency's or Agencies' license in the copyright to any subject data developed in the course of the Contract or (2) a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Contract is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Government may direct.
- C. Unless prohibited by North Carolina law, upon request by the Government, Contractor agrees to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Contractor shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Contractor.
- D. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- E. Data developed by Contractor and financed entirely without using federal assistance provided by the Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work. Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.
- F. For the purposes of this Section V, "subject data" means "recorded information, whether or not copyrighted, . . . that is delivered or specified to be delivered as required by the Contract." Examples of "subject data" include, but are not limited to, "computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the Contract."

VI. Clean Air Act and Federal Water Pollution Control Act

- A. **Clean Air Act.** Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to Federal Administering Agency or Agencies and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Federal Administering Agency or Agencies.
- B. **Federal Water Pollution Control Act.** Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to assure notification to Federal Administering Agency or Agencies and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Federal Administering Agency or Agencies.

VII. Debarment and Suspension

- A. Due to its receipt of Federal Funds, Unit is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Contract is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (31 C.F.R. § 19.220(b)(2)) or the Federal Administering Agency or Agencies ((2 C.F.R. § 180.220(b)(2); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).
- B. If this Contract is a covered transaction as set forth in Section VII.A., above, Contractor hereby certifies as of the date hereof that Contractor, Contractor's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both Contractor and Contractor's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the

Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Contract shall be void, (2) Unit shall not make any payments of federal financial assistance to Contractor, and (3) Unit shall have no obligations to Contractor under this Contract.

- C. Contractor must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters. This certification is a material representation of fact relied upon by Unit, and all liability arising from an erroneous representation shall be borne solely by Contractor.
- D. If it is later determined that Contractor did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Unit, the Government may pursue available remedies, including but not limited to suspension and/or debarment.

VIII. Byrd Anti-Lobbying Amendment

- A. Contractor certifies to Unit, and Contractor shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall, and shall cause each Tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to the Unit, which will, in turn, forward the certification(s) to Treasury. Contractor shall cause the language of this Section VIII.A. to be included in all Subcontracts. This certification is a material representation of fact upon which Unit has relied when entering into this Contract, and all liability arising from an erroneous representation shall be borne solely by Contractor.
- B. Contractors that bid or apply for a contract exceeding \$100,000 (including this Contract, if applicable) also must file with Unit the certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.
- C. Contractor also shall cause any Subcontractor with a Subcontract (at any Tier) exceeding \$100,000 to file with the Tier above it the certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.

IX. Procurement of Recovered Materials

- A. Section IX.B. shall apply if (1) this Contract involves the purchase of an item designated by the Environmental Protection Agency ("EPA") in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Unit's preceding fiscal year exceeded \$10,000.
- B. In the performance of the Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot (1) be acquired competitively within a timeframe providing for compliance with the Contract performance schedule, (2) meet Contract performance requirements, or (3) be acquired at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available on EPA's website. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

X. Prohibition on Contracting for Covered Telecommunications Equipment or Services

- A. Definitions. Unless otherwise defined in this Contract, capitalized terms used in this Section X shall have the meanings ascribed thereto in this Section X.A.
 - 1. "Backhaul" means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
 - 2. "Covered Foreign Country" means the People's Republic of China.
 - 3. "Covered Telecommunications Equipment or Services" means (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.
 - 4. "Critical Technology" means (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).
 - 5. "Interconnection Arrangements" means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
 - 6. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
 - 7. "Substantial or Essential Component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

8. "Telecommunications Equipment or Services" means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

B. Prohibitions.

1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obtaining or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
2. Unless an exception in Section X.C. applies, Contractor and any Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Federal Funds) received from a federal government to:
 - a. Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system; or
 - d. Provide, as part of its performance of this Contract, any Subcontract; any other contractual instrument; or any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system.

C. Exceptions.

1. This clause does not prohibit Contractor or Subcontractors from providing:
 - a. A service that connects to the facilities of a third party, such as Backhaul, Roaming, or Interconnection Agreements, or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment that:
 - i. Is not used as a Substantial or Essential Component of any system and
 - ii. Is not used as Critical Technology of any system.
 - b. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

D. Reporting Requirement

1. In the event Contractor identifies, during contract performance, covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system or as Critical Technology as part of any system, or if Contractor is notified of such by a Subcontractor at any Tier or by any other source, Contractor shall report the information in paragraph D.2(d)(2) of this Section X to Unit, unless procedures for reporting the information are established elsewhere in this Contract.
2. Contractor shall report the following information to Unit pursuant to paragraph D.1 of this Section X:
 - a. Within one business day from the date of such identification or notification: contract number; order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within ten business days of submitting the information in paragraph D.2.a. of this Section: any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe (i) the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services and (ii) any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

- E. *Subcontractor.* Contractor shall cause to be inserted into all Subcontracts and other contractual instruments relating to the performance of this Contract the substance of this Section X, including this paragraph E.

XI. Domestic Preferences for Procurements

A. For purposes of this Section XI, the terms below are defined as follows:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.
2. "Manufactured Products" means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

- B. As applicable, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials Produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other Manufactured Products. Contractor shall cause any Subcontractors to include the requirements of this Section XI in any Subcontracts.

XII. Solicitation of Minority and Women-Owned Business Enterprises

- A. If Contractor intends to let any Subcontracts, Contractor shall (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.
- B. For the purposes of Section XII.A., an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the N.C. General Statutes (hereinafter G.S.), and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

XIII. Prompt Pay Requirements

- A. Contractor must pay all subcontractors for satisfactory performance within 30 days from receipt of payment from the Unit. Any withheld retainage from a subcontractor must be paid to the subcontractor within 30 days from satisfactory final completion of the subcontract work. For the purposes of this Section XIII, a subcontractor's work is satisfactorily finally completed when all of the tasks outlined in the subcontract has been accomplished and documented. Any of the subcontractor's work partially accepted by the Contractor shall be deemed to be satisfactorily completed for purposes of triggering the prompt payment requirements of this Section.
- B. At any time during the performance of the Work that Contractor does not adhere to the prompt payment requirements of this Section XIII, the Unit may withhold payment owed the Contractor, including any retainage withheld by the Unit, until Contractor provides proof that subcontractor(s) have been paid current to that time.

XIV. Access to Records

- A. Contractor agrees to provide Unit, the Department of the Federal Administering Agency or Agencies, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Contractor which are directly pertinent to this Contract to conduct audits or any other investigations. Contractor agrees to permit any of the foregoing parties to reproduce such records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- B. Contractor agrees to retain all records covered by this Section XIV for all activities or work funded in whole or in part by funds provided pursuant to the Federal Funding Act for 3 years, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract. **Special Note: State of North Carolina law and funding requirements mandate that such records, for the Underlying Contract, be retained for 6 years. Notwithstanding the 3-year retention requirement under this Section XIV, Contractor shall adhere to the 6 year retention requirement of State law.**

XV. Conflicts of Interest; Gifts and Favors

- A. Contractor understands that (1) Unit will use Federal Funds to pay for the cost of this Contract and (2) the expenditure of Federal Funds is governed by the conflict of interest policy of the Unit – the **City Of Hendersonville Conflict Of Interest Policy Applicable To Contracts And Subawards Of The City Of Hendersonville Funded In Whole Or In Part With Federal Funds**, the Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c)(1)), and North Carolina law (including, without limitation, G.S. 14-234(a)(1) and -234.3(a)).
- B. Contractor certifies to Unit that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Unit involved in the selection, award, or administration of this Contract (each a "Covered Individual"); no member of a Covered Individual's immediate family; no partner of a Covered Individual; and no organization (including Contractor) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Contractor. Should Contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.
- C. Contractor certifies to Unit that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Unit. Should Contractor obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.

XVI. Assurances of Compliance with Title VI of the Civil Rights Act of 1964

- A. Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Federal Administering Agency or Agencies' Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et*

seq., as implemented by Federal Administering Agency or Agencies' Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.

XVII. Other Non-Discrimination Statutes

- A. Contractor acknowledges that Unit is bound by and agrees, to the extent applicable to Contractor, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Federal Funds:
1. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Federal Administering Agency or Agencies's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

XVIII. Miscellaneous

- A. *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Unit encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- B. *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Unit encourages Contractor to adopt and enforce policies that ban text messaging while driving.
- C. *Reporting.* The Contractor shall make such reports for the benefit of the Unit as are required by the Federal Administering Agency, and shall cause all subcontractors to make such required reports, including but not limited to all reports required by the Federal Funding Accountability and Transparency Act (FFATA).

- XIX. Special Provisions.** The Federal Administering Agency has promulgated contractual requirements, which are contained in the Supplemental Provisions, Attachment 2, the terms of which are specifically incorporated herein by reference, and Contractor agrees to be bound thereby. To the extent Attachment 2 conflicts with the requirements of this Federal Funding Addendum, Attachment 2 shall take precedence.

XX. Conflicts and Interpretation

- A. To the extent that any portion of this Addendum conflicts with any term or condition of this Contract expressed outside of this Addendum, the terms of this Addendum shall govern.

CONTRACTOR:

By: _____

Name: _____

Title: _____

UNIT:

By: _____

Name: _____

Title: _____

TO

FEDERAL FUNDING ADDENDUM**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of the undersigned's knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Date

Name and Title of Contractor's Authorized Official

Date

TO FEDERAL FUNDING ADDENDUM**SUPPLEMENTAL PROVISIONS REQUIRED BY 23 CFR 172****FEDERAL HIGHWAY ADMINISTRATION'S PROCUREMENT, MANAGEMENT AND ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICES**

In addition to the rights granted to the Unit in the Underlying Agreement, the following provisions apply. As used herein "Underlying Agreement" refers to the agreement and federal funding addendum to which this Attachment is attached. As used herein "Contractor" includes consultants, and "subcontractor" includes "subconsultants." To the extent this Attachment 2 conflicts with the Underlying Agreement, this Attachment 2 shall take precedence.

1. Rights in Data and Copyrights.

- a. *Definition of "Subject Data."* As used in this Attachment, "subject data" means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Underlying Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Underlying Agreement.
- b. *Federal Rights in Data and Copyrights.* The Contractor agrees that it must provide a license to its subject data to the Federal Government that is royalty-free, non-exclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes; and
- c. *Restrictions on Access to Patent Rights.* Nothing in the Underlying Agreement or this Attachment pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- d. *Data Developed Without Federal Assistance or Support.* The Contractor agrees that in certain circumstances it may need to provide to the Federal Government data developed without any federal assistance or support. Nevertheless, this Attachment generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Underlying Agreement. The Contractor agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
 - 1) *Requirements to Release Data.* The Contractor understands and agrees that the Federal Government may be required to release data and information that the Contractor submits to the Federal Government as required under the Freedom of Information Act (FOIA), 5 U.S.C. § 552;
 - 2) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the accompanying Underlying Agreement, and any Amendments thereto.

2. Record Retention and Access to Sites of Performance.

- a. *Types of Records.* The Unit and Contractor agree to retain, and will require all subcontractors to retain, complete and readily accessible records related in whole or in part to the Underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. *Retention Period.* All records shall be maintained for three years.
- c. *Access to Recipient and Third Party Participant Records.* The Unit and Contractor agree, and assures that each subcontractor, if any, will agree to:
 - 1) Provide, and require its subcontractors at each tier to provide, sufficient access to inspect and audit records and information related to the Underlying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General's duly authorized representatives;
 - 2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to the Underlying Agreement under the control of the Unit, Contractor and their subcontractors, within books, records, accounts, or other locations; and
- d. *Closeout.* Closeout of the Award does not alter the record retention requirements of this section of this Master Agreement.

3. Appendix A of the Title VI Assurances (US DOT Order 1050.2A). During the performance of the Underlying Agreement, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a. *Compliance with Regulations:* The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. *Non-discrimination:* The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- c. *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:* In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- d. *Information and Reports:* The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the

contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what effort it will make to obtain the information.

- e. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration, may determine to be appropriate, including, but not limited to:

- 1) withholding payments to the contractor under the contract until the contractor complies; and/or
- 2) cancelling, terminating, or suspending a contract, in whole or in part.

- f. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

4. **Appendix E of the Title VI Assurances (US DOT Order 1050.2A).** During the performance of the Underlying Agreement, the Contractor, for itself, its assignees, and successors in interest (collectively hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- c. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- d. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- i. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

5. Federal Cost Principles. At all times, Contractor shall adhere to the Federal Cost Principles as contained in 48 CFR Chapter 1, Subchapter E, Part 31 of the Federal Acquisition regulation for determination of allowable costs of commercial, for-profit entities.

Signature of Contractor's Authorized Official

Date

Name and Title of Contractor's Authorized Official

Date

Evaluation Criteria	Possible Points	Equinox	Kimley Horn	Mattern & O'Connell	SEPI	TGS	AECOM	CEC
Firm Experience: List relevant experience with similar projects, include contact information.	25	91	94	90	89	89	88	83
Project Team: Describe qualifications, experience, registration and licensure of key team members who will remain actively involved through project.	25	94	95	91	91	91	91	86
Project Approach and Methodology: Detail strategic approach that the team will take to help the project meet budget and deadlines, while meeting high performance standards.	25	93	98	84	93	86	96	84
Funding and Regulatory Organizations: Describe the Firm's experience with funding (STBG-DA, PARTF and WRDG) and regulatory agencies.	15	54	54	49	49	40	52	45
Workload and Resources: Illustrate how the Firm and Team has more than enough resources and workload capacity to support the apparent needs of this project.	10	32	32	30	35	32	32	35
POINT TOTAL	100	364	373	344	357	338	359	333
SUM OF RANKS		11	7	21	12	25	14	26
RANK OF SUMMARY SCORES		2	1	5	4	6	3	7

Proclamation

Homeless Youth Awareness Month

WHEREAS, the month of November is designated as National Homeless Youth Awareness Month as declared by the U. S. House and Senate in 2007 and serves as an outlet to increase public awareness of an ongoing issue occurring in every city across the United States; and

WHEREAS, the nation's public schools report between 1.5 and 2.3 million homeless students grades pre-k through 12th grade; and

WHEREAS, we realize that when adolescents become homeless, being separated from their caregivers and homes for various reasons, which often places them in precarious situations; that school is often the most safe and stable environment for these youth; and

WHEREAS, we recognize in Henderson County that roughly 2.5 percent of our youth are identified as homeless; and

WHEREAS, Only Home WNC, Inc. is a local non-profit whose mission is to promote the value of education, honor individuality and diversity, nurture respect for self and others, and provide hope for young people in need in the community; and

WHEREAS, an effort is being made by the board members of Only Hope WNC, Inc. by hosting its 11th Annual Sleep Out on November 4 - November 5 at the Historic Courthouse on Main Street in Downtown Hendersonville in an effort to draw attention and support for youth homelessness in Henderson County.

NOW, THEREFORE, the City Council of the City of Hendersonville does hereby proclaim the month of November 2022 as

“Homeless Youth Awareness Month”

in the City of Hendersonville and applaud the efforts of those who serve and help fight youth homelessness in Henderson County.

PROCLAIMED this 3rd day of November 2022

Seal

Barbara G. Volk, Mayor
City of Hendersonville

Attest:

Daniel Heyman, Deputy City Clerk

Proclamation

National American Indian Heritage Month

WHEREAS, the history and culture of our great nation have been significantly influenced by American Indians and indigenous peoples; and

WHEREAS, the contributions of American Indians have enhanced the freedom, prosperity, and greatness of America today; and

WHEREAS, their customs and traditions are respected and celebrated as part of a rich legacy throughout the United States; and

WHEREAS, Native American Awareness Week began in 1976 and recognition was expanded by Congress and approved by President George Bush in August 1990, designating the month of November, as National American Indian Heritage Month; and

WHEREAS, in honor of National American Indian Heritage Month, community celebrations as well as numerous cultural, artistic, educational, and historical activities have been planned.

NOW, THEREFORE, I, Barbara Volk, Mayor of the City of Hendersonville, do hereby proclaim the Month of November 2022 as

“American Indian Heritage Month”

in the City of Hendersonville and urge all our citizens to observe this month with appropriate programs, ceremonies and activities.

PROCLAIMED this 3rd day of November 2022.

Seal

Barbara G. Volk, Mayor
City of Hendersonville

Attest:

Angela Reece, City Clerk

Proclamation

In Appreciation of

Four Seasons Compassion for Life Foundation Dr. Janet Bull, Chief Medical Officer

Upon the Occasion of Her Retirement

WHEREAS, on the first day of October 2022, after serving the past twenty-two years as a Chief Medical Officer of the Compassion for Life Foundation, DR. JANET BULL departs leaving behind her an impressive legacy of service. We, the Governing Body of Hendersonville wish to publicly extend our congratulations to Dr. Janet Bull in her retirement and to acknowledge her contributions which were built on the foundation of knowledge she contributed throughout her career; and

WHEREAS, DR. JANET BULL began her career practicing obstetrician-gynecology and through her dedication to caring for patients with serious illnesses she began volunteering with hospice and eventually switched her specialty to hospice care; and

WHEREAS, DR. JANET BULL was instrumental in bringing palliative care to our community by providing serious illness care prior to patients needing hospice care; and

WHEREAS, during her two decades of service DR. JANET BULL has provided innovative clinical trial studies that have impacted the care of many patients within our community and nationally.

NOW, THEREFORE, I, Barbara Volk, Mayor of the City of Hendersonville, and City Council Members wish to recognize the many years of service to our community by DR. JANET BULL on the occasion of her retirement and to thank her for her dedicated service to our community.

PROCLAIMED this 3rd day of November 2022.

Seal

Barbara G. Volk, Mayor
City of Hendersonville

Attest: _____
Angela Reece, City Clerk

The City of Hendersonville Mayor takes pleasure in presenting this

Certificate of Commendation

to

Franklin Black

for

distinguishing himself through dedicated selfless service by giving of his time and talent in restoring and painting The Free Little Library #155314 box located in the City of Hendersonville's Sullivan Park. The natural talent of creatively painting the library to look like a tree house with diverse characters will encourage children and teens in this city to read more! Franklin has also helped dedicate countless hours to participate in the Sullivan Park Refresh project. His efforts and leadership are sincerely appreciated. Mr. Black's performance is in keeping with the highest standards and reflect distinct credit upon himself, and the City of Hendersonville. Thank you Franklin for being an advocate for improving literacy and positively impacting the Green Meadows Community.

Awarded this _____ day of _____ 2022

Barbara G. Volk, Mayor



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet **MEETING DATE:** 11/3/2022

AGENDA SECTION: PRESENTATION **DEPARTMENT:** Administration

TITLE OF ITEM: Recognition of Andy Brogden and Patrick Warren – Tom Wooten, Public Works Director

SUGGESTED MOTION(S):

NA

SUMMARY:

Andy Brogden and Patrick Warren have both just recently completed their ASE Vehicle Maintenance certifications and we would like to recognize them for their dedication and hard work.

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? EnterTextHere

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS:

Certificates



National Institute for
**AUTOMOTIVE
SERVICE
EXCELLENCE**

Be it known that

JAMES A BROGDEN

has successfully passed the examinations and met the work experience requirement prescribed by the National Institute for Automotive Service Excellence and is hereby **ASE CERTIFIED** in the service areas listed below.

MASTER AUTOMOBILE TECHNICIAN

AREAS OF DEMONSTRATED ACHIEVEMENT

ENGINE REPAIR

AUTOMATIC TRANSMISSION/TRANSAXLE

MANUAL DRIVE TRAIN AND AXLES

SUSPENSION AND STEERING

BRAKES

ELECTRICAL/ELECTRONIC SYSTEMS

HEATING AND AIR CONDITIONING

ENGINE PERFORMANCE

EXPIRES

DECEMBER 31, 2026

DECEMBER 31, 2026

DECEMBER 31, 2026

JUNE 30, 2027

JUNE 30, 2027

DECEMBER 31, 2027

DECEMBER 31, 2027

DECEMBER 31, 2027

** ** * ** * ** * ** * ** * ** * ** * ** * ** * ** * ** * ** * ** * ** *

GIVEN THIS 16TH DAY OF SEPTEMBER 2022, AT LEESBURG, VIRGINIA

ASE-5835-8649

ASE IDENTIFICATION NUMBER

Timothy A. Zilke

TIMOTHY A. ZILKE, President



National Institute for
**AUTOMOTIVE
SERVICE
EXCELLENCE**

Be it known that

PATRICK R WARREN

has successfully passed the examinations and met the work experience requirement prescribed by the National Institute for Automotive Service Excellence and is hereby **ASE CERTIFIED** in the service areas listed below.

MASTER AUTOMOBILE TECHNICIAN

AREAS OF DEMONSTRATED ACHIEVEMENT

EXPIRES

ENGINE REPAIR	DECEMBER 31, 2026
AUTOMATIC TRANSMISSION/TRANSAXLE	JUNE 30, 2027
MANUAL DRIVE TRAIN AND AXLES	JUNE 30, 2027
SUSPENSION AND STEERING	JUNE 30, 2027
BRAKES	DECEMBER 31, 2027
ELECTRICAL/ELECTRONIC SYSTEMS	DECEMBER 31, 2027
HEATING AND AIR CONDITIONING	DECEMBER 31, 2027
ENGINE PERFORMANCE	DECEMBER 31, 2027
** ** ** ** **	** ** ** **

GIVEN THIS 30TH DAY OF SEPTEMBER 2022, AT LEESBURG, VIRGINIA

ASE-5785-5612

ASE IDENTIFICATION NUMBER

Timothy A. Zuke
TIMOTHY A. ZUKE, President



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Lu Ann Welter **MEETING DATE:** November 4, 2022

AGENDA SECTION: Presentation Only **DEPARTMENT:** Human Resources

TITLE OF ITEM,
Presenter Name, Title: Quarterly MVP Recipients – *John Connet, City Manager*

SUGGESTED MOTION(S): None

SUMMARY:

The Service Excellence Design Team voted these employees as the MVPs for the July through September quarter of 2022.

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? No

If no, describe how it will be funded.

PROJECT NUMBER: N/A

PETITION NUMBER: N/A

ADDITIONAL PETITION NUMBER: N/A

PETITIONER NAME: N/A

ATTACHMENTS:

PowerPoint Presentation



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Buchanan

MEETING DATE: 11/3/2022

AGENDA SECTION: Presentations

DEPARTMENT: Finance

TITLE OF ITEM: Fiscal Year 2022 Audit Presentation – *John Buchanan, Finance Director*

SUGGESTED MOTION(S):

None

SUMMARY:

Tim Lyons, with Mauldin & Jenkins, CPAs will present the Fiscal Year 2022 audit.

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? EnterTextHere

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS:



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

PLANNING DIVISION

SUBMITTER: Matthew Manley **MEETING DATE:** November 3, 2022

AGENDA SECTION: Public Hearing **DEPARTMENT:** Community Development

TITLE OF ITEM: Zoning Text Amendment: Multi-Family in the 7th Ave MSD (P22-75-ZTA) – Matthew Manley, AICP – Planning Manager

SUGGESTED MOTION(S):

For Recommending Approval:

I move City Council **adopt** an ordinance amending the official City of Hendersonville Zoning Ordinance, Article XVI. – Supplementary Standards for Certain Uses, Section 16-4-24 Residential dwelling, multi-family, with the modifications to the petition as presented by staff based on the following:

1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The Future Land Use Designations of ‘Downtown Core’ and ‘Downtown Support’ call for recommended land uses and design guidelines that align with the proposed zoning text amendment.

2. We [find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

1. The addition of multi-family residential as a permitted use will allow for greater infill development in a zoning district with a mix of intense land uses.
2. The addition of multi-family residential as a permitted use will place more residents within close proximity to goods and services.
3. The addition of multi-family residential as a permitted use will provide for a variety of housing types at different price points.
4. The reduction of setbacks will allow for more efficient use of land and provide more opportunities for infill development.

For Recommending Denial:

I move City Council **deny** an ordinance amending the official City of Hendersonville Zoning Ordinance, Article XVI. – Supplementary Standards for Certain Uses, Section 16-4-24 Residential dwelling, multi-family, based on the following:

1. The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The Future Land Use Designations of ‘Downtown Core’ and ‘Downtown Support’ call for recommended land uses and design guidelines that align with the proposed zoning text amendment.

2. We [do not find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

1. The reduction of front setbacks would permit a more distinctly urban form.
2. The allowance of additional density would be incompatible with commercial uses in the 7th Ave MSD.
3. The provision to permit 50% of first floor for residential uses for buildings fronting 7th Ave would result in the loss of viable commercial property.

[DISCUSS & VOTE]

5. The provisions maintaining non-residential uses along frontages on 7th Ave will support a vibrant mixed-use district as redevelopment occurs along the corridor.

[DISCUSS & VOTE]

SUMMARY: *The City of Hendersonville is in receipt of a petition for a zoning text amendment from Dan Mock to address the Supplementary Standards for Multi-Family Residential uses in the 7th Ave area. Currently, the portions of the 7th Ave area that are zoned C-2 only permit Multi-Family within the boundaries of the 7th Ave Depot National Register Historic District (NRHD).*

As proposed, Sec. 16-4-24 - which only applies to Multi-Family uses in the C-2 Zoning District - would be amended to expand Multi-Family uses to a larger area encompassing the 7th Ave Municipal Service District (MSD).

As proposed, Sec. 16-4-24 would also be amended to strike the provision that Multi-Family uses would be limited to the second floor of buildings. In response to the applicant's request, the Planning Board recommends that the provision limiting multi-family to second floors be amended to state "upper" floors and that the provision remain in place for the 7th Ave NRHD but this limitation would only partially be in place for Multi-Family uses in C-2 should that use be expanded to the remainder of the MSD. This limited provision would restrict first floor residential uses to 50% for buildings footprint for those buildings fronting 7th Ave. Residential uses on the first floor would not be permitted to front on 7th Ave but could have an access door fronting 7th.

The Planning Board supported passage of this ordinance voting 5-1.

PROJECT/PETITIONER NUMBER:	P22-75-ZTA
PETITIONER NAME:	Dan Mock
ATTACHMENTS:	<ol style="list-style-type: none"> 1. Staff Report 2. Planning Board Summary 3. Supplementary Text Amendment Map 4. Draft Ordinance 5. Application

Ordinance #O-22-58

AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND ARTICLE XVI. – ‘SUPPLEMENTARY STANDARDS FOR CERTAIN USES’, SECTION 16-4-24 ‘RESIDENTIAL DWELLING, MULTI-FAMILY’ OF THE CITY OF HENDERSONVILLE ZONING ORDINANCE TO INCLUDE MULTI-FAMILY RESIDENTIAL USES WITHIN THE SEVENTH AVENUE MUNICIPAL SERVICE DISTRICT AND TO ADDRESS OTHER RELATED SUPPLEMENTARY STANDARDS

WHEREAS, the Planning Board reviewed this petition for a zoning text amendment at its regular meeting on September 12, 2022; voting 5-1 to recommend City Council adopt an ordinance amending the City of Hendersonville Zoning Ordinance, and

WHEREAS, City Council took up this application at its regular meeting on November 3, 2022, and

WHEREAS, City Council has found that this zoning text amendment is consistent with the City’s comprehensive plan, and that it is reasonable and in the public interest for the reasons stated, and

WHEREAS, City Council opened the public hearing on October 6, 2022, continued the public hearing to November 3, 2022 and has conducted a public hearing as required by the North Carolina General Statutes on November 3, 2022,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville to amend Article XVI. – ‘Supplementary Standards for Certain Uses’, Section 16-4-24 ‘Residential dwelling, multi-family’ to permit multi-family residential uses within the Seventh Avenue Municipal Service District and to address other related Supplementary Standards.

16-4-24 Residential dwellings, multi-family.

- a) The property must be within the Seventh Avenue ~~Depot National Register Historic District~~ **Municipal Service District**
- b) Multi-family dwellings may only be permitted on the ~~second~~ **upper** floors **within the Seventh Avenue Depot National Register Historic District.**
- c) **Any building fronting Seventh Avenue within the Seventh Avenue Municipal Service District, but outside of the Seventh Avenue Depot National Register Historic District, shall primarily reserve ground floor space along the Seventh Avenue street-frontage for non-residential uses. Alternatively, ground-floor residential dwellings may be permitted as an accessory use in the following special circumstances:**
 - i. **Size: A maximum of 50% of Square Footage on ground floor may be utilized for residential uses**
 - ii. **Access: Access points to ground or upper floor residential spaces may be located at any point on the front, side, or rear of a building, which may include an access point adjacent to any ground floor non-residential space along the primary street front.**
 - iii. **Frontage: Ground floor residential dwellings may front upon an alley and/or private or non-street public spaces under the following circumstances:**

a. **Notwithstanding any building code provisions, frontage upon private property shall provide a permanent access easement to the closest public right-of-way.**

e ~~d~~) There shall be no maximum density other than the minimum dwelling size is 400 square feet.

~~d) Multi-family dwellings must be occupied by three or more families living independently of each other.~~

e) **The minimum front setback may be reduced to 0’ within the 7th Ave Municipal Service District. Any off-street parking provided shall be located to the side or rear of a building.**

Adopted by the City Council of the City of Hendersonville, North Carolina on this 3rd day of November 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Daniel Heyman, Deputy City Clerk

Approved as to form:

Angela S. Beeker, City Attorney

ZONING TEXT AMENDMENT: MULTI-FAMILY IN 7th AVENUE (P22-75-ZTA)
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT 12



PROJECT SUMMARY

- Project Name & Case #:
 - Multi-Family in 7th Ave MSD
 - P22-75-ZTA
- Applicant:
 - Dan Mock
- Articles Amended:
 - Section 16-4-24 Residential dwellings, multi-family
- Applicable Zoning District(s):
 - C-2, Secondary Business (only within 7th Ave Districts)
- Future Land Use Designation:
 - Downtown Core
 - Downtown Support
- Planning Board - Legislative Committee Meeting:
 - August 30, 2022
- Downtown Advisory Board - Downtown Economic Vitality Committee Meeting:
 - September 6, 2022
- Summary Basics:
 - Expand Multi-Family uses to 7th Ave MSD while preserving ground-floor storefront for non-residential uses

Summary of Amendment Petition:

The City of Hendersonville is in receipt of a petition for a zoning text amendment from Dan Mock to address the Supplementary Standards for Multi-Family Residential uses in the 7th Ave area. Currently, the portions of the 7th Ave area that are zoned C-2 only permit Multi-Family within the boundaries of the 7th Ave Depot National Register Historic District (NRHD).

As proposed, Sec. 16-4-24, which only applies to Multi-Family uses in the C-2 Zoning District, would be amended to expand Multi-Family uses to a larger area encompassed by the 7th Ave Municipal Service District (MSD).

As proposed, Sec. 16-4-24 would also be amended to strike the provision that Multi-Family uses would be limited to the second floor of buildings.

Staff is proposing that Multi-Family be extended to the MSD. However, staff is proposing that the provision limiting multi-family to second floors be amended to state “upper” floors and that the provision remain in place for the NRHD but this limitation would only partially be in place for Multi-Family uses in remainder of the MSD.

AMMENDMENT ANALYSIS – AMENDMENT OVERVIEW

Multi-Family in 7th Ave Depot National Register Historic District (NRHD): Multi-Family residential is a permitted use within the C-2 zoning district only for those properties located within a small area within the boundaries of the 7th Ave Depot National Register Historic District (NRHD). In total there are 15 parcels zoned C-2 within the NRHD. Outside of the NRHD, properties zoned C-2 only allow single/two-family residential and Minor PRD developments. In other words, multi-family uses are not permitted in the C-2 outside of the NRHD.

There are a total of 27 parcels within the NRHD along with portions of rights-of-way that include the railroad and historic depot. The 7th Ave NRHD is split zoned between CMU (12 parcels) and C-2 (15 parcels). Within the NRHD, both districts permit Multi-Family with no density cap. The primary distinctions between the districts being the minimum front setbacks (C-2: 20' / CMU: 12') and maximum height (C-2: 48' / CMU: 64').

7th Ave Municipal Service District (MSD): The “7th Ave area” could be perceived as a reference to the entire corridor from the intersection at US 64 (to the west) to the Oklawaha Greenway / Mud Creek floodplain (to the east) along with some of the adjacent side streets. The area described above is much larger than the NRHD and more closely reflects the 7th Ave Municipal Service District (MSD).

The 7th Ave MSD is one of two MSD’s in the City (the other being the Downtown MSD). These are special tax districts that collect additional property tax revenue that is reinvested towards physical improvements and economic development strategies which support businesses and facilitate redevelopment in these areas. Some of the funds generated by the 7th Ave MSD are utilized in conjunction with the

Downtown Municipal Service District =
\$0.24 tax per \$100 valuation
7th Ave Municipal Service District =
\$0.17 tax per \$100 valuation

Friends of Downtown funds to provide support for the Farmers Market, plantings and landscaping maintenance. The 7th Avenue District is also slated to receive district “branding” and additional signage as well as extensive Streetscaping improvements. The streetscaping project will be constructed in phases with phase I located in the NRHD and phases II & III extending down the rest of the corridor to the Oklawaha Greenway.

Both the 7th Ave NRHD and the 7th Ave MSD are referenced in the Zoning Ordinance. The references to the MSD relates to a provision waiving parking minimums (there are no parking minimums for uses within the 7th Ave MSD boundaries). As previously mentioned, The 7th Ave NRHD boundaries are used to dictate where Multi-Family uses are permitted within the portions of the NRHD that are zoned C-2. The proposed text amendment would align an area where parking minimums are currently waived with an area where Multi-Family would be permitted.

While the 7th Ave area has seen a great deal of redevelopment in recent years, most of that redevelopment activity has occurred within the NRHD. As public improvements are implemented and economic interest in this corridor continues to grow, redevelopment is expected expand further east.

Allowing for Multi-Family uses and reducing setbacks along the entire 7th Ave corridor while retaining commercial space on lower floors would promote additional opportunities

SITE IMAGES



View of 7th Ave NRHD



Existing Buildings in the 7th Ave MSD

SITE IMAGES



Existing Buildings in the 7th Ave MSD



Vacant Lot in the MSD

SITE IMAGES



Conventional multi-family with 35'-40' setback in the MSD



*Existing “missing middle” apartment building in MSD with 0’
Setback – under contract by applicant*



Existing Service Use in the MSD



Far eastern edge of 7th Ave MSD – two properties in background are under contract by the applicant

COMMITTEE RECOMMENDATIONS

The Legislative Committee of the Planning Board met to discuss this petition at their meeting on Tuesday, August 30, 2022. The members of the committee that were present were Neil Brown, Jim Robertson, Stuart Glassman and Peter Hanley. The applicant, Dan Mock was also present. Mr. Mock presented his case for the proposed changes. In general, the Committee members were supportive of the proposed text changes with consideration given to preservation of commercial storefronts at the ground level along 7th Ave. Discussion revolved around changes in character between the 7th Ave NRHD and the 7th Ave MSD as well as changes in character block by block as you move east to west along 7th Ave within the MSD. Highlighted was the importance of maintaining a vibrant, pedestrian-friendly experience along 7th Ave as redevelopment occurs.

The Economic Vitality Committee of the Downtown Advisory Board considered this issue on September 6 and were generally supportive of the staff recommendations.

The Downtown Advisory Board considered this issue at both their September 13th and October 11th meetings. There were some reservations expressed. Primarily the concern related to full preservation of commercial/nonresidential space on the entirety of groundfloors along 7th Ave.

STAFF ANALYSIS

The zoning text amendment, as submitted by the applicant, is proposed to be amended as follows:

16-4-24 Residential dwellings, multi-family.

- a) The property must be within the Seventh Avenue ~~Depot National Register Historic District~~ Municipal Service District
- ~~b) Multi-family dwellings may only be permitted on the second floor.~~
- ~~e~~b) There shall be no maximum density other than the minimum dwelling size is 400 square feet.
- ~~d~~c) Multi-family dwellings must be occupied by three or more families living independently of each other.

After additional review and consideration, the Planning Board is recommending the following revisions to the zoning code found below. The basis for the changes are outlined on the following page:

16-4-24 Residential dwellings, multi-family.

- a) The property must be within the Seventh Avenue ~~Depot National Register Historic District~~ Municipal Service District
- b) Multi-family dwellings may only be permitted on the ~~second~~ upper floors within the Seventh Avenue Depot National Register Historic District.
- c) Any building fronting Seventh Avenue within the Seventh Avenue Municipal Service District, but outside of the Seventh Avenue Depot National Register Historic District, shall primarily reserve ground floor space along the Seventh Avenue street frontage for non-residential uses. Alternatively, ground-floor residential dwellings may be permitted as an accessory use in the following special circumstances:

- i. Size: A maximum of 50% of Square Footage on ground floor may be utilized for residential uses
- ii. Access: Access points to ground or upper floor residential spaces may be located at any point on the front, side, or rear of a building, which may include an access point adjacent to any ground floor non-residential space along the primary street front.
- iii. Frontage: Ground floor residential dwellings may front upon an alley and/or private or non-street public spaces under the following circumstances:
 - a. Notwithstanding any building code provisions, frontage upon private property shall provide a permanent access easement to the closest public right-of-way.

~~e d~~) There shall be no maximum density other than the minimum dwelling size is 400 square feet.

~~d) Multi-family dwellings must be occupied by three or more families living independently of each other.~~

e) The minimum front setback may be reduced to 0' within the 7th Ave MSD. Any off-street parking provided shall be located to the side or rear of a building.

There is general support for the expansion of multi-family uses within the MSD with the revisions proposed for item a).

As it relates to the proposed striking of item b) and the expansion of multi-family uses within the MSD, the potential impact of ground-level, street-front residential uses was of particular concern. Maintaining ground-floor storefronts and a continuous street wall are strategies with the Downtown Core designation of the Future Land Use Map in the City's Comprehensive Plan. Best Planning Practices would also encourage commercial mixed-use districts to maintain non-residential uses on primary corridors. The vision for 7th Ave is that of a lively district with a mix of commercial and residential uses. The provision of dense residential uses is essential to the economic welfare of the district. However, these residential uses should not come at the expense of the pedestrian-level experience along 7th Avenue. Staff is proposing a balanced approach to this issue with the proposed revisions under items b) & c) below. The addition of item e) also helps to achieve these goals.

Item d) is also proposed by staff to be stricken from these standards. The Zoning Code definition for multi-family already exist and mirrors this standard. Elimination of a requirement for multi-family dwellings to be occupied by 3+ families will reduce redundancy in the Code.

AMENDMENT ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

GENERAL REZONIGN STANDARDS: COMPREHENSIVE PLAN CONSISTENCY

Land Use & Development	Goal LU-10. Downtown Core: Maintain, enhance, and grow Downtown as a vibrant, mixed-use gathering place and cultural center with an emphasis on retail, arts and entertainment uses. Maintain a highly urban, pedestrian-focused environment through building and streetscape design.
	Strategy LU-10.1. Locations: 7 th Ave [CONSISTENT]
	Strategy LU-10.3. Secondary recommended land uses: • Multi-family residential [CONSISTENT] • Live-work units [CONSISTENT]
	Strategy LU-10.4. Development guidelines: • Continuous “street wall” with buildings adjacent to the sidewalk [CONSISTENT] • Rear parking or limited side parking only [CONSISTENT] • Window coverage and façade articulation on storefronts [INCONSISTENT]
	Strategy LU-10.5. Create a 24-hour environment that supports an expanding residential base in the downtown. Encourage services such as convenience shops, drug stores, and specialty food stores that support downtown housing [CONSISTENT].
	Goal LU-11. Downtown Support: Support the Downtown retail core and create a transition between Downtown Core and adjacent residential neighborhoods.
	Strategy LU-11.1. Locations: • Area between Downtown Core and Jackson Park [CONSISTENT] • Transitional areas between Downtown Core and neighborhoods to the north, south, and west [CONSISTENT]
	Strategy LU-11.2. Primary recommended land uses: • Offices [CONSISTENT] • Single-family attached and multi-family residential [CONSISTENT] • Live-work units [CONSISTENT] • Public and institutional uses [CONSISTENT] • Arts and entertainment establishments [CONSISTENT] • Structured or underground parking [INCONSISTENT]
	Strategy LU-11.4. (Downtown Support) Development guidelines: • Minimal front setback [CONSISTENT] • Rear or limited side parking only [CONSISTENT] • Façade articulation [INCONSISTENT] • Ground-floor storefronts and/or architectural detailing on parking structures [LIMITED]
	Growth Management Map: Area designated as “ Priority Infill Area ” - Areas that are considered a high priority for the City to encourage infill development on remaining vacant lots and redevelopment of underutilized or underdeveloped properties [CONSISTENT]
	Strategy LU-1.1. Encourage infill development and redevelopment in areas planned for high-intensity development as indicated by the “Priority Infill Areas” on Map 8.3a. Action LU-1.1.1. Review zoning standards and revise as necessary to enable compatible infill projects. [CONSISTENT]

	<p>Strategy LU-3.5 Minimize negative impacts from growth and land use changes on existing land uses. Some zoning map changes and other development applications may create short-term incompatibilities with existing neighborhoods, even if they are consistent with the Future Land Use Plan. It is critical that City officials consider the full range of impacts of all development applications, in addition to conformance with the Future Land Use Plan.</p> <p>Action LU-3.5.1 Consider a full range of short- and long-term impacts when reviewing zone change applications and other proposals that introduce land use changes. When reviewing zone change applications, the City should consider whether applications demonstrate a clear public purpose as well as the criteria listed in Figure 8.3a. [CONSISTENT]</p>
	<p>Strategy LU-3.6. - Update the Zoning Code to ensure conformance with the Comprehensive Plan. The Zoning Code is the City's primary regulatory tool in implementing the Comprehensive Plan. Amendments to the Zoning Code and Map will be necessary to reflect Comprehensive Plan recommendations and ensure orderly growth and development. [CONSISTENT]</p>
Population & Housing	Strategy PH-1.1 – Promote compatible infill development
	Strategy PH-1.4. Allow redevelopment and/or reuse of single-family homes that directly front on arterials into office or high-density residential uses in coordination with the Future Land Use Map.
	<p>Goal PH-2. Encourage a wide range of housing types and price points in order to meet the diverse and evolving needs of current and future residents, match the housing supply with the local workforce, and promote diverse neighborhoods.</p>
	<p>Goal PH-3. Promote safe and walkable neighborhoods.</p> <p>Action PH-3.1.1. Encourage pedestrian-friendly design features in residential developments, such as recessed or rear garages and front porches in single-family development, and rear parking lots and front entrances in multi-family developments.</p>
	Strategy PH-3.2 - Encourage mixed land use patterns that place residents within walking distance of services.
Natural & Environmental Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Cultural & Historic Resources	Goal CR-1. Preserve the viability and individuality of Hendersonville's historic neighborhoods in order to maintain their role in supporting community pride, livability and identity.
	Strategy CR-1.3. Promote investment in and adjacent to Historic Districts through compatible infill development, particularly on currently underutilized, non-historic properties.
	Strategy CR-4.3. Support increased Downtown housing and office density in order to support retail uses and create a 24-hour environment.
Community Facilities	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Water Resources	There are no Goals, Strategies, or Actions that are directly applicable to this petition.
Transportation & Circulation	Strategy TC-1.1. Encourage mixed-use, pedestrian-friendly development that reduces the need to drive between land uses.

GENERAL REZONING STANDARDS

Compatibility	<p>Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property –</p> <p><i>Multi-family: The 7th Ave MSD contains a wide-range of land uses including: multi-family and single-family residential uses; automobile service, retail, restaurants, services for those in need, art galleries, and vacant land. The area is also home to the historic depot and the location of the City’s farmers market.</i></p> <p><i>Commercial uses on ground floors: This provision is in place currently and is currently found in the district. This provision would remain in place in full for the NRHD where mixed use is most likely to continue to occur and would remain in place in part in the MSD with provision maintaining non-residential uses on first floor frontage along 7th Ave</i></p> <p><i>Setbacks: Minimum front setbacks are currently found in some locations in the MSD. A reduction in setbacks allows for greater flexibility and more efficient utilization of land. A more walkable urban form is achieved by - allowing for buildings to be brought closer to the street to form a “street wall” and by reducing minimum setbacks which allows for the shifting of parking to the rear of a lot.</i></p>
Changed Conditions	<p>Whether and the extent to which there are changed conditions, trends or facts that require an amendment -</p> <p><i>New activity such as the opening of new businesses, adaptive reuse and renovation of existing buildings has grown in frequency in the 7th Ave Area. This activity is likely to occur along the corridor extending east. There is a well-documented growth in demand and undersupply of housing in our region.</i></p>
Public Interest	<p>Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -</p> <p><i>Multi-family: As is well-documented in the City’s Comprehensive Plan, there is a need for compatible infill development in areas of the City where utilization of existing infrastructure can be realized and in areas that place residents in close walking distance to goods and services. The addition of multi-family residential would help to address this need while providing a variety of housing types.</i></p> <p><i>Commercial uses on ground floors: This provision will help to achieve a vision for a lively district with a mix of commercial and residential uses and a positive pedestrian-level experience.</i></p> <p><i>Setbacks: Reducing front setbacks and allowing for the shifting of parking to the rear of lots supports a built environment that is more friendly to pedestrians by creating a greater sense of enclosure as is found in areas such as Main St and the 7th Ave District.</i></p>
Public Facilities	<p>Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment</p> <p><i>The 7th Ave MSD is in an urban location that is well served by public facilities.</i></p>
Effect on Natural Environment	<p>Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife</p> <p><i>There are no known or anticipated negative environmental impacts associated with the petition.</i></p>

DRAFT COMPREHENSIVE PLAN CONSISTENCY AND REZONING REASONABLENESS STATEMENT

The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The Future Land Use Designations of 'Downtown Core' and 'Downtown Support' call for recommended land uses and design guidelines that align with the proposed zoning text amendment.

We [find] this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

DRAFT [Rationale for Approval]

- 1) The addition of multi-family residential as a permitted use will allow for greater infill development in a zoning district with a mix of intense land uses.*
- 2) The addition of multi-family residential as a permitted use will place more residents within close proximity to goods and services.*
- 3) The addition of multi-family residential as a permitted use will provide for a variety of housing types at different price points.*
- 4) The reduction of setbacks will allow for more efficient use of land and provide more opportunities for infill development.*
- 5) The provisions maintaining non-residential uses along frontages on 7th Ave will support a vibrant mixed-use district as redevelopment occurs along the corridor.*

DRAFT [Rational for Denial]

- 1) The allowance of additional density would be incompatible with commercial uses in the 7th Ave MSD.*
- 2) The reduction of front setbacks would permit a more distinctly urban form.*

PLANNING BOARD RECOMMENDATIONProject #: P22-75-ZTAMeeting Date: September 12, 2022PETITION REQUEST: Zoning Text Amendment – Multi-Family in 7th Ave MSD

APPLICANT/PETITIONER: Dan Mock

PLANNING BOARD ACTION SUMMARY:

Staff gave a presentation on the request, the feedback from the committee level, and reviewed the guidance from the Comprehensive Plan and the criteria for considering a zoning text amendment. Planning Board considered this item for approximately 50 Minutes.

The applicant, Dan Mock, gave a 10-Minute presentation on the proposal emphasizing the need for multi-family within the 7th Ave MSD and his desire to invest in and enhance property in the area.

One member of the public spoke and asked questions related to the development:

- I. Ken Fitch, 1046 Patton St – Mr. Fitch desired clarity that this only applies to C-2 within the 7th Ave MSD. He also expressed concerns related to parking standards in this district. He also suggested that the final decisions related to 7th Ave branding and input from HPC would be important for guiding design standards for new development.

The Planning Board discussed and showed support for the provision to retain a commercial component on the first floor and recognized that the request is essentially to make the district a “mixed-use” district. One Planning Member, Fred Nace, expressed concerns with the idea of “recruiting ‘hipsters’” to the district. Other members of the Planning Board viewed the statement as a “poor choice of words” and that the petitioner’s intent was to attract younger residents. Further, it was pointed out that the discussion about “who” would live in these multi-family units is a function of the market and not a function of the zoning ordinance (outside of any future provisions that would require income-based inclusionary zoning). Mr. Nace also expressed concerns for allowing multi-family by-right (under 50 units) within this district.

MOTION:

Mr. Hanley made a motion to approve the petition. The motion passed 5-1 with the following language.

COMPREHENSIVE PLAN CONSISTENCY AND REASONABLENESS STATEMENT:

The petition is found to be consistent with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

The Future Land Use Designations of ‘Downtown Core’ and ‘Downtown Support’ call for recommended land uses and design guidelines that align with the proposed zoning text amendment.

REASONABLENESS STATEMENT

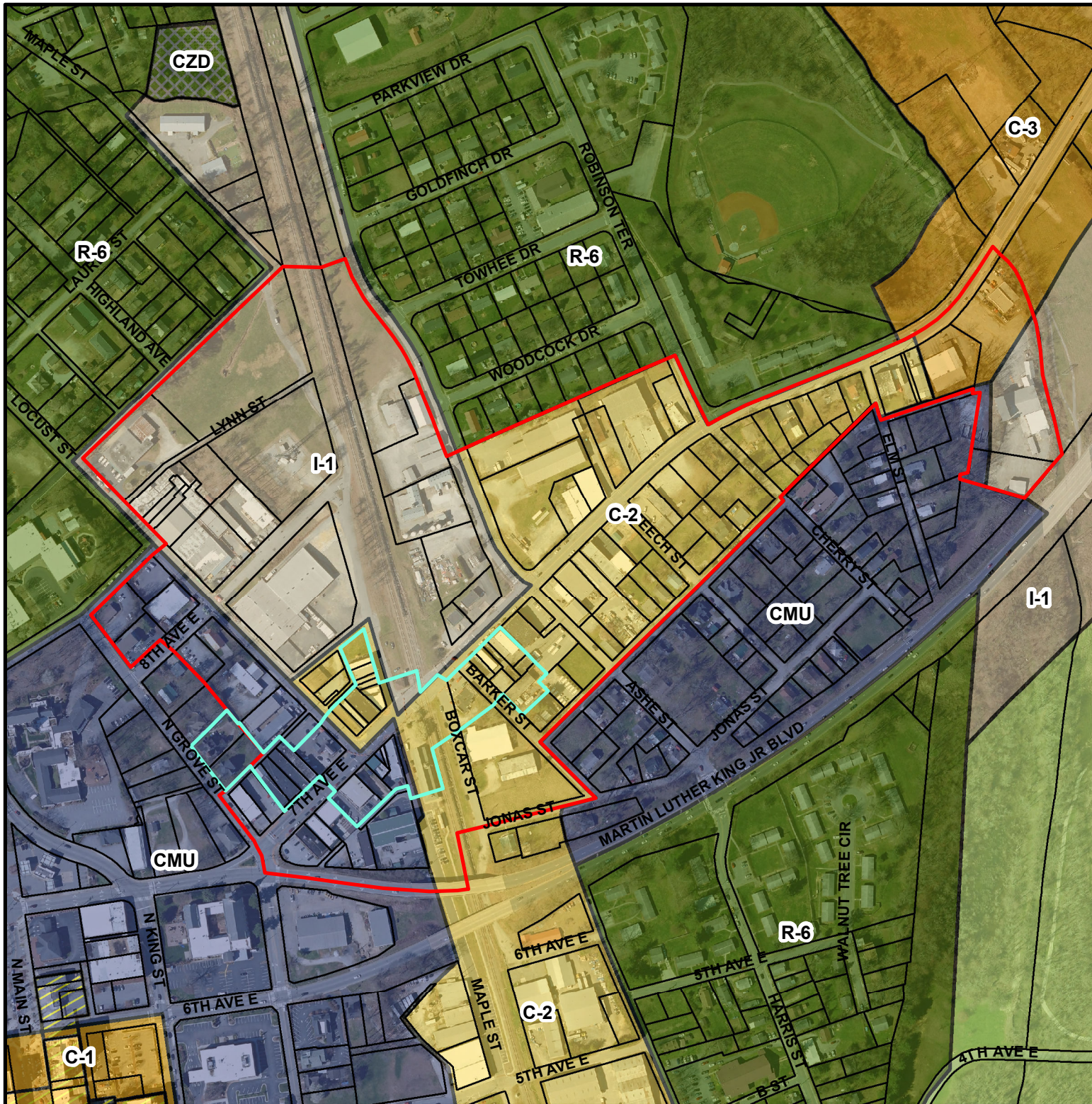
We find this petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

[Rationale for Approval]

- 1. *The addition of multi-family residential as a permitted use will allow for greater infill development in a zoning district with a mix of intense land uses.*
- 2. *The addition of multi-family residential as a permitted use will place more residents within close proximity to goods and services.*
- 3. *The addition of multi-family residential as a permitted use will provide for a variety of housing types at different price points.*
- 4. *The reduction of setbacks will allow for more efficient use of land and provide more opportunities for infill development.*
- 5. *The provisions maintaining non-residential uses along frontages on 7th Ave will support a vibrant mixed-use district as redevelopment occurs along the corridor.*

BOARD ACTION

- **Motion/Second:** Hanley / Brown
- **Yeas:** Hanley, Robertson, Brown, Martin, Flores
- **Nays:** Nace
- **Absent:** Cromar, Blatt, Glassman, Peacock
- **Recused:** N/A



7th Ave. ZTA
P22-72-ZTA
Current Zoning, MSD & Historic District
Community Development Department

- 7th Ave Depot National Register Historic District
 7th Avenue Municipal Service District
- Hendersonville Zoning**
- CZD Conditional Zoning Districts
 - MSH Main Street Historic Overlay District
 - R-15 Medium Density Residential
 - R-6 High Density Residential
 - C-3 Highway Business
 - C-2 Secondary Business
 - C-1 Central Business
 - CMU Central Mixed Use
 - I-1 Industrial





**CITY OF HENDERSONVILLE
DEVELOPMENT ASSISTANCE DEPARTMENT**

100 N. King St. ~ Hendersonville, NC ~ 28792

Phone (828) 697-3010 ~ Fax (828) 697-6185

www.cityofhendersonville.org

**ZONING ORDINANCE TEXT AMENDMENT
Sections 4-1 and 11-1 of the City Zoning Ordinance**

The following are required to constitute a complete application for a zoning text amendment:

~ This form.

~ Appropriate fee.

Applications for zoning text amendments are due at least 30 days prior to any Planning Board Meeting.

Date 8/1/22

Section of Ordinance proposed to be changed 16-4-24

Proposed change

- a) The property must be within the Seventh Avenue Municipal Service District.
- b) There shall be no maximum density other than the minimum dwelling size is 400 square feet.
- c) Multi-family dwellings must be occupied by three or more families living independently of each other.

Reason for change

- a) Keep the use consistent with the 7th Ave Historic District.
- b) Balance out the housing affordability index by mixing in market rate housing with the existing affordable housing.
- c) Promote continued development along the 7th Ave corridor.
- d) Increase the safety of its residents and neighborhood.
- e) Restore neighborhood blight to creatively designed architectural buildings consistent with the neighborhood and surrounding areas.
- f) Create a more walkable, usable and friendly environment.

Applicant Name Dan Mock

Address 638 Spartanburg Hwy, Ste 70-338, Hendersonville, NC 28792

Phone 310-750-7117

Fax

E-mail dan@rockwooddevelopment.com

Signature

Official Use:

DATE RECEIVED: _____ BY _____ FEE RECEIVED \$ _____

Section 11-4 Standards The advisability of amending the text of this Zoning Ordinance or the Official Zoning Map is a matter committed to the legislative discretion of the City Council and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment to the text of this Ordinance or the Official Zoning Map, the City Council shall consider the following factors among others:

a) Comprehensive Plan Consistency. Consistency with the Comprehensive Plan and amendments thereto.

The proposal to include multifamily in the 7th Ave. Municipal Service District is supported by the future land use map designation for this area.

b) Compatibility with surrounding uses. Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property.

The proposed amendment is compatible with existing multifamily uses surrounding the subject property.

c) Changed conditions. Whether and the extent to which there are changed conditions, trends or facts that require an amendment.

Significant redevelopment has occurred and continues to occur along the 7th Ave corridor and the City has plans for improved street scaping along the entire corridor.

d) Public Interest. Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare.

The proposed amendment would greatly benefit the surrounding neighborhood as new market rate units would likely balance out the affordable units while promoting new commercial and retail development and increasing the safety of the residents and neighborhood.

e) Public facilities. Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment.

The proposed amendment will have little to no impact to public facilities and services as the majority of the infrastructure would be unchanged due to the fact that it is an existing building.

f) Effect on natural environment. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, stormwater management, streams, vegetation, wetlands and wildlife.

The proposed amendment should have little to no impact on the natural environment since it is an existing building.



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

John Connet

MEETING DATE:

11/03/2022

AGENDA SECTION:

UNFINISHED BUSINESS

DEPARTMENT:

Administration

TITLE OF ITEM:

Establishment of Social Districts in Downtown Hendersonville – Council Member Simpson

SUGGESTED MOTION(S):

I move that City Council direct staff to develop a proposal to establish Social Districts in Downtown Hendersonville in the following manner: _____.

SUMMARY:

The establishment of social districts were discussed several months ago. The City Council agreed to discuss the idea during Council Conversations. Upon the completion of the Council Conversations, Council Member Simpson has request that this item be placed back on the agenda for additional discussion.

BUDGET IMPACT: \$ TBD

Is this expenditure approved in the current fiscal year budget? EnterTextHere

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS:

Social District Fact Sheet

North Carolina's Updated Laws on Social Districts

In September 2021, Governor Roy Cooper signed into law House Bill 890 (HB 890) – ABC Omnibus Legislation – which passed both the House and Senate with bi-partisan support. Included in HB 890 was a provision allowing local governments to create social districts in North Carolina. The North Carolina Retail Merchants Association (NCRMA) was the major interest group pushing for the passage of this important legislation to drive foot traffic to downtown businesses and level the playing field for brick-and-mortar businesses with ABC permits. In a little less than a year since the enactment of HB 890, nearly twenty municipalities have successfully created social districts in towns as small as Norwood to cities as big as Greensboro. Numerous other cities are investigating the creation of social districts based on how successful the social districts have become with customers and businesses alike.

The passage of legislation creating social districts also resulted in some legal questions posed to the North Carolina Alcoholic Control Commission, Alcohol Law Enforcement, and local city attorneys.

In June 2022, House Bill 211 (HB 211) – Social District/Common Area Clarifications - passed both the House and Senate with bi-partisan support and was subsequently signed into law by the Governor on July 7, 2022. This legislation provides some much-needed clarity to the original social district legislation and includes more detail on the inter-workings of social districts.

The sections of the North Carolina General Statutes regulating social districts contained in HB 890 were repealed and replaced with a brand-new section of Chapter 18B to regulate social districts. However, any social districts created in 2021 remain in place. The information detailed below provides context on North Carolina's initial law allowing for the creation of social districts and clarifications to this law established via the recent passage of HB 211.

What is a Social District?

A social district is a defined area in which a person may consume alcoholic beverages sold by an ABC permittee located within the social district. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area during the days and hours set by the local government in creating the social district. A social district may include privately owned property, including permittees and non-permittee businesses, and multi-tenant establishments, as well as public streets, crosswalks, or parking areas whether the streets or parking areas are closed to vehicle traffic.

This revised definition clears up any confusion as to whether a social district can cross a public street or road and whether a social district may be created in a privately owned area of a local government jurisdiction, such as a shopping center. It also clarifies that a social district may include both indoor and outdoor areas of businesses within, or contiguous to, the defined area during the days and hours set by the local government. It should be noted that it is the sole decision of a business located within the geographic area of a social district whether to participate in the activities of the social district.

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Who Can Designate a Social District?

Neither HB 890 nor HB 211 created a statewide social district, but instead allows cities and counties to “opt-in” to social districts via an ordinance.

- A city may adopt an ordinance designating an area within the municipal limits as a social district under G.S. 160A-205.4.
- A county may adopt an ordinance designating a social district from an area located outside a municipal boundary under G.S. 153A-145.9.
- Once created, a local government may also eliminate a social district by ordinance.
- HB 211 did clarify that a local government may create more than one social district within its jurisdiction.

What are the Requirements for a City or County to Create a Social District?

- Social districts must be clearly defined, and signage must be posted in conspicuous locations indicating:
 - The geographic area included in the social district.
 - The days and hours during which alcoholic beverages can be consumed in the social district.
 - The telephone number for the ALE Division and Local Law Enforcement with jurisdiction over the social district.
 - A clear statement that an alcoholic beverage purchased for consumption in a social district shall:
 - only be consumed within the social district and
 - be disposed of before the person possessing the alcoholic beverage exits the social district unless the person is reentering the licensed ABC premises where the alcoholic beverage was purchased.
- Social districts are only allowed to operate during hours defined under G.S. 18B-1004:
 - From 7:00 am until 2:00 am Monday – Saturday; and
 - From Noon until 2:00 am on Sunday
 - If the local government has allowed for earlier Sunday Sales, a social district may operate beginning at 10:00 am on Sunday
- A local government creating a social district is required to establish management and maintenance plans for the social district and post these plans, along with a drawing of the boundaries and the applicable days and hours of the social district, on the local government’s website. A social district must be maintained in a manner that protects the health and safety of the general public.
 - Under HB 211, a local government is now authorized to delegate the management and maintenance of the social district to a private entity, such as a downtown development organization, local chamber of commerce or owner of a shopping center.
 - A local government may also establish guidelines in their social district allowing for suspension of regular days and hours of alcohol consumption in all or part of a social district during events requiring special events ABC permits.
- Before a social district can become operational, a local government must submit to the North Carolina Alcoholic Beverage Control (ABC) Commission a detailed map of the social district with the boundaries clearly marked and the days and hours during which alcoholic beverages can be consumed (G.S. 18B-904.1(c)(3)).
 - The ABC Commission has created a specific form for a local government to submit this documentation and can be found here:
 - [NC ABC Commission Social District Registration Link](#)
 - A local government is only required to submit a revised map to the ABC Commission if the local government changes the geographic area of a social district. It should be noted that a local government is not required to identify the businesses or ABC permittees located within the social district or if there is a change in businesses located within the social districts that are participating in the social district.

- A local government is required to develop or approve uniform signs indicating that a non-permittee is included in the social district and allows alcoholic beverages on its premises when the social district is active and distribute the signs to non-permittee businesses that are included in the social district.
 - The signs may be in the form of a sticker, placard, or other format as deemed appropriate by the local government.
 - A non-permittee participating in the social district and allowing alcohol on their premises is required to always display the uniform sign during the times when the social district is active.
 - A customer may not bring an alcoholic beverage into a non-permittee business that does not display the uniform sign.
 - A local government may now delegate the designing of signage, cups, and window clings to a private entity such as a downtown development authority, local chamber or property management group with the local government maintaining ultimate decision-making on these items.

Who Can Sell Alcohol in a Social District?

A business holding any of the following ABC permits may sell alcohol to be consumed in a social district:

- 1) An on-premises malt beverage permit issued pursuant to G.S. 18B-1001(1).
- 2) An on-premises unfortified wine permit issued pursuant to G.S. 18B-1001(3).
- 3) An on-premises fortified wine permit issued pursuant to G.S. 18B-1001(5).
- 4) A mixed beverages permit issued pursuant to G.S. 18B-1001(10).
- 5) A distillery permit issued pursuant to G.S. 18B-1001(5).
- 6) A wine shop permittee issued pursuant to G.S. 18B-1001(16).

Special one-time permits: The ABC Commission may issue special one-time permits pursuant to G.S. 18B-1002(a)(2) or (a)(5) for events occurring on premises located partially or entirely within the boundaries of a social district. This was an important clarification to the social district law contained in HB 211 because some local governments questioned whether they could create social district in an area where the local government conducted annual festivals where alcohol was sold.

What Additional Rules Do ABC Permittees Have to Follow to Sell Alcohol Within a Social District?

An ABC permittee must be located in or contiguous to the social district in which it is selling alcohol to be consumed.

The ABC permittee is only allowed to sell and serve alcoholic beverages on its licensed premises. In other words, the ABC permittee cannot sell alcoholic beverages in the street or down the street from its licensed premises just because the ABC permittee is located in, or contiguous to a social district.

Alcoholic beverages that are being sold to be consumed in a social district can only be sold in a container that meets all the following requirements:

- 1) The container clearly identifies the ABC permittee from which the alcoholic beverage was purchased.
- 2) The container clearly displays a logo or some other mark that is unique to the social district in which it will be consumed.
- 3) The container is not made of glass.
- 4) The container displays, in no less than 12-point font, the statement, “Drink Responsibly – Be 21.”
- 5) The container cannot hold more than sixteen fluid ounces.

A local government may now create its social district ordinance so an ABC permittee or non-permittee business can allow a customer to possess and consume on the business's premises alcoholic beverages purchased from any ABC permittee located in or contiguous to the social district.

- This is a major change from HB 890 enacted in 2021 which prohibited a customer who had purchased an alcoholic beverage from one ABC permittee to enter the premises of another ABC permittee located in the social district.

In summary, an ABC permittee in a social district is no longer prohibited from allowing a patron to enter their premises with an alcoholic beverage purchased at a different ABC permittee located within the social district if the local government chooses to write its social district ordinance to allow for this activity.

Another major policy change contained in HB 211 allows ABC permittee and non-permittee businesses in multi-tenant establishments to be included and participate in a social district. This allows for a social district to be created in an area that is privately-owned such as in a mixed-used shopping center which contains residential units as well as businesses that sell or do not sell alcohol.

If I am a Business in the Social District, but I Do Not Want Customers Coming into My Store with Alcoholic Beverages, Do I Have to Participate?

No, any business without an ABC permit located in, or contiguous to, the designated social district has the option to participate, or not, in allowing customers with beverages to enter their premises. For example, Printers' Books may remain open during designated social district hours but decide to post a sign that alcoholic beverages (or any beverages) are not allowed in their store even if they are located inside of the social district.

Likewise, a business with an ABC permit located in, or contiguous to, the social district may decide to participate or not participate in allowing customers to leave their premises with an open container.

HB 211 contained several clarifying changes concerning this question, including:

- A participating non-permittee business is now required to always display the uniform sign during the times when the social district is active as to whether the business allows for patrons to enter their business with alcohol.
- All non-permittee businesses that are part of a social district and allow customers to bring alcoholic beverages onto their premises are required to clearly post signage on any exits that do not open to the social district indicating that alcoholic beverages may not be taken past that point.
 - As example, if a non-ABC permittee has two points of ingress and egress with one point entering and exiting into the social district and one entering and exiting into an area not in the defined social district the business would have to post signage warning their customers not to exit the business with alcohol into the area not contained in the social district. This is to prevent a patron from unknowingly possessing an open container of alcohol outside of the social district.
- During the days and hours when the social district is active, a non-permittee business that allows customers to bring alcoholic beverages onto its premises is required to allow law enforcement officers access to the areas of the premises accessible by customers.
- In a major policy change from HB 890, HB 211 allows an ABC permittee or a non-permittee to possess and consume on the business' premises alcoholic beverages purchased from any permittee located in the social district. HB 890 previously prohibited a local government from creating a social district that allowed an ABC permittee to allow a customer to bring an alcoholic beverage from a different ABC permittee onto their premises. G.S. 18B-300.1(f) allows an ABC permittee to allow a person to bring an alcoholic beverage purchased at a different ABC permittee onto their premises. Again, while this activity is allowed, the decision on whether to allow for this activity within a social district is up to the local government and how the local government determines to write their ordinance creating a social district.

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What Requirements Do Customers Have to Follow Within a Social District?

A person can only possess and consume alcoholic beverages purchased from an ABC permittee located in, or contiguous to, the social district. A person cannot bring their own personal beer or wine into the social district for consumption.

A person, including a customer who is in possession of an open container of an alcoholic beverage, may possess alcoholic beverages in closed containers in a social district to the extent allowed by law (ex: a person can buy a beer to drink in the required social district cup and take a four-pack to consume at home from a bottle shop).

Any alcoholic beverages consumed in the social district must be consumed from the required container described above. In other words, a person cannot pour their wine or beer into a personal solo cup or any type of container other than the one meeting all the requirements for social districts.

Alcoholic beverages shall only be possessed and consumed in the social district during the days and hours set by the city or county. If a city designates an area as a social district from 9:00 pm until midnight on Friday and Saturday, a person cannot consume alcohol in the social district at 9:00 pm on Wednesday.

The sale and delivery of alcohol in a social district is subject to the same limitations for sales and deliveries of alcohol in North Carolina:

- No more than two malt beverages or wine drinks at one time to a single patron
- No more than one mixed beverage or spiritous liquor drink at one time to a single patron

A person is required to dispose of any alcoholic beverage in the person's possession prior to exiting the social district. In other words, if a person is leaving the social district area, they must pour out or throw away their alcohol.

Can Common Area Entertainment (CAE) Permits and Social Districts Co-Exist?

In 2019, prior to the enactment of social district authorizing legislation, the General Assembly passed SB 290 – ABC Regulatory Reform Bill – that created a Common Area Entertainment (CAE) Permit. While individual tenants in multi-tenant establishments, like food halls, were already allowed to serve alcohol within their defined premises – the multi-tenant establishment did not have its own permit to allow customers to flow within the “common area” itself.

This new CAE permit allowed the property owner or property owner's association of a “multi-tenant establishment” with two or more alcohol-permitted businesses to have a designated consumption area on the property where individuals could purchase alcohol at establishments and take the open containers of this alcohol (including beer, wine, and spirituous liquor) in specially-designated cups off the designated premises of those businesses into a designated consumption area, or back onto the premises of a business, with permission of the business owner.

Fast-forward to the 2021 legislative session, when the legislature passed HB 890 authorizing local governments to pass ordinances to designate social districts whereby customers of businesses located contiguous to the social district could take open containers of alcohol (including beer, wine, and spirituous liquor) in specially-designated cups off the premises of an ABC permitted establishment and into any areas designated as part of the social district.

During the 2022 legislative session, HB 211 included clarifying provisions to answer questions that arose on the interaction of CAE permits and social districts such as:

- Could CAEs be issued to mixed-use developments that had private streets open to vehicular traffic?
- Can local governments pass ordinances designating social districts in mixed-use developments and/or privately-owned property?
- Can a social district and a special event permit work in tandem?

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HB 211 makes the following clarifications to the existing CAE and social district laws to address those que

- A mixed-use development may obtain a CAE that encompasses the development, including privately owned streets, sidewalks, and courtyards and does not have to restrict or close these areas through the delineation of vertical boundaries.
- A city or county may pass a social district ordinance that encompasses a mixed-use development and/or private property and may delegate management of that social district to the property owner or property owner's association.
- Various types of special event permits may act in conjunction with social districts, and cities/counties have flexibility to implement this process. For example, street festivals in a downtown area can operate in conjunction with a social district.
- Property owners and cities/counties have flexibility to implement management and maintenance plans, which include limiting hours of consumption, creating signage, and providing security.

The CAE permit will continue to be issued to the owner or property owners' association of a multi-tenant establishment, but a common area would be defined as "an indoor or outdoor portion of a multi-tenant establishment that is open to the public" and the permit holder can designate common areas to be "designated consumption areas" where consumption of alcoholic beverages is allowed.

The designated consumption area may include:

- Any indoor or outdoor area of a permittee business that is contiguous to a designated common area or
- Any indoor or outdoor area of a non-permittee business that is contiguous to the designated common area and that chooses to allow customers to bring open containers of alcoholic beverages onto its premises.

Additional requirements and clarifications involving a CAE Permit:

- A permittee can be included in the designated consumption area even if it chooses to exclude open containers of alcoholic beverages purchased from other permittees.
- Non-permittee businesses are not responsible for enforcing the alcohol laws but must allow law enforcement officers access to the areas of the premises accessible by customers.
- The designated consumption areas must be submitted to and approved by the ABC Commission and be marked in a way that clearly indicates to customers where the boundaries of the designated consumption area are located.
- Open containers sold by a permittee for consumption in a designated consumption area must be in a container meeting several criteria, and the possession of closed containers would be allowed to the extent otherwise allowed by law.

City Manager Appropriation Target \$2,000,000							Council Recommendations				
Organization	ARP Funding Request	Staff Reviewed Funding	City Manager Funding	Total Score	Staff Rank	Council Appropriation	Debbie Roundtree	Lyndsey Simpson	Barbara Volk	Jennifer Hensley	Jerry Smith
	\$ 7,542,383	\$ 4,748,192	\$ 2,000,000			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Joseph's Outreach Ministries - Connections Center	1,500,000	1,500,000	800,000	95.80	1	-	-	-	-	-	-
Interfaith Assistance Ministry	393,784	393,784	-	92.00	2	-	-	-	-	-	-
Housing Assistance Corporation - Home Repair	250,000	250,000	360,000	90.20	3	-	-	-	-	-	-
Blue Ridge Community Health	330,093	330,093	-	89.00	4	-	-	-	-	-	-
Housing Assistance Corporation - Apple Ridge	1,674,315	1,674,315	-	88.00	5	-	-	-	-	-	-
Children and Family Resource Center	260,000	260,000	-	86.20	6	-	-	-	-	-	-
Safelight - Training	20,000	20,000	20,000	83.40	7	-	-	-	-	-	-
Pisgah Legal Services	320,000	320,000	320,000	80.80	8	-	-	-	-	-	-
Safelight - Phoenix Project (SANE)	100,000	-	-	78.60	9	-	-	-	-	-	-
Blue Ride Literacy Council	38,000	-	-	74.00	10	-	-	-	-	-	-
Safelight - New Facility	1,306,015	-	-	70.60	11	-	-	-	-	-	-
True Ridge	50,000	-	-	65.60	12	-	-	-	-	-	-
Latino Advocacy Coalition - El Centro	500,000	-	-	62.00	13	-	-	-	-	-	-
Mills River Partnership	90,000	-	-	57.60	14	-	-	-	-	-	-
Team ECCO	67,580	-	-	51.60	15	-	-	-	-	-	-
Hendersonville Theatre	112,596	-	-	48.60	16	-	-	-	-	-	-
Flat Rock Playhouse	500,000	-	-	45.40	17	-	-	-	-	-	-
WNC Air Museum	30,000	-	-	27.60	18	-	-	-	-	-	-
City of Hendersonville Crisis Response	-	-	500,000	-	-	-	-	-	-	-	-



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Electric Vehicle Infrastructure **MEETING DATE:** 11/03/2022
AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Administration
TITLE OF ITEM: Electric Vehicle Infrastructure Discussion – *Will Garvey. Environmental Sustainability Board Member*

SUGGESTED MOTION(S):

NA

SUMMARY:

Upon the request of Council Member Simpson, Will Garvey will make a presentation regarding the benefits of additional electric vehicle infrastructure in the Hendersonville.

BUDGET IMPACT: \$TBD

Is this expenditure approved in the current fiscal year budget?

If no, describe how it will be funded.

ATTACHMENTS:

None

Resolution #__-____

RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO SELECT A CONSULTANT TEAM TO PROVIDE PROFESSIONAL COMMUNITY PLANNING SERVICES FOR THE 2045 COMPREHENSIVE PLAN PROJECT AND DIRECT THE CITY MANAGER TO NEGOTIATE A CONTRACT WITH THE SELECTED FIRM

WHEREAS, the City of Hendersonville advertised a request for proposals for community planning services to complete the 2045 Comprehensive Plan for the City of Hendersonville and;

WHEREAS, the City included certain add-alternates to the request for proposals including the following: 1) Preparation of a Downtown Masterplan; 2) Preparation of a Comprehensive Transportation Plan; and 3) Rewrite of the City's Zoning Ordinance; and

WHEREAS, the Bolton Menk/Cole Jenest Stone team was determined, following internal review, to qualify for the interview round and further was the consensus top choice among the interview team; and

WHEREAS, the Planning Board reviewed the proposal review process and affirmed the results of the process recommending that the City Council pursue a contract with the Bolton Menk team for the completion of the 2045 Comprehensive Plan; and

WHEREAS, Staff supports the recommendation, and also recommends that 1) the initial scope of work for the contract include the Preparation of a Downtown Masterplan as part of the Comprehensive Plan scope of work, and 2) the contract includes the possibility of adding the Preparation of a Comprehensive Transportation Plan and Rewrite of the City's Zoning Ordinance to future scopes of work under the contract;

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

1. The City Manager is authorized to negotiate and enter into a contract in an amount not to exceed \$200,000 for the 2045 Comprehensive Plan community planning project with Cole Jenest Stone/Bolton and Menk on behalf of the City in consultation with the City Attorney, upon such terms and conditions as he deems appropriate, including but not limited to:
 - a. Determining the initial scope of work;
 - b. Breaking the scope of work into Phases if appropriate, and
 - c. Including, within the initial scope of work or as an amendment in the future, the ad alternates.
 - d. Amending the contract in the future to amend the scope of work or activate future phases, including the Preparation of a Comprehensive Transportation Plan and the Zoning Ordinance rewrite;

Provided, however, that the following conditions shall apply:

- a. The contract and any amendment(s) entered now or in the future shall only obligate the City to budgeted and available funds as of the date of the contract or any such amendment.

2. If negotiations fail, the City Manager is directed to negotiate a contract with the next most qualified firm based on the review and interview recommendations;

Adopted by the City Council of the City of Hendersonville, North Carolina on this 4th day of November, 2022.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form: _____ Angela S. Beeker, City Attorney



PROPOSAL FOR CITY OF HENDERSONVILLE, NC

Comprehensive Plan Update
August 31, 2022

Grant Meacci, PLA, LEED AP
Senior Urban Designer
910-409-5076
Grant.Meacci@bolton-menk.com

200 South Tryon Street | Suite 1400 | Charlotte, NC 28202
704-376-1555 | Bolton-Menk.com



Cole Jenest & Stone
BOLTON & MENK, INC.

In partnership with

City Explained, Inc.
Nealon Planning, PLLC

Retail Strategies, LLC
Green Heron Planning, LLC



August 31, 2022

Mr. Lew Holloway
Community Development Director
City of Hendersonville, NC
160 6th Avenue
Hendersonville, NC 28792

200 South Tryon Street | Suite 1400
Charlotte, NC 28202
704-376-1555 | Bolton-Menk.com

RE: Proposal for RFP #231200001 for COH Comprehensive Plan Update

Dear Mr. Holloway:

It's been quite a while since our paths crossed in WNC in the mid-2000s, but one thing hasn't changed: the allure of the mountains. The City of Hendersonville has continued to be a gem of WNC, whose Main Street shines as an example that many towns and cities aspire to reach. So, it's no surprise that the popularity and growth resulting from creating such a great place has led to the desire from the city and its community to seek a renewal of their commitment to impactful policy changes that will shape Hendersonville for the next 25 years and beyond. Having the foresight to seek revisions now is wise. Imagine, after the past two years of pandemic and social unrest, a plan that was completed prior to the many changes that are shaping how people view their city, town, or neighborhood? In short, it's a great time to think about the future.

ColeJenest & Stone/Bolton & Menk and its talented partners are pleased to present our proposal to work with city staff and the community to thoughtfully develop a 2045 Comprehensive Plan, downtown plan, transportation plan, and updated zoning ordinance. One differentiator our team brings is the knowledge of having been in your seat, working with a consultant team to craft policies for your community. Our team's experience in public service gives us a unique understanding of how to lead projects like this from your vantage, and that knowledge helps us deliver plans, policies, and implementable projects that are reflective of your desires and a document that will not sit on the shelf.

Our team of urban designers, planners, and transportation engineers, coupled with a savvy and thorough engagement strategy, can help you deliver policies, strategies, and projects that are practical, measurable, and implementable. Just as our byline suggests, we are ready to work with you to provide a framework that continues to promote Hendersonville as a safe, sustainable, and beautiful community.

Project Understanding

The city displayed candor in addressing the shortcomings of the original 2009 document and reaffirming its economic and development goals for 2030 and 2045. Our proposed team has a wealth of planning knowledge and experience in similarly sized cities and towns across the state of North Carolina and beyond where we can draw lessons learned and craft solutions specific to Hendersonville. We understand the characteristics and nuances that make your city a destination for tourists, retirees, remote workers, businesses, and families of all types. This dynamic has only accelerated the desire and affordance for people to live in cities of their choice, and they choose great places first. We will carefully research historical demographics and economic factors, then look forward to forecasting the next generation of Hendersonville's community. This will be compiled and organized into a compelling plan with impactful policies, programs, and projects that will align with the city's vision.

We understand that the city wishes to include alternates to several elements that are critical in helping set an actionable future for Hendersonville. While we have provided estimates for these as separate items, we would highly encourage you to embed them into the process of updating the comprehensive plan for two reasons:

1. A comprehensive plan without transportation and downtown elements is simply incomplete. A plan with significant thought, put toward the heart of your community will answer all critical questions.

2. The efficiency of including them as elements in the planning process will save you money and extend our ability to help you within your budget (i.e. the costs of those individual line items will be reduced).

I have no doubt that we can co-create a great plan that includes all the elements you desire within your budget, but that takes a more detailed discussion with the Hendersonville team.

Summary of Approach

Our approach will create a compelling framework that will allow you to use each of the individual elements as standalone items (like the downtown plan) while still integrating those elements in the comprehensive plan process and final plan document. It will demonstrate our collective understanding of how the community has changed and how it will continue to evolve by documenting a vision that is universally supported, adaptable, and grounded. Think of it as a kit of parts that will define the policies, programs, and projects that will ensure that Hendersonville continues to be a great place. Our approach will

- **Celebrate great places and define the elements most important to community character**
- **Balance environmental sustainability and resiliency with continued growth**
- **Establish an equitable economic development strategy to ensure a prosperous future**
- **Strengthen mobility and connectivity throughout the community**
- **Find a seat at the table for all**

Our company has taken meaningful strides to implement an approach that we call Community-Centered Design as a way to ensure that our partnership with you will take an equitable approach to solutions and public engagement, while making sure every voice is heard. A healthy mix of both traditional and digital media will be used to cover the gamut of a geographically, socioeconomically, and a culturally diverse population. We are also experienced in “non-traditional” methods of communication including pop-up events and “front-porch” meetings. Immersive, direct communication with residents—facilitated in their local community—can remove barriers and be a catalyst for engagement.

Summary of Costs

We understand the necessity of having to make the hard choice of including Alternates based on your total budget. We firmly believe that we will be able to right-size our project approach and engagement strategy to stay within budget once we are able to have a conversation about how best to accomplish all of your project's goals. Our fee estimate total (before Alternates) is \$191,400 and Alternates 1&2 is \$80,000.

CJS/Bolton & Menk and our partners are the team with necessary knowledge, expertise, and national experience to assist the City of Hendersonville staff, elected officials, and residents on this important planning effort. I will serve as your lead contact for our team. Please contact me at 910-409-5076 or Grant.Meacci@bolton-menk.com if you have any questions regarding our proposal.

Respectfully submitted,
Bolton & Menk, Inc.



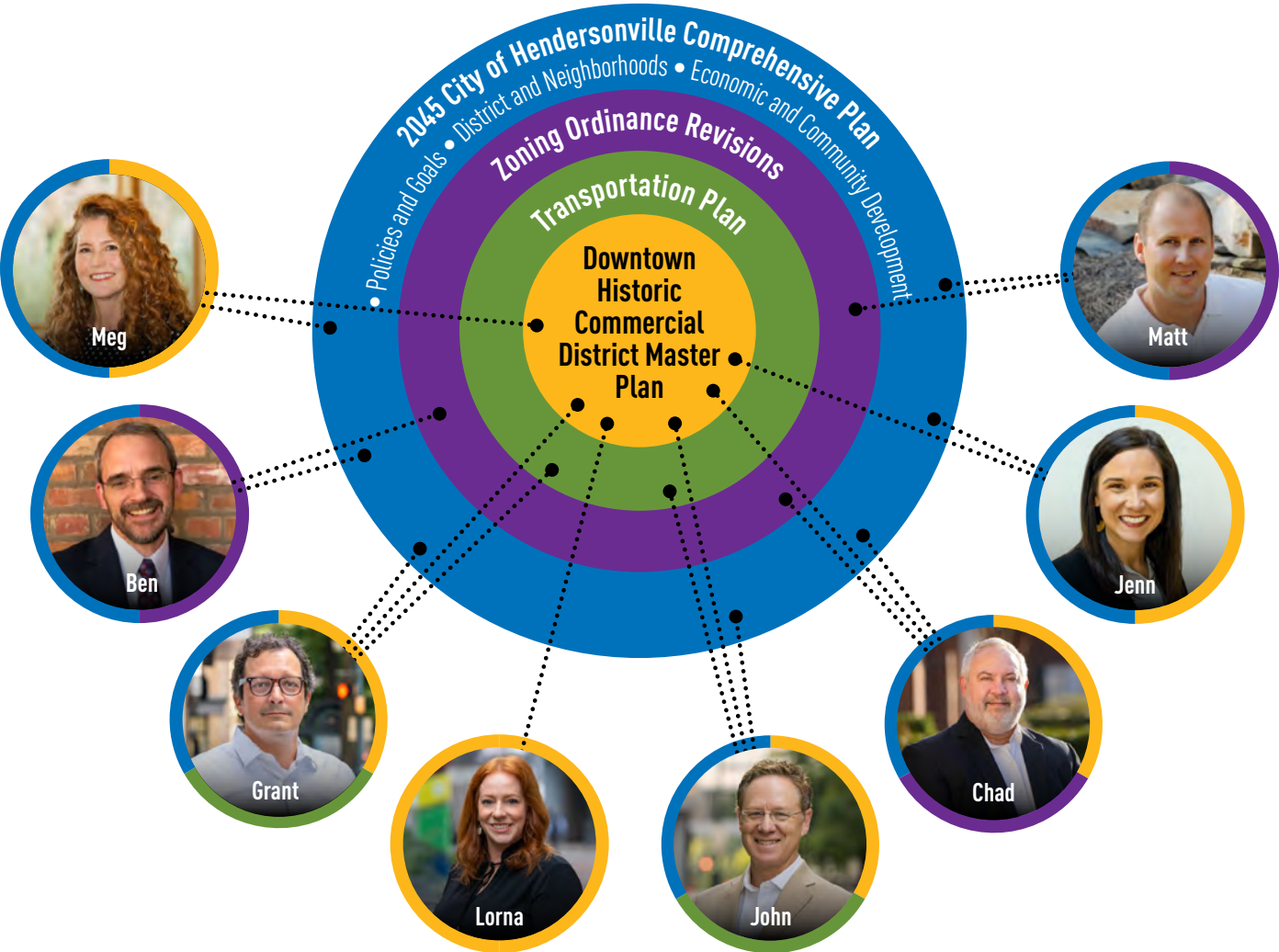
Grant Meacci, PLA, LEED AP
Senior Urban Designer

EXECUTIVE SUMMARY

Project Team

Project Team

We have assembled a great team. They are professionals known for their practical experience, creativity, collaboration, and commitment to improving communities.





GRANT MEACCI, PLA, LEED AP Senior Urban Designer

Grant will lead team coordination and the downtown plan element.

Grant is a senior urban designer at

Bolton & Menk and is a Professional Landscape Architect. Prior to joining our firm, Grant worked in public service as an assistant planning director managing the Urban Design and Preservation Division for the City of Charlotte and the Urban Design Center for the City of Raleigh. With 30 years of design and planning experience, he has led a wide variety of plans and design projects in both the public and private sector. That experience allows him to balance both practical and aspirational elements needed to develop plans and design strategies for redevelopment that lead to implementable actions and transformative change. His career has focused on designing projects that create vibrant places, enhance people's quality of life, and foster stronger community.



LORNA ALLEN, ASLA, PLA Project Manager

Lorna will be responsible for project management, the downtown plan, and public engagement elements.

Lorna provides extensive planning, urban design, and placemaking experience building consensus through community input and engagement. Her work has been published and has won state and national awards in master planning, communication, and site design.



MATT NOONKESTER, AICP (CITY EXPLAINED) Comprehensive Plan Co-Lead

Matt will be responsible for the comprehensive plan and scenario planning elements.

Matt has 25 years of progressive planning experience managing projects that help local, regional, and state government officials tackle difficult public policy planning issues. He has led or been part of 47 comprehensive plan projects in 19 states, including 16 in North Carolina. His grassroots approach energizes the community, and his ability to capture their vision in a document that does not overburden local government positions staff and elected officials well for implementation.



MEG NEALON, AICP, PLA (NEALON PLANNING) Comprehensive Plan Co-Lead

Meg will be responsible for the comprehensive plan and district/neighborhood focus area elements.

Meg has been assisting clients in the public and private sectors with complex planning and design efforts for more than 30 years. She is the founder of Nealon Planning. She combines her analytical capabilities, knowledge, and experience derived from a wide range of projects. She is focused on helping communities manage change while respecting the natural and cultural assets upon which their identities and economic opportunities are based.



JENN GREGORY (RETAIL STRATEGIES) Market, Retail, and Downtown Economic Analyst

Jenn will be responsible for the economic development element.

Jenn advises communities on market analysis, tourism, economic vitality, and design and assists businesses with their digital presence, omni-channel marketing, and understanding a post-COVID market. She joined Retail Strategies in 2019 with a 13-year career in community development and downtown revitalization. Prior to joining Retail Strategies, Jenn served as CEO of a regional development partnership which consisted of the chamber of commerce, visitors and convention council, county economic development, and the city main street organization.



BEN HITCHINGS, FAICP (GREEN HERON PLANNING, LLC) Implementation Lead

Ben will be responsible for the comprehensive plan implementation and zoning ordinance elements.

Ben is a School of Government Fellow and the principal of Green Heron Planning, LLC. He provides research, guidance, and teaching on land use and community planning to inform clients throughout North Carolina. A past president of the North Carolina chapter of the American Planning Association (APA-NC), Ben has almost 30 years of experience working on planning issues.



S. CHAD HALL, AICP
Urban Designer/Planner

Chad will be responsible for the district/neighborhood focus area elements and downtown plan.

Chad is a senior landscape designer who began his career in 1995. He is experienced in urban design and planning, advocating for sustainable Smart Growth and New Urbanist principles in various towns and cities throughout the southeast. He offers a well-rounded passion for creating high quality of life places. His diverse background illustrates creative ways to realize responsible aesthetic form and function.



JOHN COCK, AICP
Senior Transportation Planner

John will lead the transportation plan element.

Over the last two decades, John has worked on urban trail, bicycle, pedestrian, Complete Streets, and sustainable mobility solutions with communities throughout the southeast. He has led the transportation element of many comprehensive planning projects. John has special expertise in the areas of planning and design for walking and bicycling, land use and transportation integration, Complete Streets design, transit access, parking management, new mobility planning, project management, and group facilitation.



KATHERINE AMIDON, AICP
Public Engagement Lead

Katherine will be responsible for the comprehensive plan and public engagement.

Katherine is a senior environmental planner and hands-on project manager with a focus on planning, land use/water quality, stakeholder engagement, policy analysis assessment, and brownfields redevelopment. Katherine began her career in 2012 and as project manager for multiple municipal projects, she leads teams of professional engineers, landscape architects, planners, and subcontractors in environmental assessments, strategies, and planning. She is adept at applying standard project management principles to keep projects on track and clients and stakeholders engaged. She is an enthusiastic and engaging public speaker and enjoys coordinating with stakeholders and helping to build consensus for complex projects.



JIM MERTZ, GISP
GIS Lead

Jim will assist with public engagement and lead GIS analytics for all elements.

Jim began his career in 2011 and has served in a variety of roles on projects, including project management, transportation planning, public engagement, web application development, and spatial analysis. He is passionate about coordinating clients, communities, and stakeholders on projects. Jim's approach is based on his belief that all projects must meet the needs of those it affects.





FIRM OVERVIEW

Background | Similar Project Experience



Background

CJS/Bolton & Menk was founded in 1949 and our commitment to communities has remained throughout our history. We specialize in providing design and engineering solutions that make our communities safe, sustainable, and beautiful. Our goals are simple—**make progress by listening to what people want, finding the best solutions for their needs, and treating them right.**

We have provided planning and urban design services for many years; however, in 2021 we entered a new era, bringing **Placemaking, Planning, and Policy** services to the forefront of what we do as a company. Through carefully planned strategic hires and acquisitions, our team and expertise in these areas have expanded greatly in terms of staff, experience, and résumé. While still firmly grounded in our principles of local presence and long-term commitment, we now have expanded capabilities in small area planning, master planning, transit-oriented development planning and design, private development feasibility and planning, parks and open space planning and design, and urban design and placemaking. Alongside our expertise in transportation, water resources, funding, project communication, and related services, we offer a comprehensive approach for communities looking to make their vision a reality to help create and maintain great places.

With offices in Greenville, South Carolina; Raleigh and Charlotte, North Carolina, the greater Bolton & Menk team has been providing award-winning urban design and land planning solutions throughout the Southeast for more than 30 years.

The Bolton & Menk planning and urban design staff helps clients plan and design their future. Rooted in skilled technical analysis, visionary yet practical insights, and intentionally inclusive public engagement, we facilitate community-centered consensus for buildable, sustainable solutions. Our team helps solve multifaceted problems with technical, regulatory, funding, and community expertise. We deliver plans and designs for projects that transcend expectations.

Our team's **100+ professional planning, landscape architecture, surveying, and engineering staff throughout the Carolinas** carry these core values and principles into every project. Today, Bolton & Menk has nearly 800 employees throughout 26 locations in the Upper Midwest and Southeast United States, including a professional staff of more than 250 engineers, planners, landscape architects, and surveyors providing services to more than 500 communities and agencies that advocate for community.

We promise every client two things: we'll work hard for you and we'll do a good job. We take a personal interest in the work being done around us. At the end of the day, we're **Real People** offering **Real Solutions**.



Solutions Provided:

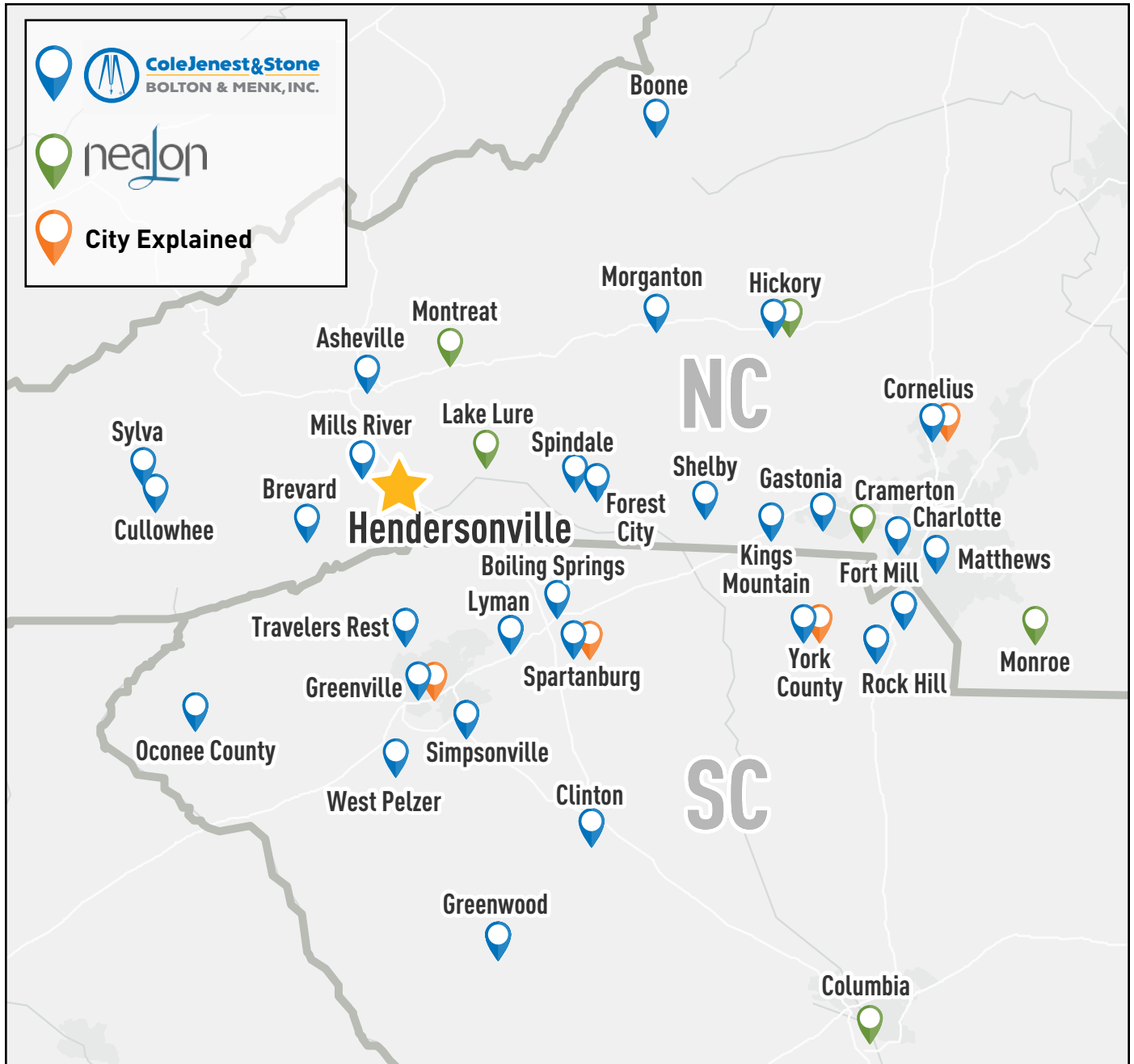
- Planning & Urban Design
- Transportation Planning & Engineering
- Geographic Information Systems
- Project Funding Support
- Project Communication
- Creative Studio Services
- Civil/Municipal Planning & Engineering
- Water & Wastewater Engineering
- Structural Services
- Aviation Services
- Water Resources Engineering
- Environmental Planning & Permitting
- Construction Administration & Inspection
- Land Surveying

Origin: St. Peter, MN (1949)

State of Incorporation: Minnesota

Current Size: 794 Employees

We provide planning, urban design, and placemaking services to many communities throughout the Western Carolinas and the U.S.



Similar Project Experience

2040 COMPREHENSIVE PLAN UPDATE

HOPKINS, MINNESOTA



CLIENT
City of Hopkins, MN

REFERENCE
Kersten Elverum
Director of Economic
Development & Planning
City of Hopkins
952-935-8474
kelverum@hopkinsmn.com

PLANNING + COMMUNITY ENGAGEMENT

As part of its required 2040 comprehensive plan update, the City of Hopkins wanted to shape a new vision for growth and development. The community was looking to leverage opportunities around three Green Line Extension light rail stations to support mixed use, transit-oriented development. It was also looking to support its downtown, strengthen residential areas and neighborhood nodes, and further goals around equity and sustainability.

Bolton & Menk led a team to work with the city to complete a plan update. The process included creative and inclusive outreach strategies, using a community advisory committee, numerous community meetings and pop-ups, an online interactive mapping interface, artist involvement in engagement, and topics on social media.

Both the planning process and the resulting plan were organized around four environments: natural, built, social, and economic. There were expanded themes of sustainability and equity throughout the plan, with additional content on arts and culture, public health and wellness, and sense of community.



Click here to see how Hopkins used the 2040 Comprehensive Plan Update to implement "The Artery."



Town of Fuquay-Varina 2040 Community Vision Land Use Plan

*Fuquay-Varina, North Carolina
Completed by City Explained and Nealon Planning*



Village of Pinehurst 2019 Comprehensive Plan

*Pinehurst, North Carolina
Completed by City Explained and Nealon Planning*



Charlotte Future 2040 Comprehensive Plan

*Charlotte, North Carolina
Completed by City Explained, Grant Meacci, and Lorna Allen (City of Charlotte)*

DOWNTOWN IMPLEMENTATION PLAN

MARSHALLTOWN, IOWA



CLIENT
City of Marshalltown

REFERENCE
City of Marshalltown
641-754-5701

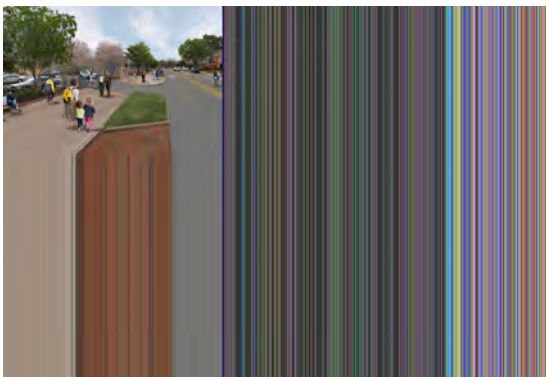
PLANNING + URBAN DESIGN + TRANSPORTATION PLANNING & ENGINEERING

Bolton & Menk was hired to refine the vision of the master plan and develop a cohesive strategy for implementing the outcomes of the previous planning study. Components of this project focused on defining the character of the streetscape environment, evaluating various parking scenarios, a comprehensive pavement management plan for downtown, and the consideration for transitioning one-way streets back to two-way traffic.

The study area covered 30 square blocks in downtown with consideration given to every street, sidewalk, and alley in the area. On-street parking types were evaluated and the feasibility of a one-way to two-way conversion of the parallel corridors of Church Street and Linn Street were completed to promote safer vehicular and pedestrian traffic throughout the downtown business district. These improvements focused on the implementation of strategies that would create a more vibrant downtown core, while improving public safety.

COMMUNITY MASTER PLAN

BOILING SPRINGS, NORTH CAROLINA



CLIENT
Town of Boiling Springs

REFERENCE
Bill Ellis
Mayor
704-477-0550
bill.ellis@boilingspringsnc.net

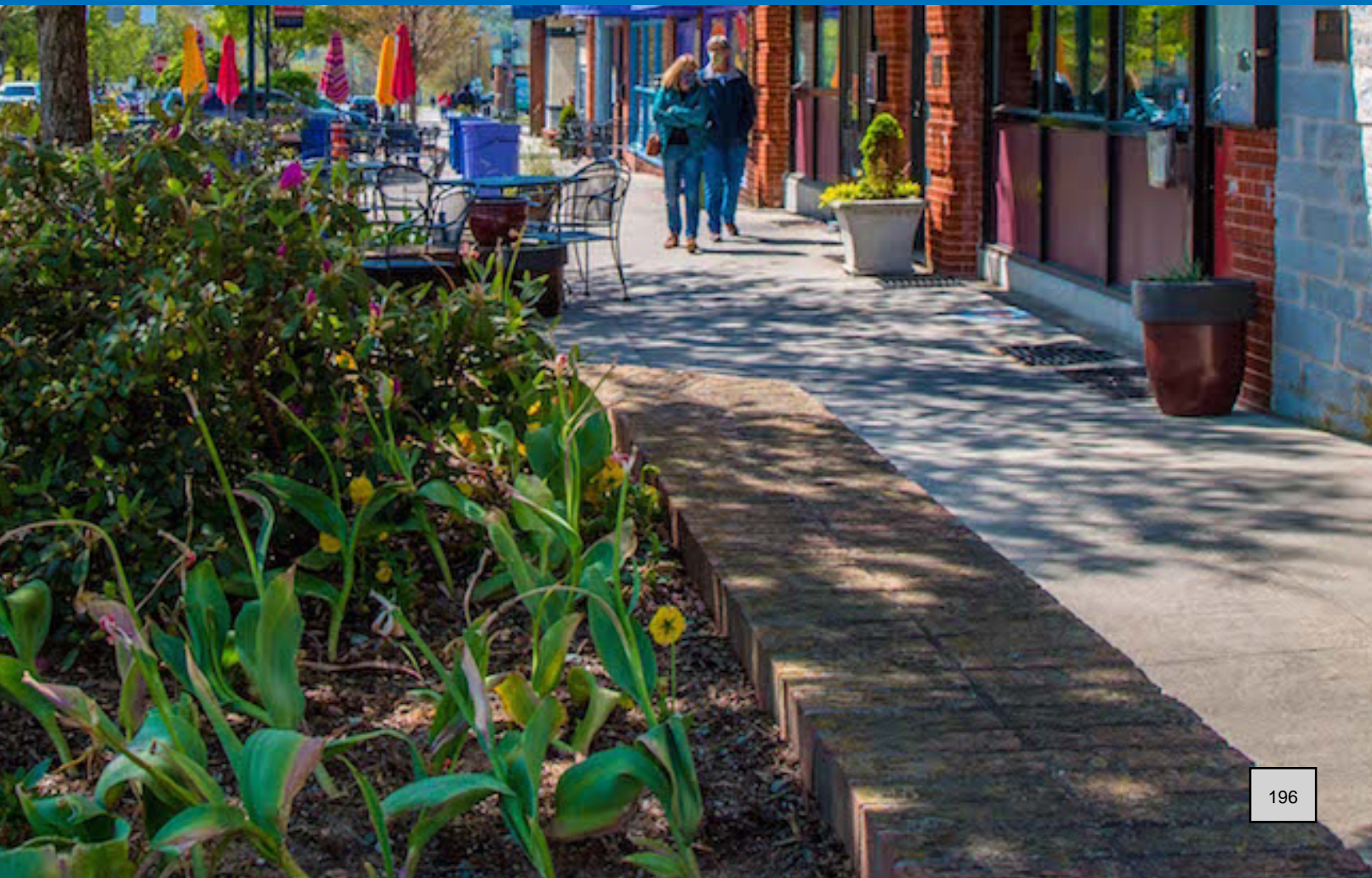
MASTER PLANNING + LANDSCAPE ARCHITECTURE + CIVIL ENGINEERING + URBAN DESIGN

As the Town of Boiling Springs, North Carolina continues to experience growth, the need for a unified vision and improvement plan became a priority to properly accommodate the future development. Through coordination with the town, CJS/Bolton & Menk generated a master plan that took into consideration the overall street designs, land use and open space areas, planting area locations, lane widths and configurations, public art locations, and furniture and signage locations. The team also collaborated in development of the town's bike, pedestrian, and parking study to establish key areas of interest and public investment. As part of the town's effort to identify the community's ideas and recommendation, our firm conducted design workshops to strategize outcomes and goals with local constituents. As a follow on to our planning efforts, our staff have assisted the town with grant funding applications for infrastructure project implementation.



PROJECT APPROACH

Overall Approach to the Project | Key Topic Areas



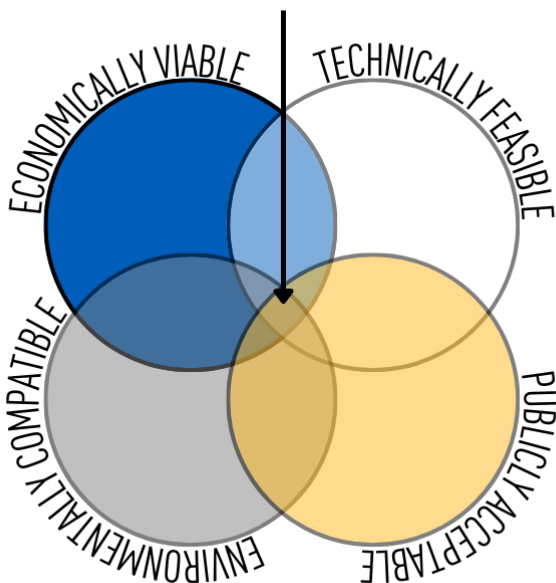
Overall Approach to the Project

A successful comprehensive plan depends on a complete understanding of the City of Hendersonville's issues and resources, as well as the culture that makes Hendersonville uniquely your city. We understand the need to be flexible and creative as we work together to develop a guide to the future. Our team has been serving the region for years and has a deep understanding of the challenges and opportunities the community will face in the coming decades. To do so, the city is updating the current comprehensive plan. **The 2045 City of Hendersonville Comprehensive Plan must**

- Establish a common vision for future growth based on shared community values and priorities
- Guide the future growth and redevelopment of the city
- Incorporate existing plans and policies into a single, cohesive document
- Establish a framework for future decision-making
- Tailor engagement strategies and activities geared to reaching all, particularly the meaningful involvement of lower-income and underrepresented populations

Our team believes that an **equitable and sustainable decision-making planning approach** results in a comprehensive plan that is technically feasible, economically viable, environmentally compatible, and publicly and politically acceptable.

Sustainable Solution



An **economically viable** plan is sensitive to local market, economic, and fiscal conditions, and will create a vision for the future that is both inspiring and achievable.

An **environmentally compatible** plan identifies both natural and built assets in the community and balances policy alternatives to protect and accentuate existing resources while supporting improvements that enhance community livability, sustainability, and resiliency.

A **technically feasible** plan builds upon work already completed, establishes policies and objectives based on sound planning principles, and applies extensive experience to finding flexibility and feasible solutions at the policy level.

An **equitable and universally supportable** plan identifies and involves stakeholders early in the decision-making process, listens and understands issues, and informs and maintains communication. We will achieve this in partnership with you by

- Building on prior investments
- Listening and adjusting
- Creating an attainable future

Building on Prior Investments

Prior planning efforts like the 2030 Comprehensive Land Use Plan have many goals that are still applicable today. With these prior planning investments made, we can help the city create a cohesive package with new guidance for land use, multimodal transportation, and applicable design options for each neighborhood and corridor in the community.

Listening and Adjusting

Our team has technical expertise that can provide tools and solutions to the problems, but ultimately, we know these projects will be guided by city staff and officials, emergency service providers, community engagement, and feasible funding mechanisms. With our team's foundational belief in communication and a nimble approach to the planning process, we can respond to adjust our approach as we learn and encounter new information during the comprehensive planning process. We will listen to the needs of the community and respond with expert technical solutions to meet those needs.

Creating An Attainable Future

This plan will create the implementation guidebook that is publicly accepted, so no doubt is left about the next steps. This includes land use policies that determine when, where, and how development takes place, as well as clear technical street design guidance for a more livable, sustainable community. With an eye towards implementation, our goals can target short-term changes that make large impacts, then long-term improvements that make Hendersonville the preferred "home" of residents for years to come.



Key Topic Areas – We've Got You Covered

Scenario Planning

Led by City Explained (CEI), our team actively uses scenario planning in places ranging from small, newly incorporated cities to large metropolitan regions. We have experience developing both numerical data models and spatial data models that provide real-time representation of growth alternatives and the trade-offs between them. We have recently started publishing likely impacts analysis reports within the comprehensive planning process to enumerate quantitatively the opportunities, challenges, and trade-offs associated with alternative growth scenarios for a comprehensive long-range plan.

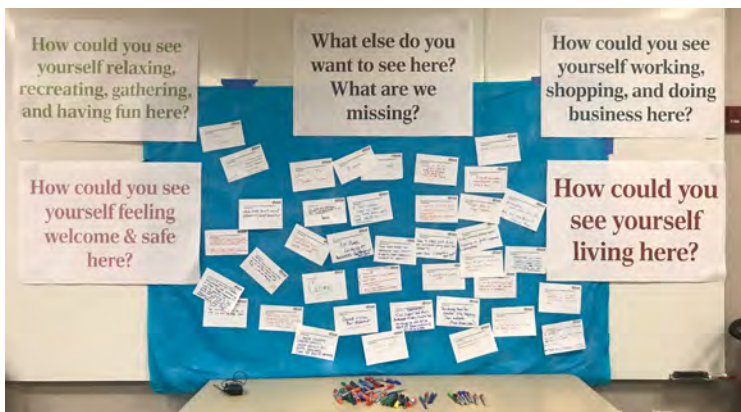
Economic Development Strategy

Hendersonville plays a big role in the continuing momentum behind the Asheville Metro regional population growth. Our team is equipped to delve into market and economic strategies to link land use and development decisions to existing and future market realities to identify the most mutually beneficial opportunities for Hendersonville's growth.



Transportation and Mobility Planning

Mapping, needs assessments, street design principles, and transportation policies and regulatory tools will be assembled into a strategic mobility element that aligns the vision for community character with appropriate transportation network and corridor solutions. Our transportation recommendations will be based on principles for developing a holistic and complete transportation network and Complete Street solutions for each corridor. We will plan for a transportation system that equitably considers all users from pedestrians and cyclists and transit riders to freight haulers and private motor vehicle drivers. We will reflect regional and NCDOT transportation goals and determine how to best integrate these with the local vision for Hendersonville.



Implementation Strategy

We know that a plan is only as good as its strategy for implementation. Our team is experienced in building consensus to prioritize and implement plans based on stakeholder input, market demand, and availability of strategic funding. Though, our team carefully balances the analysis of data with the goal of generating a robust vision and identifying priority actions. This frequently takes the form of ordinance and zoning recommendations, but may also include establishment of specific area standards, design guidelines, economic development initiatives, and other plan implementation approaches, as needed.



Downtown Historic Commercial District Master Plan

The city has had great success with the preservation of cherished historic structures and a vibrant main street; however, with multiple downtown studies and zoning districts can cause confusing with policy that doesn't always align. Our team has been successful leading plans, policy changes, and zoning ordinance revisions that simplify and create predictable development patterns and a vibrant public realm. Our planning process leads to implementable actions that influence the physical development of place and the regulatory controls that help guide it.





SECTION IV (PREFERRED SPECIFICATIONS/REQUIREMENTS)

Scope of Work | Reference List | Project Schedule



Scope of Work

We will work with you to craft the specific scope of work tailored to your needs, aligned with your goals for these projects, and within your anticipated project budget. However, our partnership with you is most important to understanding how to deliver a plan and planning process that is efficient and cost-effective. Following the general three phase process you have outlined in this request for qualifications, the following scope and expectations for the projects suggests that the downtown plan—both an embedded element of the overall comprehensive plan, while also producing a stand-alone downtown plan deliverable—can easily be used to demonstrate an actionable vision for downtown Hendersonville.

Task 1: Project Management, Meetings, and Orientation

Bolton & Menk will manage staff, resources, and budget to successfully meet project objectives. Grant Meacci and Lorna Allen will serve as project manager and deputy project manager, working closely with the team to ensure clear and consistent communication occurs. We propose an initial orientation kickoff meeting with the city to clarify the project scope, goals, and schedule. Internal monthly project status meetings will be conducted to review plan progress and provide input on project strategy and direction. In addition to regular internal monthly meetings, periodic quarterly updates will be provided to city council and planning commission at critical points in the process.

Task 2: Innovative Community Engagement Process

Our approach to public engagement is simple and consistent with the city's approach: to connect and engage with stakeholders in a way that is meaningful, strategic, impactful, and equitable. We believe that approaching public engagement in a meaningful way is important because people's time, input, and shared knowledge is valuable.

Our team recognizes that the City of Hendersonville is comprised of multiple communities and stakeholder groups that will require a robust public engagement strategy that includes a grassroots approach and builds upon the city's and partners' previous and ongoing engagement efforts. We expect to work alongside and be guided by the outstanding outreach work that the Community Development Department - Planning Division has been leading with prior planning efforts.



The Bolton & Menk team will develop a robust public involvement plan to engage community members, policy makers, and stakeholders throughout the duration of the project. Our team will work with the city to engage public leaders, public and private sector stakeholders, and community members to drive conversations around Hendersonville's future. We will be strategic when crafting a public engagement strategy with client communities and partners because we know engagement needs to be robust, inclusive, and meet people where they are—being conscious of things that limit a stakeholder's ability to participate such as language and technology barriers, location/time of meetings, access to transportation or childcare, or a personal understanding of the project.

We will tailor each public engagement strategy to the project's needs, making sure that we are strategic with when, where, and how often we engage with stakeholder groups—making sure we gather valuable input to shape the goals and outcomes of the project. At the center of our public engagement strategy is equity. Our team believes that equitable public engagement should be reflective of the project's stakeholders and be strategic when engaging underserved and historically underrepresented communities.

An effective, balanced, and persuasive public information and education campaign are especially important at the beginning of the process. We use a balanced approach to hosting in-person events and meetings coupled with virtual engagement opportunities to gather community information, perceptions, ideas, and expectations for the project, discuss data, and work to develop the goals and visions for the plan. Bolton & Menk prides itself on our successful public involvement process. In this community engagement plan, we outline our two-fold

communication toolbox, which includes options for in-person and virtual community engagement. Below is a description of the public engagement tools that are recommended within the process.

A Flexible Engagement Process

The City of Hendersonville wants to provide strong and effective community engagement. Bolton & Menk understands how important this phase is to plan implementation. We have divided our engagement into two categories:

- Essential engagement tools
- Innovative digital tools

Essential Engagement Tools

Public Communication Plan

It is critical that we are deliberate, transparent, inclusive, and thoughtful with our engagement tactics. We will work with Hendersonville to create a public communication plan that will be targeted to the diversity of your community. Together we will prepare a timeline for engagement activities and strategies that benefit plan milestones and its overall success.

Elected and Appointed Officials Work Session

Implementation hinges upon the buy-in of key decision-making bodies and meeting face-to-face with these groups will be critical for plan success. Bolton & Menk will host a work session and roundtable discussion as plan recommendations begin to take shape. This will allow the project team to present findings, discuss stakeholder and public perceptions, and receive essential feedback.

Stakeholder Roundtable Discussions

To develop an effective economic, land use, urban design, and transportation analysis, it is critical that our project team engage with various groups of local stakeholders. We would like to connect with groups such as truck drivers, local business owners, bicycling groups, etc. to discuss the needs and goals of the people that live, work, and play in Hendersonville. We would also plan to meet with developers, real estate agencies, lenders, and development organizations around the community to understand the business aspects that Hendersonville brings in.

Following our Community-Centered Design framework and with leadership from our local partners, we will use the following engagement principles:

- 1 Building trust is key.** We will create a transparent process to dispel skepticism and misinformation. We will aim for building short-term (during project) and long-term (outside of project) trust in community.
- 2 We will start with known and trusted groups** to identify and build stakeholder networks, particularly within underrepresented communities.
- 3 We will create local networks of community members.** If more people know what is happening and are willing to work toward a goal, the project is more likely to achieve broad support.
- 4 The project will involve community-based organizations** in planning, engagement, and design processes and compensate them for their time.
- 5 We recognize community expertise** as valid and equal; we will strive to balance technical versus lived expertise.
- 6 We prioritize a cultural and/or historical tour of the project area** with community experts.
- 7 We strive to understand factors outside of your project** that may impact participation (pandemic, economic recession, community events). We will create feedback loops as part of each engagement tool to demonstrate how input is used.
- 8 We understand that including the community as active decision makers** typically requires educating them on issues and potential solutions.



Open House Meetings

A series of public meetings timed to coincide with project milestones are ideal. We strive to make our meetings interesting, productive, and fun with hands-on activities and appealing, informative graphics.

Pop-Up Meetings

Pop-up meetings in the heart of the community offer great opportunities to get the word out about a project or gather public input. Our team can attend community events or set up booths at local hangouts where people naturally gather. This is particularly useful to engage with groups that may not historically opt to join traditional engagement activities.

Walking Tour

A walking tour through key areas of downtown (most specifically) can highlight many of the issues in Hendersonville. Our team can be on-hand with members of the steering committee and public stakeholders to guide discussions about issues and present ideas and alternatives along the way.

Food

We understand that BBQ will be provided! In all seriousness, we have found that hosting events where food is provided is a great way for community members to break bread in an atmosphere that promotes dialog at the table (so to speak).

Innovative Digital Tools

Project Web Page

A virtual repository for all pertinent project information is a critical component of our engagement strategy. With a stated objective of informed consent on every project, Bolton & Menk feels that project websites (primarily utilizing ArcGIS Story Maps) are invaluable at providing transparent access to information. Our website will share project information, upcoming events, opportunities to get involved, invitations for public comment, materials from meetings, and online surveys.

Comment Mapping

Do you want to see stakeholders' thoughts at a single glance? Bolton & Menk has developed INPUTiD™, an online public input application with a customizable interface and tools, which makes it easy to gather all comments in one place. We will design the interface to allow people to add their comments directly on a project site map as well as view and respond to others' comments.

Social Media Campaigns

Social media is a fun way to interact with people. We will work with council staff to determine regular discussion topics for the agency's social media accounts or create new project-specific accounts. We will use social media to showcase project events, direct people to information on the project web page, and create a space for people to provide comments and questions.

Online and Digital Intercept Surveys

Another great way to gather input is through online and in-person intercept surveys. We can create and post surveys on project web pages, utilize tablets around town, and promoting both options through multiple avenues, including social media. Any survey results will be summarized and presented as reports to the steering committee.

Live Polling

Live polling software can be used at meetings to ask key questions about a project. Users can use remote clickers or personal smartphones to participate. This interactive exercise allows people to instantly see responses. In addition to being fun, live polling helps everyone in the room have an equal opportunity for input.

Email and Text Subscriptions

When users sign up for a subscription service, they can directly receive alerts about upcoming or immediate utility interruptions, road closures, and more. With email subscriptions, we can also track if recipients are opening emails or engaging with email content (i.e. clicking on a website link).

Story Mapping

Bolton & Menk's team of project communication and GIS professionals have a depth of experience developing ArcGIS Story Maps. As a Silver Business Partner to Esri, we have leveraged this power tool to create inspiring, immersive stories by combining text, interactive maps, and other multimedia content to support our public engagement efforts. Planning studies and final deliverables can now be distributed in an advanced web-based format that reaches a broader audience.



Task 3: Background and Issue Identification

Understanding the past is a key component of planning for the future. Bolton & Menk will study the history and development of the city to gain a deeper understanding of growth, what worked, and what didn't work. We will also review existing plans and documents to evaluate how they can be incorporated into the new comprehensive plan. This exercise will provide background for the plan and set the stage for the vision and goals.

Task 4: Vision and Goals

We will work alongside the city and collaboratively with identified stakeholder groups to create a vision and goals for the future of the community. These will establish the themes we will use throughout the plan. This section, along with the efforts in Task 2, becomes the introduction chapter for the comprehensive plan document.

Task 5: Draft Document and the Plan Elements

The following tasks focus on the topics outlined in the RFP. The focus of these elements may change as a result of discussions with the city.

THE BUILT ENVIRONMENT

>>> Task 5.1: Land Use and Growth Framework

The land use section of a plan is almost always the most well-known of the elements and the topic most people associate with the comprehensive plan. We will focus on a balance between infill/redevelopment and greenfield development. Prioritizing and understanding the fiscal and social costs associated with each type of development typology will be an important topic. Our team will evaluate existing land uses and the current zoning map. We will prepare a land use capacity analysis to help direct growth and development within the community.

We will use this data, as well as the background data outlined in Task 2, to develop a set of future land use categories to guide the development of the city. The plan will include a high-level description of each category and criteria to help determine appropriate locations. We will also create a future land use map illustrating the locations of future land uses.

Task 5.1.1: Downtown Land Use, Form, Catalyst Projects, and Opportunities Concept Development

Task 5.1.2: Downtown Mobility

>>> Task 5.2: Public Infrastructure

This element will include an inventory and map of existing public sanitary sewer, water main, and storm sewer utilities based on existing data. Our team will identify potential capacity issues with the existing utility systems related to their ability to accommodate growth. This proposal does not include a comprehensive sanitary sewer or water supply plan. As traffic patterns and volumes change, user needs also change. By reviewing current roadway and intersection conditions, we will better understand how vehicular and pedestrian circulation functions and find opportunities for incorporating Complete Streets principles.

Task 5.2.1: Downtown Infrastructure

Task 5.2.2: Downtown Parking

THE SOCIAL ENVIRONMENT

>>> Task 5.3: Community Character, Cultural, and Historic Resources

This element will provide an overview of existing public community facilities, including municipal and county buildings, libraries, community centers, and schools. The plan will also identify significant historic resources or other cultural resources. We will assist the city in establishing goals, policies, and actions for the protection and preservation of these resources, and encourage an appreciation for the city's history and culture.

Task 5.3.1: Downtown Urban Design, Character, and Form

THE NATURAL ENVIRONMENT

>>> Task 5.4: Natural Resources, Sustainability, and Resiliency

We will map and discuss the community's natural resources including lakes, wetlands, stream, rivers, and other areas of high importance. These elements will be considered in evaluating the future land use patterns. Sustainability and resiliency is a theme that will run throughout the plan. While this is an important aspect of preserving and maintaining the city's natural resources, we can also view other decisions through a sustainability lens by asking questions such as "does the city have the resources to preserve and maintain the infrastructure developed today?"

Task 5.4.1: Sustainability and Resiliency Downtown

>>> Task 5.5: Parks, Recreation, and Public Space

The plan will include an inventory and assessment of the city's existing parks, recreational facilities, and public space. We will provide recommendations on the need for additional park and public space as a result of new development and will align with the Meck Playbook goals and future plans. The section will consider connectivity between community resources and identify the necessary trail and pedestrian linkages.

Task 5.5.1: Downtown Public Space and Programming

Task 6: Implementation and Action Plan

>>> Task 6.1 Downtown Action Plan

The production of a plan is just the start of the process—implementation is where the real impact is. Most components of a comprehensive plan identify what a community intends to do over the next 20 years. The general implementation plan will describe local ordinances, policies, public programs, infrastructure improvement plans, and other tools available to implement the goals and strategies in the comprehensive plan.



The implementation plan will be organized into a matrix by themes and goals and will assign priority to each actionable item. This will allow the city easy reference and measurable results. The matrix will be used to develop a "report card" that can be used annually by city staff and the planning commission to evaluate the progress of the plan as well as evaluate each goal for continued relevance as related to changing conditions.

Task 7: Final Plan

Our team will attend the public hearing at the planning commission meeting to present the final plan and implementation strategy. We will also present the final plan to the city council for adoption. Once the final language is drafted, we will create an attractive, easy-to-read final plan for publication. We will use high-quality graphics and images to illustrate the plan concepts. The result will be a document the City of Hendersonville will reference regularly.

Task 8: Community & Economic Development Chapter

Retail Strategies will lead the effort to evaluate the five pillars of your city's mix: market analysis, policy and administration, design, tourism and promotion, and economic vitality to provide a true roadmap to revitalization.



>>> Task 8.1: Market Analysis

For a market analysis of your downtown, we begin by assessing your consumers from multiple geographies. Using our advanced analytics and proprietary tools, we uncover and define the economic potential in your city. We will

- Identify trade area using political boundaries, drive times and radii, and custom geographies
- Identify trade area consumers using mobile data analysis
- Analyze retail peer market
- Analyze gaps for trade area (retail leakage and surplus)
- Identify priority business categories for recruitment, entrepreneurship, and/or local expansion

- Develop tapestry lifestyles—psychographic profiles/ market segmentation analysis
- Analyze consumer spending patterns
- Understand commuter patterns
- Research (using all available data) historical, current, and projected demographics
- Assess downtown walkability
- Specify demographics for the areas surrounding the downtown
- Analyze real estate - performed by licensed retail real estate professionals
- Inventory downtown buildings
- Evaluate properties for development, redevelopment and higher, and best use opportunities

>>> Task 8.2: Economic Development Strategies

Economic policy and administration involves creating a strong foundation for a sustainable growth effort, including cultivating partnerships, community involvement, and resources for the district. We'll provide you with a roadmap to prosperous growth or creative placemaking and a host of recommendations for every step along the way. Additionally, economic strategies will focus on capital, incentives, and other economic and financial tools to assist new and existing businesses, catalyze property development, and create a supportive environment for entrepreneurs and innovators that drive local economies.

Task 9: District and Neighborhood Identification and Targeted Consideration

Establishing a framework on how broad policies "hit the ground" in the distinct neighborhoods and districts of Hendersonville is a great strategy that will show how policy goals might look and feel when they are applied in a specific area. The Bolton & Menk team will prepare more detailed concept plans for up to five district or neighborhoods (focus areas) in Hendersonville that illustrate many of the big ideas expressed in the comprehensive plan policies and growth framework. The focus area studies may include new (or improved) streets, blocks, parks, and buildings (determined after focus areas are selected) using a plan view format (top-down map). Perspective drawings, streetview scenes, gateway treatment before/after images, or architectural details may be used to highlight the community's preferred development principles for the focus areas.

Add Alternate 1: Downtown Historic Commercial District Master Plan

With our team, we can approach the project in its entirety—developing the Comprehensive Plan and Downtown Master Plan in a seamless process. Bundling both plans will allow us to develop and test broad vision concepts and policies with the specificity of downtown focused urban design, planning, and economic development strategies.

Add Alternate 2: Strategic Transportation Plan

Specific to transportation, our team will develop a strategic transportation plan (STP) that summarizes Hendersonville’s policy and project priorities for transportation in the context of recommendations for character and land use.

The STP will also consider the juxtaposition of Hendersonville’s priorities for transportation relative to Henderson County and NCDOT, and the inherent relationships between land use (demand), urban design (context), and transportation (supply) to

1. Establish a safe, reliable, and efficient transportation system.
2. Reinforce a consistent and coordinated community character.



System-wide maps and recommendations in the STP will identify high-level needs for mobility of motorized and non-motorized traffic, Complete Streets, context sensitive street design, or placemaking. Emphasis on these (or other) topics will follow priorities established during the comprehensive planning process. It is assumed that we will focus on freight, automobile, transit, bicycle, and pedestrian needs for the system-wide assessment and recommendations.

Up to three transportation hotspots will also be included in the STP, which provide more specific and detailed recommendations for mobility in the context of surrounding development. The hotspots may include an important corridor or intersection identified during the comprehensive planning process.

Information for the transportation work performed under Task AA2.1 will be summarized in the comprehensive plan as a backdrop for more detailed studies that may be required in the future (completed independent of the consultant).

>>> Task AA2.1: Review Existing Transportation Projects, Plans, Policies, and Priorities

We will review existing planning documents and ongoing planning efforts at the local and regional level to see priorities for Hendersonville and points of consensus and contradiction or gaps.

Task AA2.1.1: System-Level Roadway Network

We will assess travel demand using FBRMPO data and comparing to preferred community land use scenarios from the land use element.

Task AA2.1.2: Active Transportation Network (Greenway and Bikeway) Assessment

As part of this plan, we will

- Review Existing Plans
- Recommend ped/bike priority network and key system level gaps
- Recommend where on-street facilities are needed instead of or in addition to multiuse paths/sidepaths
- Provide recommendations for future greenway and bikeway and micromobility network recommendations

Task AA2.1.3: Transportation System Design and Policy Recommendations

We will update street sections for character areas:

- Recommending how to tie context-based street cross-

- sections to land use character areas.
- Suggesting potential additions to adopted cross-sections to match character area goals
- Looking at how the street sections tie to street classifications from FBRMPO, NCDOT, and existing city standards
- Suggesting how existing engineering standards can be made consistent
- Recommending future speed limits related to character area goals and street design guidance, especially for growth areas
- Making recommendations for new city-wide connectivity options
- Making recommendations for possibly converting one-way streets to two-way to improve mobility, connectivity, and traffic flow through the downtown area
- Recommending access management strategies to improve traffic flow and efficiencies of the roadway and street network

Task AA2.1.4: Model for Traffic Impacts (Optional)

Analyze local traffic capacity (weekday and weekend) and interface to understand traffic impacts of new developments on an ongoing basis and to educate elected officials and the public of potential impacts.

>>> Task AA2.2: Hotspot – Transportation Recommendations

Up to three hotspots will be identified through the planning process; these may include corridors and/or districts (e.g., US 64 corridor, Main Street/Church Street/King Street corridors, opportunity sites, etc.). We will recommend key transportation strategies for each hotspot area to correspond with character area and community vision for the hotspot locations, which could include intersection improvements, connectivity improvements, roadway segment improvements, active transportation, and transit improvements, etc.

>>> Task AA2.3: Transportation Recommendation Summary for Comprehensive Plan

Specific to transportation, we will develop a strategic transportation vision (STV) that summarizes Hendersonville's policy and project priorities for transportation in the context of recommendations for character and land use in the growth and conservation framework.

Information for the transportation work performed under this task will be summarized in the comprehensive plan as a backdrop for more detailed studies that may be

required in the future (completed independently of the consultant):

- The Bolton & Menk team will summarize the STV and recommendations for Hendersonville based on inputs from tasks above
- Indicate implications for implementation and partnership and process with FBRMPO, NCDOT, and other partners.

Add Alternate 3: Zoning Ordinance Revisions

The Bolton & Menk team will assist the city in the development and refinement of zoning ordinance revisions that foster the implementation of the vision and goals of the comprehensive plan, including development of new codes or refinement of existing ordinances and form-based codes.

>>> Task AA3.1: Review Existing Development Standards

We will review the existing zoning and development standards for the communities along the corridor and use the Transit Oriented Development Strategy Report and Policy Toolkit as a guide for implementation.

For transit-readiness, we focus on several key code conditions, including but not limited to

- Parking standards
- Permitted densities
- Height
- Mix of uses
- Street network
- Development incentives

We will evaluate additional standards related to stormwater management, tree preservation, and open space requirements and their impact on compact walkability. One of the key factors in zoning is addressing adjacency issues. Transitions for height and use intensity are often issues especially when they may be visible from very low-density, single family home neighborhoods. While many of the issues around equity are not zoning-related, the protections and permissions afforded by development rules can have unintended consequences on vulnerable communities.

>>> Task AA3.2: Support Ordinance Development and Form-Based Code

Our project team will support rewrites of overlays and ordinances throughout the city, assist with the development of a form-based code, where appropriate.

Reference List

Client satisfaction through quality deliverables, cost-effective rates, and timely project delivery are top priorities for ColeJenest & Stone/Bolton & Menk. Please contact the following references to evaluate our team's performance on similar projects.



Alysia Osborne, Long Range
& Strategic Planning
City of Charlotte, NC
704-336-8364
Alysia.Osborne@charlottenc.gov

Project: Charlotte Future
2040 Plan



Cheryl Myers, Chief Planning
& Development Officer &
Senior VP, Charlotte
Center City Partners
704-332-2227
cmyers@charlottecentercity.org

Project: All In 2040 Charlotte
Center City Vision Plan

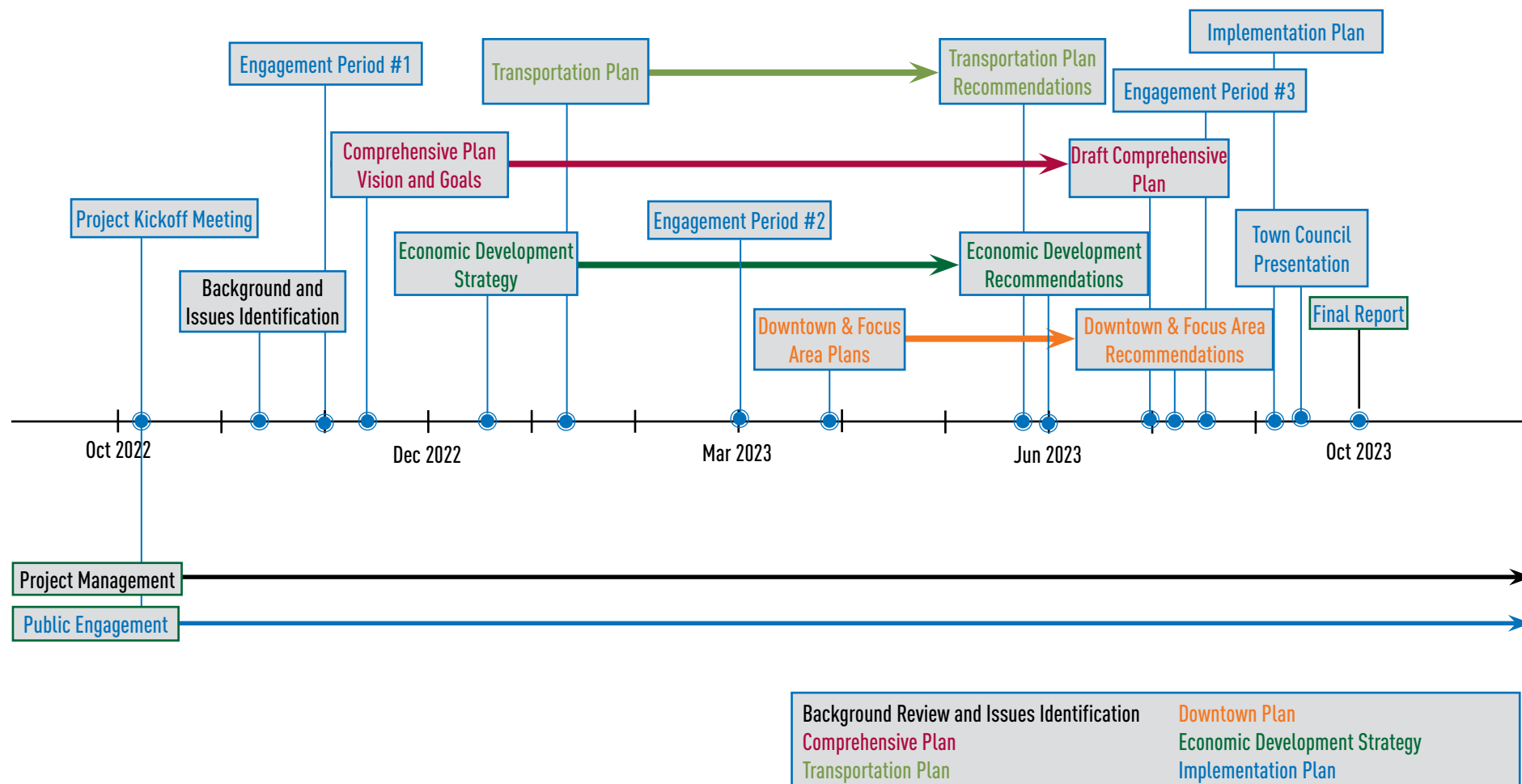


Joy Almond, Downtown
Development Director
City of Albemarle, NC
704-984-9420
jalmond@albemarlenc.gov

Project: Albemarle
Economic Strategy

Project Schedule

This schedule is based on our review of the project background, description, and scope of services included in the RFP and our experience on other similar projects. Upon selection, Bolton & Menk will work with the City of Hendersonville and other project partners to revise and update this schedule as needed to ensure successful delivery of this project. We believe that the most efficient use of city funds to accomplish your goals is to integrate the downtown and transportation plan into elements of the comprehensive plan.





SECTION VII - BID RESPONSE SHEET

Fee Estimate



Fee Estimate

Our team is committed to helping Hendersonville with these fun and important projects. The fee range estimated is based on the scope of work and duration outlined in our submittal and our previous experience with projects of this scale.

If you like us, pick us, and we can right-size our project approach and engagement strategy to stay within budget once we are able to have a conversation with you about how to best accomplish the project's goals. There are many ways to shift, remove, or reallocate funds to meet your project budget.

Our fee range represents a "best-guess" estimate at this time, which will be refined during contract negotiations with city officials to ensure the proposed project approach and public engagement strategy match exactly what is expected for the project. For now, the selection committee should assume the budget estimates presented are not-to-exceed cost figures based on the team's experience and proven track record of completing similar land use plan updates across North and South Carolina.

Employee Classification	Hourly Billing
Project Manager	\$140-190
Senior Project Engineer	\$145-185
Project Engineer	\$126-170
Design Engineer	\$110-150
Senior Planner	\$150-192
Senior Landscape Architect	\$150-170
Landscape Architect	\$118-142
Landscape Designer	\$85-112
Administrative/Corporate Specialists	\$65-120
Subconsultants	Hourly Billing
City Explained - Principal	\$195
City Explained - Support Planning Staff	\$155
Nealon Planning	\$195
Retail Strategies	\$187.50
Green Heron Planning	\$195
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet **MEETING DATE:** 11/03/2022e

AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Administration

TITLE OF ITEM: Consideration of Ordinance Amending Chapter 20, Article II, Noise of the Hendersonville City Code – *Rodney Gilliam, VLGMF Intern*

SUGGESTED MOTION(S):

I move that City Council adopt *An Ordinance of the City of Hendersonville City Council to Amend Chapter 20 Article II of the Code of Ordinances – Noise*, as presented for the first reading.

SUMMARY:

Several months ago, the Police Department raised concerns about several inconsistencies in our Noise Ordinance. Staff has reviewed the ordinance and made several amendments that modernize the ordinance and make it easier to enforce. This ordinance amendment will require two readings.

BUDGET IMPACT: \$ NA

Is this expenditure approved in the current fiscal year budget?

If no, describe how it will be funded.

ATTACHMENTS:

Proposed Ordinance

Ordinance # ____ - ____

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO AMEND
CHAPTER 20 ARTICLE II OF THE CODE OF ORDINANCES- NOISE**

WHEREAS, the City of Hendersonville is desirous of amending and updating provision of the Code of Ordinance regulating noise within the municipal limits of the City, in particular Chapter 20, Article II- Noise; and

WHEREAS, a proposed modifications have been prepared and presented to City Council for consideration; and

WHEREAS, City Council wishes to adopt these modifications as presented.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hendersonville, North Carolina that Chapter 20, Environment, Article II, Noise, of the Code of Ordinances for the City of Hendersonville shall be amended as follows:

CHAPTER 20 - ENVIRONMENT

ARTICLE II. NOISE

Sec. 20-31. Article designated noise control ordinance.

(a) ____ This article shall be known as the "Noise Control Ordinance for the City of Hendersonville."

(b) *Statement of policy. The City of Hendersonville will maintain a peaceful community while recognizing that certain noises are part of acceptable economic and recreational activity in a vibrant community. The goal of the city is to encourage such activity while not disturbed by unacceptable noise, particularly during time periods when customarily at rest or have an expectation of peaceful enjoyment of their residences.*

Sec. 20-32. Terminology and methodology.

(a) *Definitions and Terminology. The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context.* All terminology used in this article not defined below shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

- (1) *A-weighted sound level: The sound pressure level in decibels ~~as is~~ measured on a sound level meter using the ~~A-weighting~~-frequency-weighted network and slow meter response setting. ~~The level so read is designed~~ Sound levels are represented herein by the designation dB (A).*

(2) *Decibel (dB)*: A unit for describing the amplitude of sound, equal to 20 times the logarithm to the base ten of the ratio for the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

(3) *Nighttime. 10pm – 7am*

(34) *Sound pressure level*: 20 times the logarithm to the base ten of the ratio of the RMS sound of 20 micronewtons per square meter.

(45) *Sound level meter*: An instrument, which includes a microphone, amplifier, RMS detector, integrator, or time-averaged, output meter.

(56) *Sound level*: The weighted sound pressure level ~~obtaining by the use of~~ obtained using a sound level meter and frequency weighted network, such as A, B, or C as specified in American National Standards Institute or the latest approved version thereof) ANSI S1.4-1971, or the latest approved version thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(67) *Emergency work*: Any work performed for the purposes of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

(78) *Outdoor amplified sound*: Any sound using amplifying equipment whose sound is outside or whose source is inside, and the sound propagates outside through open doors or windows or other openings in the building.

(89) *Sound amplifying equipment*: Any device for the amplification of the human voice, music, or any other sound, including jukeboxes, stereos, and radios.

(b) *Methodology- Noise violation based on sound level meters. .It shall be unlawful to create, cause or allow the continuance of any noise that exceeds the decibel limits provided in Section 20-35 below. However, enforcement of this article does not require the use of a sound level meter to determine compliance. When a sound level meter is used to determine sound levels pursuant to this article, the S* standards, instrumentation, personnel, measurement procedures, and reporting procedures ~~to be used in the measurement of sound as provided for in this section shall be those as specified herein:~~ shall be as specified in this section, and all terminology not defined in this section shall be in conformance with the ANSI.

(1) Sound level measurement shall be made with a sound level meter using the “A”-weighting scale, set on “slow” response.

(2) Sound level meters shall be ~~of at least type three meeting American National Standard Institute Incorporated (ANSI) S1.4 1971 requirements. The entire sound measurement system serviced, and~~ calibrated and operated as recommended by the manufacturer. and in accordance with regulations prescribed by the Chief of Police. Persons using the sound level meters shall be trained in sound level measurement and the operation of sound level measuring equipment.

(3) ~~The chief of police or his designee may adopt standards for sound level measurement and enforcement consistent with this article.~~ Sound level measurements shall be made from within the boundary line of

an adjoining or complaining property. Whether the sound level violates the prescribed limits in section 20-35 below will be determined by whether the readings taken within the adjoining or complaining property are in excess of the levels allowed for the zoning area of the property that is the source of the sound.

(4) Except as specified in subsection (g) below, the sound level measurement shall be averaged over a period of at least one (1) minute for purposes of determining the sound level. Sound levels may not exceed the prescribed level by more than three (3) decibels at any time during the measurement period.

(5) During sound level measurement, the microphone shall not be positioned so as to create any unnatural enhancement of the measured sound. A windscreen shall be used when appropriate.

(6) Traffic noise and noise from other sources not connected with the sound being measured shall not be considered in taking sound level measurements.

(7) In the case of noise that is impulsive or not continuous, the sound level measurement shall be taken over a period of time of at least one (1) minute. Any such sound or noise that exceeds the prescribed level more than two (2) times in a minute shall be deemed to exceed the prescribed sound levels.

(8) If an officer does not have possession of a department-owned and ANSI-approved sound level meter at the time of responding to a noise complaint, sound level measurements for the purpose of determining violations of this article may not be taken using any other device, including but not limited to applications on cellular devices or any hand-held personal sound level meters obtained from any other source. The officer shall instead proceed under the other sections of this article in order to determine whether a noise disturbance is occurring.

(c) Methodology- Noise violation not based on sound level meters.

(1) Any police officer responding to a noise complaint may, in the officer's discretion, issue a civil citation or enforce any other penalties under this article if the officer determines that a noise disturbance, as defined by this Ordinance, does exist.

(2) An officer does not have to use a sound level meter or actually witness the sound or noise personally in order to take enforcement action under this section. Citations may be issued based upon statements and evidence obtained from complaining witnesses when the officer determines that such evidence is reliable, appropriate, and sufficient.

(3) It shall be a violation of this article for any person to communicate a noise complaint to any city staff or official, using the 911 system or otherwise, for the purpose of harassing the subject of the complaint, and knowing or having reason to know that no noise disturbance actually exists or existed.

(4) Factors to consider in determining whether a noise disturbance exists include, but are not limited to, the following:

- a. The volume of the noise;
- b. The intensity of the noise;
- c. Whether the nature of the noise is usual or unusual;

- d. Whether the origin of the noise is natural or unnatural;
- e. The volume and intensity of the background noise, if any;
- f. The proximity of the noise to residential sleeping facilities;
- g. The nature and zoning of the area from which the noise emanates;
- h. The density of the inhabitation of the area from which the noise emanates;
- i. The time of the day or night the noise occurs;
- j. The duration of the noise;
- k. Statements of any complaining witnesses, including any pictures or audio/video documentation produced by complaining witnesses; and
- l. Whether the noise is recurrent, impulsive, intermittent, or constant.

Sec. 20-33. Noises prohibited, nuisances.

- (a) *General prohibitions.* It shall be unlawful to create, cause or allow the continuance of any unreasonably loud, disturbing, or frightening noise, ~~particularly during nighttime~~ which ~~substantially~~ interferes with neighboring residents' reasonable use and enjoyment of their properties.
- (b) *Specific prohibitions.* The following acts are prohibited and shall be considered nuisance acts:
 - (1) *Horns and signaling devices.* The intentional sounding of any horn or signaling device of a motor vehicle on any street or public place continuously or intermittently, except as a danger or emergency warning.
 - ~~(2) *Motor vehicles.* Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order to effectively prevent loud or explosive noises therefrom.~~
 - ~~(3)~~ (2) *Exterior loudspeakers.* Operating or permitting the operation of any mechanical device or loudspeaker, without a permit to do so, in a fixed or moveable position exterior to any building or mounted on any aircraft or motor vehicle in such a manner that the sound therefrom is ~~in excess of~~ more than the maximum decibel level as described in section 20-35 of this chapter.
 - ~~(4)~~ (3) *Power equipment.* Operating or permitting the operation of any power saw, sander, drill, grinder, leaf blower, lawn mower, or other garden equipment, or tools of a similar nature, outdoors during nighttime.
 - ~~(5) *Explosives.* The use or firing of explosives, firearms, fireworks, or similar devices which create impulsive sounds.~~ (4) *Fireworks.* Launching or permitting the launching of fireworks during nighttime.
 - ~~(6)~~ (5) *Security alarms.* The sounding of a security alarm, for more than 20 minutes after being notified by law enforcement personnel.
 - ~~(7) *Dogs and other animals.* Allowing one or more dogs or other animals to bark or make disturbing noises continuously or intermittently for more than 30 minutes.~~

~~(86)~~ Motor vehicle speakers or speakers located in or on a motor vehicle. Operating or permitting the operation of any speaker or sound in or on a motor vehicle in such a manner that the sound therefrom is ~~in excess of~~ **more than** the maximum decibel level described in sections ~~20-35~~ of this chapter when registered ~~25-10~~ or more feet from the motor vehicle.

(7) Burnouts. Operating or permitting the operation of a motor vehicle or motorcycle in such a manner that the motor vehicle remains stationary and the tires are spun rapidly against a solid surface continuously or intermittently producing loud noise. The friction between the tires and the solid surface typically produces smoke in addition to loud noise.

~~(9) Any business situated within the municipal services district that permits to be played within its building any electronically amplified music or speech, regardless of whether such music is live, shall not permit any door from any street or alley into such building to be or remain open during such amplification except while persons or goods are actively entering or exiting the building through such door, nor shall it permit any window to be or remain open during such amplification.~~

Sec. 20-34. Exceptions.

The following are exempt from the provisions of this article:

- ~~(1a)~~ Sound emanating from regularly scheduled outdoor athletic events on the campus of local schools.
- ~~(2b)~~ Construction operations from 7:00 a.m. to ~~9~~10:00 p.m. ~~on weekdays and 8:00 a.m. to 9:00 p.m. on weekends~~ for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of the government; providing all equipment is operated in accord with manufacturer's mufflers and noise-reducing equipment is in use and in proper operating condition.
- ~~(3c)~~ Noises of safety signals, warning devices, emergency pressure relief valves, and all church bells.
- ~~(4d)~~ Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency.
- ~~(5) Any other noise resulting from activities of a temporary duration permitted by law, and for which a license or permit therefor has been granted by the city in accordance with section 20-37, below. Regulations of noise emitting from operations under a permit shall be according to the conditions and limits stated on the permit and contained above.~~
- ~~(6e) Unamplified and amplified sound at street fairs and parades permitted pursuant to section 46-84 of the Code.~~ **Events which have received a special events permit from City Council.**
- ~~(7f)~~ All noises ~~coming~~ **that come** from the normal operations of properly equipped aircraft (not including scale model aircraft).

- (8g) All noises that come from normal operation of motor vehicles properly equipped with the manufacturer's standard mufflers and in good working order.
- (9h) Noise from lawful fireworks and noisemakers on holidays and at religious ceremonies.
- (10i) Lawn mowers, agricultural equipment, and landscape maintenance equipment **that are** used between the hours of 7:00 a.m. and 9**10**:00 p.m. when operated with all the manufacturer's standard mufflers and noise-relating equipment in use and **in** proper operating condition.
- (11j) Musical accompaniment or firearm discharge related to military **or law enforcement** ceremonies.
- (12k) ~~Sound amplification equipment used in conjunction with telecommunications systems on business properties to notify employees of that business of incoming phone calls, providing that this system be used only between the hours of 7:00 a.m. and 10:00 p.m. And that any speakers attached to the system be oriented toward the interior of the property.~~ **Fireworks permitted by law, except during nighttime hours.**
- (13l) Emergency work **that is** necessary to restore property to a safe condition following a fire, accident or natural disaster, ~~or~~ to restore public utilities, or to protect persons or property ~~from an~~ **from** imminent danger.
- (14m) Noises resulting from the provision of government services.
- (15n) Noises resulting from the provision of sanitation services between the hours of 7:00 a.m. and 9**10**:00 p.m.

Sec. 20-35. Maximum permitted sound level.

~~In addition to the requirements of section 20-34, above, and except as otherwise provided herein or in conjunction with special events permits, it shall be unlawful for any person or group of persons, regardless of number, to willfully make, continue or cause to be made or continue any loud, raucous and disturbing noise, which term shall mean any sound which, because of its volume level, duration, and character, annoys, disturbs, injures or endangers the comfort, health, peace or safety of reasonable persons of ordinary sensibilities within the limits of the City of Hendersonville. The term loud, raucous, and disturbing noise shall be limited to loud, raucous, and disturbing noises heard upon the public streets, in any public park, in any school or public building, or upon the grounds thereof while in use, in any church or hospital or upon the grounds thereof while in use, upon any parking lot open to members of the public as invitees or licensees, or in any occupied residential unit which is not the source of the noise, or upon the grounds thereof.~~

<u>Maximum Sound Level Readings</u>
<u>Downtown</u>

<u>7am to midnight</u>	<u>75 dB(A)</u>	<u>Midnight to 7am</u>	<u>65 dB(A)</u>
<u>Residential</u>			
<u>7am to 10pm</u>	<u>65 dB(A)</u>	<u>10 pm to 7am</u>	<u>55 dB(A)</u>
<u>Commercial/Industrial</u>			
<u>7am to midnight</u>	<u>75 dB(A)</u>	<u>Midnight to 7am</u>	<u>65 dB(A)</u>

Sec. 20-36. - ~~Motor vehicle noise.~~ Reserved

- (a) ~~It shall be unlawful for any person to drive, operate, move or permit to be driven, operated or moved, a motor vehicle or combination of vehicles at any time in such a manner that the sound level of the vehicle or combination of vehicles exceeds 75 db(A) measured at a distance of 25 feet from the nearest lane(s) being monitored and at a height of at least four feet above the immediate surrounding surface.~~
- (b) ~~This section shall apply to the total noise from a vehicle and shall not be construed as limiting or precluding the enforcement of any other provisions of this article.~~
- (c) ~~Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements under this section.~~

Sec. 20-37. ~~Permits to exceed limits.~~ Reserved

- (a) ~~A person or group of persons may produce or cause sound to be produced more than levels authorized in sections 20-35, above, only if a permit to exceed the limit for the time and place of the activity has been obtained.~~
- (b) ~~Any person or group or persons desiring a permit shall apply as provided herein and shall provide all the information required. All applications shall be submitted to the chief of police or his designer at least 48 hours prior to the scheduled event. Failure to comply with this requirement shall be grounds for denying the permit.~~
- (c) ~~The chief of police or his designee shall have the authority to take decisive action on all applications for permits specified in this article. In considering and acting on such applications, the chief of police or his designee shall consider, but shall not be limited to, the following in issuing or denying such permit: the timeliness of the application; the nature of the requested activity; previous experience with the applicant; the nature of the event; other activities in the vicinity of the location proposed; the frequency of the application; the cultural or social benefit of the proposed activity; the effect of the activity on the residential areas of the city; previous violations, if any, of the applicant.~~

~~(d) — Permits to exceed limits shall specify the duration for which noncompliance shall be permitted and may prescribe the conditions or requirements necessary to minimize adverse effects upon the community or surrounding neighborhood. The chief of police or his designee may require, but shall not be limited to, the following:~~

~~(1) — That no sound speakers shall be set up more than ten feet above the ground.~~

~~(2) — That the permit holders change the arrangement of the loudspeakers or the sound instruments to minimize the disturbance to others resulting from the position or orientation of the speakers or from atmospherically or geographically causing the dispersal of sound beyond the property lines.~~

~~(e) — Permit holders shall agree to cooperate with the police department in enforcing the noise control article by having signers of the permit available at the site of the event during the entire time for which a permit has been issued and capable of assisting the police in enforcing the noise control ordinance. The failure of the permittee or designees to be present or to assist the police in compliance with this article will result in the revocation of said permit.~~

Sec. 20-38. Violations.

(a) Any person who violates any portion of this article shall ~~be~~ subject to ~~a fine of not less than \$50.00 dollars nor more than \$500.00 plus court costs~~ **the penalties stated in this Section 20-38.** Each failure to obey an order to cease or abate shall constitute a separate violation of this article. **Multiple violations may occur within the same day.** ~~Violation of this section is cause for immediate revocation of a permit to exceed:~~

(b) **Repeated violations of this article by the same person, or repeated violations at the same address, within a 12-month rolling period shall be subject to civil penalties as follows:**

(1) **First violation: \$250.00**

(2) **Second violation: \$500.00**

(3) **Third violation: \$750.00**

(4) **Fourth and all subsequent violations: \$1,000.00 per offense**

(c) **The 12-month rolling period is defined as the 12 months immediately preceding the violation. For example, for a violation of this article occurring on January 7, all violations occurring on or after January 8 of the preceding year shall be included for purposes of calculating civil penalties under this subsection.**

(d) **Any person who willfully fails to comply with the directive of a law enforcement officer to come into compliance with this article shall be subject to a civil penalty of \$1000.00 Violation of this subsection shall constitute a separate violation of this article.**

(e) **In addition to the remedies stated herein, the City may enforce the provisions of this article by appropriate equitable remedies as outlined in sections 1-6. Violations of this article shall not constitute a crime.**

(f) **Violation of the following sections of this Article, including all subsections, sub-subsections, sub-sub-subsections, and all other paragraphs, shall constitute a Class 3 misdemeanor, and shall subject the offender to a fine of not less than \$50.00 dollars nor more than \$500.00 plus court costs.**

- (1) Section 20-32. Terminology and methodology.
- (2) Section 20-33. Noises prohibited, nuisances.
- (3) Section 20-35. Maximum permitted sound level.

Sec. 20-39. Owner and occupant responsibility.

(a) Penalties for violations of this article may be assessed against any of the following:

- (1) Persons who are responsible for or in control of the premises on which the violation occurs, including but not limited to a business owner, an onsite manager or supervisor, or a tenant.
- (2) Persons in possession or control of any device producing or causing the violation.
- (3) The owner of the premises on which the violations occur.

(b) An owner of any premises, as well as any person responsible for or in control of such premises, shall be responsible for and may be held in violation of this article for, actions of tenants, guests, or other licensees that constitute violations of this article. This subsection shall not be interpreted to relieve any other person from responsibility for violations of this article.

Adopted on the first reading of the City Council of the City of Hendersonville, North Carolina on the ____ day of _____, 2022, and adopted on the second reading of the City Council of the City of Hendersonville, North Carolina on the ____ day of _____, 2022.

[Not to be signed until after passing the second reading.]

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Angela L. Reece, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: John Connet **MEETING DATE:** 11/3/2022

AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Administration

TITLE OF ITEM: Discussion Regarding the Closing of 4th Avenue on Halloween – *Jennifer Hensley, Council Member*

SUGGESTED MOTION(S):

I move that City Council direct staff to develop a plan to close a portion of 4th Avenue for Halloween 2023.

SUMMARY:

Council Member Hensley would like to discuss the closing of 4th Avenue on Halloween due to the large number of people trick or treating.

BUDGET IMPACT: TBD

Is this expenditure approved in the current fiscal year budget? EnterTextHere

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS:

EnterTextHere



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER: John Buchanan

MEETING DATE: November 3, 2022

AGENDA SECTION: Staff Reports

DEPARTMENT: Finance

TITLE OF ITEM: Cash and Investment Report – John Buchanan, Finance Director

SUGGESTED MOTION(S):

None

SUMMARY:

Cash and Investment Summary

	6/30/2022	9/30/2022
U.S. Treasuries	\$ 2,098,168.13	\$ 4,062,172.57
Agencies	3,497,725.00	3,497,725.00
Commercial Paper	998,750.00	2,940,990.56
NCCMT (FCB Cash)	3,994,277.02	104,995.74
NCCMT	831,082.47	2,005,106.63
Wells Fargo H&W	51,559.00	55,598.79
Wells Fargo Operating Account	6,078,963.46	8,961,401.92
Total	\$ 17,550,525.08	\$ 21,627,991.21

Undisbursed Bond Proceeds

2019 Revenue Bond	\$ 1,045,218.41	\$ 1,047,345.84
2021 LOB	\$ 10,215,644.70	\$ 6,548,805.67
2022 Revenue Bond	\$ 3,081,421.01	\$ 2,700,389.51

BUDGET IMPACT: \$

Is this expenditure approved in the current fiscal year budget? EnterTextHere

If no, describe how it will be funded. EnterTextHere

ATTACHMENTS:

Investment detail

FIRST CITIZENS CUSTODIAN ACCOUNT

Investment Name		Rating	Cusip	Price	Coupon	YTM	Purchased Date	Issued Date	Maturity Date	Callable	Cost Basis
TREASURY AND FEDERAL AGENCIES											
Federal Home Loan Bks Cons Bds	FHL		3130ALLN2	99.825	0.50%	0.50%	3/24/2021	3/24/2021	3/24/2026	NO	499,125.00
Federal Home Loan Mtg Corp	FHLM		3137EAF2	99.91	0.25%	0.25%	3/24/2021	12/4/2020	12/4/2023	No	999,100.00
Federal Farm Credit	FFCB	Aaa AA+ /	3133EL7EB	99.975	0.22%	0.23%	9/29/2020	9/15/2020	3/15/2023	Yes	1,999,500.00
US Treasury Note	USTN		912828M80	101.05	2.00%	1.64%	12/11/2019	11/30/2015	11/30/2022	NO	606,328.13
US Treasury Bill	USTB		912796V71	99.456	0.54%	0.63%	6/27/2022	6/30/2022	10/27/2022	NO	1,491,840.00
US Treasury Bill	USTB		912796YL7	98.2	1.68%	1.80%	9/13/2022	9/13/2022	3/16/2023	NO	1,964,004.44
TOTAL TREASURY AND FEDERAL AGENCIES											7,559,897.57
COMMERCIAL PAPER/CASH EQUIVALENT											
Credit Suisse First Boston N Y Disc Coml Paper	EBMK		2254EBMK4	98.67			8/3/2022	8/4/2022	12/19/2022	NO	986,697.50
Mufg Bk LTD N Y Brh Disc Coml Disc Coml Paper	MRU		62479MRU9	97.426	3.47%	3.59%	8/3/2022	8/4/2022	4/28/2023	NO	974,264.17
Natixis Disc Coml Paper Disc Coml Paper	KQ18		63873KQ18	98.003	3.44	3.533	8/3/2022	8/4/2022	3/1/2023	NO	980,028.89
TOTAL COMMERCIAL PAPER/ CASH EQUIVALENT											2,940,990.56
OTHER INVESTMENTS (MUNI/BABS/)											
TOTAL OTHER INVESTMENTS (MUNI/BABS)											0.00
Total Securities											10,500,888.13
NC Capt Management	Cash										104,995.74
Total Security - Cost Basis											10,605,883.87



CITY OF HENDERSONVILLE

AGENDA ITEM SUMMARY

SUBMITTER:

John Connet

MEETING DATE:

09/28/2022

AGENDA SECTION:

CLOSED SESSION

DEPARTMENT:

Administration

TITLE OF ITEM:

Closed Session – John Connet, City Manager

SUGGESTED MOTION(S):

I move that City Council enter closed session pursuant to NCGS § 143-318.11 (a) (1) (3) and (6) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, to consult with an attorney employed or retrained by the public body in order to preserve the attorney-client privilege between the attorney and the public body and to discuss the matter of O’Neill v. City of Hendersonville, 22 CVS 1738, and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

SUMMARY:

City staff is requesting a closed session to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and to consult with an attorney employed or retrained by the public body in order to preserve the attorney-client privilege between the attorney and the public body and to consider the qualifications, competence, performance, character, fitness of an individual public officer or employee.

BUDGET IMPACT:

\$ TBD

Is this expenditure approved in the current fiscal year budget?

NA

If no, describe how it will be funded.

NA

ATTACHMENTS:

None