



AGENDA

City of Hendersonville City Council

Special Call Meeting | November 18, 2020 - 5:30 p.m.

Operations Center - Assembly Room | 305 Williams St. | Hendersonville NC 28792

1. CALL TO ORDER
2. PARTF Grant Award
3. Public Hearing – pursuant to North Carolina General Statute § 158-7.1:
 - A. To Consider Granting Economic Development Incentives to Project Wheel
 - B. To Consider Interlocal Agreement and Three-Party Agreement to provide Loan Funds for the Purchase and Development of an Industrial Park for Economic Development
 - C. To Consider Extension of Water and Sewer Infrastructure to Serve Industrial Park for Economic Development
Resolution 1 Resolution 2
4. CLOSED SESSION – pursuant to North Carolina General Statute § 143-318.11(a)(5)

To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
5. ADJOURN

NOTICE

City of Hendersonville 160 Sixth Avenue East Hendersonville, NC 28792

CITY COUNCIL

CITY OF HENDERSONVILLE

SPECIAL CALL MEETING

Wednesday, November 18, 2020, at 5:30 p.m.

The City of Hendersonville City Council will hold a SPECIAL CALLED MEETING on **Wednesday, November 18, 2020, at 5:30 p.m.** in the Assembly Room of the City Ops Building, 305 Williams St. Hendersonville, NC. The purpose of this meeting is to consider the following:

- 1. PARTF Grant Award**
- 2. Public Hearing – pursuant to North Carolina General Statute § 158-7.1:**
 - A. To Consider Granting Economic Development Incentives to Project Wheel**
 - B. To Consider Interlocal Agreement and Three-Party Agreement to provide Loan Funds for the Purchase and Development of an Industrial Park for Economic Development**
 - C. To Consider Extension of Water and Sewer Infrastructure to Serve Industrial Park for Economic Development**
- 3. CLOSED SESSION – pursuant to North Carolina General Statute § 143-318.11(a)(5)**

To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

Anyone wishing to submit written public comment for this public hearing prior to the meeting may visit <http://www.publicinput.com/hvlmeeting> and select the appropriate public hearing to participate in.


Angela L. Reece, City Clerk

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

Posted 11/13/2020
<https://www.hendersonvillenc.gov>



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NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN pursuant to N.C. Gen. Stat. §158-7.1 that the City Council for the City of Hendersonville will hold a public hearing at a special called meeting to be held on November 18, 2020, at 5:30 p.m. in the City Operations Center, located at 305 Williams Street, Hendersonville, NC at 5:30 p.m., or as soon thereafter as the Council is able, to consider three matters:

1. The request of Project Wheel company for economic development incentives.
The company has requested to remain anonymous at this time due to competitive pressures.

Project Wheel company is a manufacturing concern located inside the United States contemplating a new plant site in Henderson County.

Under the project as proposed, the public benefit to be derived from the capital project is a total taxable capital investment over five years by or on behalf of Project Wheel company of at least \$17,000,000.00 in real property (not including any land acquisition costs), and not less than \$21,000,000.00 in business personal property (equipment). The project would result in the creation of 150 new jobs, at an average wage of \$39,867.00, which is in excess of the median wage in Henderson County for full-time employment, plus other benefits. The contemplated incentives would last for a period of seven years from each of the five years over which capital investment would be made by the company. The first year's contemplated incentive, if granted, would be not more than \$11,760.00, based on the new investment, the number of new employees, and the Council's incentives guidelines. The total estimated amount of monetary incentives to be considered in this grant (at 2020 tax rates, assuming no appreciation or depreciation in the real property, and a 7-year straight line depreciation on personal property) would be \$857,500.00.

The company would be required to enter into an economic development agreement with the City pursuant to N.C. Gen. Stat. § 158-7.1(h).

The City of Hendersonville will consider granting assistance toward the investment of Project Wheel company at the close of the public hearing.

If approved, the request would be funded through the general property tax revenue.

2. Two proposed complementary agreements, the first one being a proposed interlocal agreement, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, with the City of Hendersonville, and the second being a three party agreement between the City of Hendersonville, Henderson County and the Economic Investment Fund of Henderson County, Inc. (the "EIF", a North Carolina non-profit corporation). The purpose of the proposed agreements would be to provide financing for the purchase, by EIF, of certain real estate to be used as an industrial

park, consisting of +/- 41.46 acres located between Crest Road and Commercial Blvd, having the following REIDs: 9967047, 9967049, 202522 (less +/- 0.97 acres), 9966235, 9966236, 9966237, and 202520 (the "Property"). It is the intent of the City Council for the City of Hendersonville to approve these agreements at the close of the public hearing. The Property will be subject to restrictive covenants to restrict the property to uses that are consistent with the City's economic development policies and guidelines.

The terms of the agreements would involve an estimated net investment by the City of approximately \$470,000 as a loan to the EIF (as well as a like investment by the Henderson County) to be used to purchase the Property to be used for location of industry. The EIF would borrow approximately \$1,170,000 from each of the City of Hendersonville and Henderson County, for a total estimated loan amount of \$2,340,000, would impose restrictive covenants on the property and subdivide it as an industrial subdivision, and then convey a portion of the Property to the developer of the site for the Project Wheel company, and repay the County and the City the amounts loaned to the EIF except for the approximate loan amount noted above (\$470,000 each). Both the County and the City would then jointly hold a first lien deed of trust on the remaining Property securing the remaining balance of the sums loaned to the EIF, at a fair market value rate of interest. Release of the acreage from the lien of the deed of trust would be made in exchange for payment of a release fee of \$64,500 per acre but only if the acreage is sold by the EIF to entities that would qualify for economic development incentives under The County's Economic Assistance Guidelines. The City and the County will retain the ability to release the acreage for less than this stated per acre price, or to waive accrued interest, but only as allowed by N.C. Gen. Stat. § 158-7.1, and only after holding duly authorized public hearing, and making the findings required under N.C. Gen. Stat. § 158-7.1.

The second agreement, an interlocal agreement, pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, with the City of Hendersonville, would set out the parties' obligations to provide financing for the purchase as set out above.

3. The Extension of Water and Sewer Infrastructure to the Property. The City Council will consider approving the extension of +/- 1040 lineal feet of 8" gravity sewer line, and +/- 3,735 feet of 8" ductile iron water line to the Property to serve the industrial facility to be occupied by Project Wheel and the balance of the Property. The estimated cost for the water and sewer extensions is \$800,000, with the expectation that \$560,000 will be funded by a grant from the Golden Leaf Foundation, and \$240,000 will be funded from the City's Water and Sewer Capital Reserve Fund (459) which have been previously earmarked by City Council for economic development purposes.

As all three of the economic development activities above are in the nature of economic development under N.C. Gen. Stat. §158-7.1, the funds provided would be general property tax revenue, except as to the water and sewer extensions which is expected to be funded from a private grant and the City's Water and Sewer

Attention: _____ Fax: _____

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Capital Reserve Fund (459) as indicated above. The public benefit from these three economic development activities would be the employment and investment noted, above. In addition, the resulting transaction would make the remaining land obtained by the EIF (after the conveyance to the developer of the site for the Project Wheel corporation) increase in taxable value.

The public hearing on all of these matters will be held in the Assembly Room of the City Operations Center, located at 305 Williams Street, Hendersonville, NC at 5:30 p.m. The public is invited to attend and comment.

The Mayor and City Council Members will attend the hearing in person. In-person attendance by the public will also be permitted; however, in compliance with Executive Orders and social distancing guidelines, in-person attendance of the public will be limited as spacing permits. Public hearing comments will be accepted from those attending in-person at the designated time of this meeting. The public may also view and verbally comment during this public hearing live via ZOOM. For security reasons, screen sharing will not be allowed. The meeting instructions to join by Zoom will be available on the City's website and calendar event by visiting <https://www.hendersonvillenc.gov/events-calendar>. Comment period instructions will also be displayed at the appropriate time during the meeting.

Anyone wishing to submit written public comment for this public hearing prior to the meeting may visit <http://www.publicinput.com/hvlmeeting> and select the appropriate public hearing to participate in. Participants are asked to give their name and address for the record and a space is given to submit their written public comment which will be provided to the City Council. Written comments must be submitted by noon on Tuesday, November 17, 2020, to be considered by the City Council.

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 a particular accommodation for this meeting please contact the City Clerk, Angela Reece at 697-3000 no later than 24 hours in advance of the meeting.

Angela L. Reece, Clerk to the
City Council for the City of Hendersonville

11/5, 2020

669496

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CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: Brent Detwiler

Department: Engineering

Date Submitted: 11/13/20

Presenter: Brent Detwiler

Title of Item: NC Parks and Recreation Trust Fund Clear Creek Greenway Agreement

Nature of Item: Council Action

Council Meeting Date: 11/18/20

Summary of Information/Request:

Item # 2

The City was recently awarded a \$376,000 NC Parks and Recreation Trust Fund (PARTF) Grant for design and construction of the Clear Creek Greenway. The attached agreement between the City and the North Carolina Department of Natural and Cultural Resources summarizes the grant amount (\$376,000), local government match (provided through donations, and other grants) and time period (11/1/20 through 10/31/23). Staff is working with other agencies to coordinate the two remaining grant agreements. We are asking Council to approve the agreement in order for the Mayor to execute. Please let us know if you have any questions.

Suggested Motion(s):

I move City Council to resolve to approve the NC Parks and Recreation Trust Fund Clear Creek Greenway Project Agreement and to authorize the Mayor to execute said agreement.

Budget Impact: \$ 1,365,590 Is this expenditure approved in the current fiscal year budget? N/A If no, describe how it will be funded.

Budget amendment forthcoming with subsequent grant agreement approvals.

Project Number: Petition Number: Additional Petition Number:

18026 N/A

Petitioner Name:

Attachments: N/A

NC Parks and Recreation Trust Fund Clear Creek Greenway Project Agreement

Parks and Recreation Trust Fund Grant Manual for Local Governments (via link)



North Carolina Division of Parks and Recreation

Governor Roy Cooper

Secretary Susi H. Hamilton

October 22, 2020

Mr. Brendan Shanahan
Civil Engineer
City of Hendersonville
305 Williams Street
Hendersonville, NC 28792

Dear Mr. Shanahan:

Recently Mr. Neal Lewis, Chairman of the N.C. Parks and Recreation Authority, sent a letter to Ms. Barbara Volk announcing that the City of Hendersonville received a grant from the N.C. Parks and Recreation Trust Fund (PARTF) for the Clear Creek Greenway project. I am writing to you as the City's contact person to provide information about administering the grant.

The first step is to execute a contract between the City of Hendersonville and the N.C. Department of Natural and Cultural Resources (DNCR). Enclosed are two copies of the contract. Please have your chief elected official sign and return both copies to me at the address below within 45 days. A representative of DNCR will then sign the contracts and return a copy of the executed contract. Please do not begin work on the PARTF project until you receive the signed contract.

PARTF grants are paid on a reimbursement basis. A local government must first spend its own funds on the project and then be reimbursed. The enclosed PARTF Grant Manual provides further information about accounting and grant administration. The manual is also available at www.ncparks.gov/partf under "For Grant Recipients". It is very important that your finance officer and project manager are familiar with this information. In addition, a series of progress inspections for the project will be conducted by your regional consultant. A copy of the inspection forms is enclosed.

If you have any questions about your project, please contact Judy Francis at 828-296-7230.

Sincerely,

Christine Schmidt Acting Manager, Grants and Outreach Program

Enclosures

cc: Judy Francis, Recreation Resources Service Regional Consultant

John Fullwood, Acting Director
NC Division of Parks and Recreation
1615 MSC - Raleigh, NC 27699-1615
919.707.9300 / ncparks.gov

NORTH CAROLINA STATE PARKS
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STATE OF NORTH CAROLINA

CONTRACTOR'S FEDERAL I.D.

COUNTY OF WAKE

XXXX 01242

N.C. Parks and Recreation Trust Fund Project Agreement

Grantee: City of Hendersonville

Project Number: 2021 - 926

Project Title: Clear Creek Greenway

Period Covered By This Agreement: 11/1/2020 to 10/31/2023

Project Scope (Description of Project): Land Acquisition 2 +/- acres and development including trail, bridge, amenities, fencing, crosswalks, site preparation and planning costs.

Project Costs: PARTF Amount \$ 376,000

Local Government Match \$ 989,590

Conditions

The North Carolina Department of Natural and Cultural Resources (hereinafter called the "Department") and City of Hendersonville (hereinafter referred to as "Grantee") agree to comply with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances described in the North Carolina Parks and Recreation Trust Fund (PARTF) administrative rules and grant application which are hereby by reference made a part of the PARTF grant contract and which are on file with the Division of Parks and Recreation. In addition, the Department and the Grantee agree to comply with the State of North Carolina's Terms and Conditions as listed in "Attachment A" to this contract.

Now, therefore, the parties hereto do mutually agree as follows:

Upon execution of this grant agreement, the Department hereby promises, in consideration of the promises by the Grantee herein, to obligate to the Grantee the grant amount shown above. The Grantee hereby promises to efficiently and effectively manage the funds in accordance with the approved budget, to promptly complete grant assisted activities described above in a diligent and professional manner within the project period, and to monitor and report work performance.

The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation and availability of funds for this purpose to the Department.

Section I. Eligible Project Costs and Fiscal Management

1. The PARTF grant amount must be matched on at least a dollar-for-dollar basis by the Grantee. To be eligible, project costs must be incurred during the contract period, be documented in the grant application, and described in the project scope of this agreement, and initiated and/or undertaken after execution of this agreement by the Grantee and the Department.
2. PARTF assistance for land acquisition will be based on the fair market value of real property or the sales price, whichever is less. Value must be based upon an independent appraisal by a licensed appraiser holding a general or residential certification from the North Carolina Appraisal Board. The Department shall review the appraisal as to content and valuation. Approval of appraised amounts rests with the Department. The Grantee agrees to begin development on PARTF acquired land within five (5) years of the date this contract is signed by the Department and Grantee in order to allow general public access and use.
3. Payment shall be made in accordance with the contract documents as described in the Scope of Work (Attachment B). Payment for work performed will be made upon receipt and approval of invoice(s) from the Grantee documenting the costs incurred in the performance of work under this contract. Invoices may be submitted to the Contract Administrator

quarterly. Final invoices must be received by the Department within forty-five (45) days after the end of the contract period or contract completion, whichever occurs first. Accounting records should be based on generally accepted local government accounting standards and principles. Records shall be retained for a period of five (5) years following project completion, except that records shall be retained beyond five (5) year period if audit findings have not been resolved. All accounting records and supporting documents will clearly show the number of the contract and PARTF project to which they are applicable. The State Auditor shall have access to persons and records as a result of all contracts and grants entered into by state agencies and or political subdivisions in accordance with General Statute 147-64.7.

4. The Grantee agrees to refund to the Department, subsequent to audit of the project's financial records, and costs disallowed or required to be refunded to the Department on account of audit exceptions.

Section II. Project Execution

1. The Grantee may not deviate from the scope of the project without approval of the Department. When one of the conditions in the contract changes, including but not limited to the project scope, a revised estimate of costs, a deletion or additions of items, or need to extend the contract period, the Grantee must submit in writing a request to the Department for approval.
2. The Grantee shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Department.
3. In the event the Grantee subcontracts for any or all of the services covered by the contract:
 - a. The Grantee is not relieved of any of the duties and responsibilities provided in this contract;
 - b. The subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and;
 - c. The subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.
4. In accordance with Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, the grantee agrees not to subcontract with any vendors debarred or suspended by the State of North Carolina and shall not knowingly enter into any lower tier covered transactions with a person or vendor who is debarred, suspended or declared ineligible.
5. The Grantee shall not substitute key personnel assigned to the performance of this contract without prior approval by the Department's Contract Administrator. Mr. Brendan Shanahan is designated by the Grantee as key personnel for purposes of this contract. The Department designates, Ms. Jill Fusco, Grant Administrator, as the Contract Administrator for the contract.

Department Contract Administrator	Grantee Contract Administrator
NC Department of Natural and Cultural Resources Division of Parks and Recreation Attention: Ms. Jill Fusco, Contract Administrator 1615 Mail Service Center Raleigh, NC 27699-1615 Telephone 919-707-9362 Email: jill.fusco@ncparks.gov	City of Hendersonville Attention: Brendan Shanahan 305 Williams Street Hendersonville, NC 28792 Telephone: 828-233-3237 Email: bshanahan@hvlnc.gov

6. The Grantee agrees to comply with all applicable federal, state and local statutory provisions governing purchasing, construction, land acquisition, fiscal management, equal employment opportunity and the environment including but not limited to the following:

Local Government Budget and Fiscal Control Act (G.S. 159-7 to 159-42); Formal Contracts, Informal Contracts and Purchasing (including but not limited to G.S. 44A-26, G.S. 87-1 to 87.15.4, G.S. 133.1 to 133-40, G.S. 143-128 to

G.S.143-135; Uniform Relocation Assistance Act (G.S. 133-5 to 133-18); Conflict of Interest (G.S. 14-234); Contractors Must use E-Verify (G.S. 143-48.5); Americans With Disabilities Act of 1990 (P.L. 101-336) and ADA Accessibility Guidelines; N.C. State Building Code; and the North Carolina Environmental Policy Act (G.S. 113A-1 to G.S. 113A-12), and Sales Tax Refund (G.S. 105-164.14(c)).

7. The Grantee agrees it provides a drug-free workplace in accordance to the requirements of the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D).
8. The Grantee agrees to permit periodic audits and site inspections by the Department to ensure work progress in accordance with the approved project, including a close-out inspection upon project completion. After project completion, the Grantee agrees to conduct grant contract compliance inspections at least once every five (5) years and to submit a Department provided inspection report to the Department.
9. The Grantee agrees land acquired with PARTF assistance shall be dedicated in perpetuity as a recreation site for the use and benefit of the public, the dedication will be recorded in the deed of said property and the property may not be converted to other than public recreation use without approval of the Department. The Grantee agrees to maintain and manage PARTF assisted development/ renovation projects for public recreation use for a minimum period of twenty-five (25) years after project completion.
10. The Grantee agrees to operate and maintain the project site so as to appear attractive and inviting to the public, kept in reasonably safe repair and condition, and open for public use at reasonable hours and times of the year, according to the type of facility and area.
11. The Grantee shall agree to place utility lines developed with PARTF assistance underground.
12. If the project site is rendered unusable for any reason whatsoever, the Grantee agrees to immediately notify the Department of said conditions and to make repairs, at its own expense, in order to restore use and enjoyment of the project by the public.
13. The Grantee agrees not to discriminate against any person on the basis of race, sex, color, national origin, age, residency or ability in the use of any property or facility acquired or developed pursuant to this agreement.
14. The Grantee certifies that it:
 - (a) Has neither used nor will use any appropriated funds for payment to lobbyists;
 - (b) Will disclose the name, address, payment details, and purposes of any agreement with lobbyists whom Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and,
 - (c) Will file quarterly updates about the use of lobbyists if material changes occur in their use.

Section III. Project Termination and Applicant Eligibility

1. The Grantee may unilaterally rescind this agreement at any time prior to the expenditure of funds on the project described in this contract.
2. If through any cause, the Grantee fails to fulfill in a timely and proper manner the obligations under this contract, the Department shall thereupon have the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reasons thereof. In that event, the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this contract.
3. Failure by the Grantee to comply with the provisions and conditions set forth in the formal application, PARTF administrative rules and this agreement shall result in the Department declaring the Grantee ineligible for further participation in PARTF, in addition to any other remedies provided by law, until such time as compliance has been obtained to the satisfaction of the Department.

Section IV. Attestation and Execution

N.C.G.S. §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you (Contractor) attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

In witness whereof, the Department and the Grantee have executed the Agreement in duplicate originals, one of which is retained by each of the parties.

City of Hendersonville	
Name of Grantee (Local Government)	Signature of Grantee (Chief Elected Official)
Typed or Printed Name of Official	Title of Official

(Notary Public Completes)

State of North Carolina

County of

--

On this _____ day of _____, 20____, _____

personally appeared before me the said named _____, to me known and known to me to be the person described in and who executed the foregoing instrument, and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My commission expires: _____, 20_____.

Signature of Notary Public

(Seal Here)



North Carolina Department of Natural and Cultural Resources
Susi H. Hamilton, Secretary

By:

Department Head or Authorized Agent
for Secretary Hamilton

Title

**General Terms and Conditions
Governmental Entities
May 1, 2011**

DEFINITIONS

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are from 9 NCAC 3M.0102 unless otherwise noted. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein.

- (1) "Agency" (as used in the context of the definitions below) means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political sub-agency of government. For other purposes in this Contract, "Agency" means the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the Agency to the Office of the State Auditor that states that the Grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the Agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and sub-grantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or sub-grantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or sub-grantee during the performance of the grant.
- (10) "Grantee" has the meaning in G.S. 143-6.2(b): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto. For purposes of this contract, Grantee also includes other State agencies such as universities.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in N.C.G.S. 143-6.2(a)(1): A firm, corporation, partnership, association, county, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution.
- (13) "Public Authority" has the meaning in N.C.G.S. 143-6.2(a)(3): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are sub-granted to other organizations. Pursuant to N.C.G.S. 143-6.2(b), the terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.
- (17) "Sub-grantee" has the meaning in G.S. 143-6.2(b): a non-State entity that receives a grant of State funds from a grantee or from another sub-grantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

- (18) "Unit of Local Government has the meaning in G.S. 143-6.2(a)(2): A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

Relationships of the Parties

Independent Contractor: The Grantee is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Agency.

Subcontracting: To subcontract work to be performed under this contract which involves the specialized skill or expertise of the Grantee or his employees, the Grantee first obtains prior approval of the Agency Contract Administrator. In the event the Grantee subcontracts for any or all of the services or activities covered by this contract: (a) the Grantee is not relieved of any of the duties and responsibilities provided in this contract; (b) the subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and; (c) the subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.

Sub-grantees: The Grantee has the responsibility to ensure that all sub-grantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Contract.

Assignment: The Grantee may not assign the Grantee's obligations or the Grantee's right to receive payment hereunder. However, upon Grantee's written request approved by the issuing purchasing authority, the Agency may:

- (a) Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or
- (b) Include any person or entity designated by the Grantee as a joint payee on the Grantee's payment check(s).

Such approval and action does not obligate the State to anyone other than the Grantee and the Grantee remains responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this Contract insures to the benefit of and is binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, are strictly reserved to the Agency and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Agency and Grantee that any

third person receiving services or benefits under this Contract is an incidental beneficiary only.

Indemnity

Indemnification: In the event of a claim against either party by a third party arising out of this contract, the party whose actions gave rise to the claim is responsible for the defense of the claim and any resulting liability, provided that a party may not waive the other party's sovereign immunity or similar defenses. The parties agree to consult with each other over the appropriate handling of a claim and, in the event they cannot agree, to consult with the Office of the Attorney General.

Default and Termination

Termination by Mutual Consent: Either party may terminate this agreement upon thirty (30) days notice in writing from the other party. In that event, all finished or unfinished documents and other materials, at the option of the Agency, shall be submitted to the Agency. If the contract is terminated as provided herein, the Grantee is paid in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this agreement; for costs of work performed by subcontractors for the Grantee provided that such subcontracts have been approved as provided herein; or for each full day of services performed where compensation is based on each full day of services performed, less payment of compensation previously made. The Grantee repays to the Agency any compensation the Grantee has received which is in excess of the payment to which he is entitled herein.

Termination for Cause: If, through any cause, the Grantee fails to fulfill in timely and proper manner the obligations under this agreement, the Agency thereupon has the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reason thereof and the effective date thereof. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Grantee, at the option of the Agency, be submitted to the Agency, and the Grantee is entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. The Grantee is not relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this agreement, and the Agency may withhold payment to the Grantee for the purpose of set off until such time as the exact amount of damages due the Agency from such breach can be determined.

Waiver of Default: Waiver by the Agency of any default or breach in compliance with the terms of this Contract by the Grantee is not a waiver of any subsequent default or breach and is not a modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Agency and the Grantee and attached to the contract.

Availability of Funds: The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.

Force Majeure: Neither party is in default of its obligations hereunder if and it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: Any and all copyrights resulting from work under this agreement shall belong to the Grantee. The Grantee hereby grants to the North Carolina Department of Environment and Natural Resources a royalty-free, non-exclusive, paid-up license to use, publish and distribute results of work under this agreement for North Carolina State Government purposes only.

Compliance with Applicable Laws

Compliance with Laws: The Grantee understands and agrees that is subject to compliance with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Equal Employment Opportunity: The Grantee understands and agrees that it is subject to compliance with all federal and State laws relating to equal employment opportunity.

Confidentiality

Confidentiality: As authorized by law, the Grantee keeps confidential any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement and does not divulge or make them available to any individual or organization without the prior written approval of the Agency. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract or without the prior written approval of the Agency.

Oversight

Access to Persons and Records: The State Auditor and the using agency's internal auditors shall have access to persons

and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees or performance). The Contractor shall retain all records for a period of three years following completion of the contract or until any audits begun during this period are completed and findings resolved, whichever is later.

Record Retention: The Grantee may not destroy, purge or dispose of records without the express written consent of the Agency. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to Federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

Time Records: The Grantee will maintain records of the time and effort of each employee receiving compensation from this contract, in accordance with the appropriate OMB circular.

Miscellaneous

Choice of Law: The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Grantee, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Agency and the Grantee.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this Contract.

Care of Property: The Grantee agrees that it is responsible for the proper custody and care of any State owned property furnished him for use in connection with the performance of his contract and will reimburse the State for its loss or damage.

Ownership of equipment purchased under this contract rests with the Agency. Upon approval of the Agency Contract Administrator, such equipment may be retained by the Grantee for the time the Grantee continues to provide services begun under this contract.

Travel Expenses: All travel, lodging, and subsistence costs are included in the contract total and no additional payments will be made in excess of the contract amount indicated in above. Contractor must adhere to the travel, lodging and subsistence rates established in the Budget Manual for the State of North Carolina.

Sales/Use Tax Refunds: If eligible, the Grantee and all sub-grantees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Grantee may not use the award of this Contract as a part of any news release or commercial advertising.

Recycled Paper: The Grantee ensures that all publications produced as a result of this contract are printed double-sided on recycled paper.

Sovereign Immunity: The Agency does not waive its sovereign immunity by entering into this contract and fully retains all immunities and defenses provided by law with respect to any action based on this contract.

Gratuities, Kickbacks or Contingency Fee(s): The parties certify and warrant that no gratuities, kickbacks or contingency fee(s) are paid in connection with this contract, nor are any fees, commissions, gifts or other considerations made contingent upon the award of this contract.

Lobbying: The Grantee certifies that it (a) has neither used nor will use any appropriated funds for payments to lobbyist; (b) will disclose the name, address, payment details, and purpose of any agreement with lobbyists whom the Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with

profits or non-appropriated funds on or after December 22 1989; and (c) will file quarterly updates about the use of lobbyists if material changes occur in their use.

By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32: It is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipates bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24."

Scope of Work

North Carolina Division of Parks and Recreation Parks and Recreation Trust Fund – Grants Program for Local Governments

Grantee: City of Hendersonville

Title of Project: Clear Creek Greenway

Project Number: 926

Contract Number: 2021-926

Amount of Grant: \$ 376,000

Amount of Match: \$ 989,590

Contact Person for Project: Brendan Shanahan

Title: Civil Engineer
City of Hendersonville

Address: 305 Williams Street
Hendersonville, NC 28792

Telephone: 828-233-3237

Contact email address: bshanahan@hvlnc.gov

Scope of Project: Land Acquisition 2 +/- acres and development including trail, bridge, amenities, fencing, crosswalks, site preparation and planning costs.

Length of Project: 36 months (11/1/2020 – 10/31/2023)

Schedule for Reimbursements: Grantee may submit bills quarterly after a significant portion of work has been completed on the project element(s). Not more than 90% of the grant will be reimbursed until the grantee completes the project elements specified in the grant (refer to detailed budget submitted with grant application).

The City of Hendersonville grant application and support documentation are, by reference, part of the contract. The administrative rules of the N.C. Parks and Recreation Trust Fund are, by reference, a part of the contract.

STATE OF NORTH CAROLINA

CITY OF HENDERSON

AGREEMENT

This Agreement is made and entered into this the _____ day of _____, 20_____, by and between the City of Hendersonville, North Carolina, a North Carolina municipal corporation, (the “**City**”), and _____, Inc. (the “**Company**”), and MDT Holdings, Inc., a _____ company, (the “**Developer**”).

WITNESSETH:

Whereas, the City is a municipal corporation having the capacity to contract under N.C. Gen. Stat. §160A-11; and

Whereas, the Company is a Delaware corporation authorized to do business in North Carolina, having the capacity to contract; and

Whereas, the Developer is a South Carolina corporation authorized to do business in North Carolina, having the capacity to contract; and

Whereas, the Company has been considering commencing operations in Henderson County, which if it occurs is estimated by the Company to result in a taxable capital investment to be made by or on behalf of the Company of at least Thirty-Eight Million Dollars (\$38,000,000.00), to be made over a period of five (5) years, and the creation of not fewer than one hundred fifty (150) new jobs, paying an average wage in excess of the current average weekly wage for jobs in Henderson County; and

Whereas, the Developer will purchase real property and construct the facilities necessary for the Company’s operations in Henderson County and the City of Hendersonville, and lease the same to the Company; and

Whereas, the Company and the Developer have stated that the City is competing with one or more other sites for the location of the capital investment, both within and outside the United States; and

Whereas, the Company requested assistance from the City in the form of economic development incentives to offset a portion of the costs associated with construction of a new plant in Henderson County and the City; and

Whereas, in reliance upon the Company’s representations to the City concerning the net taxable capital investment to be made, the City set and held a public hearing for November 18, 2020, duly advertised in the Hendersonville Lightning, a newspaper having daily general circulation in Henderson County, on November 5, 2020, to hear public comment regarding the City’s intent to consider granting economic development incentives to the Company in a total amount not to exceed Eight Hundred Fifty-Seven Thousand Five Hundred Dollars (\$857,500.00); and

Whereas, the City has the authority under N.C. Gen. Stat. §158-7.1(a) to make appropriations, including grants to a company to offset a portion of the expenses associated with the construction of a new manufacturing plant, in order to stimulate the local economy, promote business, create new jobs, and benefit the public by generating additional tax revenue for the City; and

Whereas, the City, through its City Council, has determined that the capital investment and creation of new jobs described above by the Company would benefit the public in Henderson County; and

Whereas, the City, through its City Council, has determined that a taxable capital investment of Thirty-Eight Million Dollars (\$38,000,000.00), to be made over a period of five (5) years, will benefit the City by generating

additional taxable capital property, real and personal, and provide well-paid jobs with benefits for the City's citizens, thus stimulating the local economy;

NOW, THEREFORE, in consideration of the mutual covenants and promises and obligations contained herein below, the parties agree as follows:

Acquisition of Real Estate

1. Company has identified a project site consisting of +/- 18.5 acres, being a portion of those parcels having a REID of 9967049, 202522, 9966237 202520, and 9966236, the approximate location and layout of the site being shown on Exhibit A, attached hereto and incorporated by reference, hereinafter the "**Site**." The Developer shall acquire marketable fee simple title to the Site for the Company's operations in Henderson County. All real property investments which are the subject of this Agreement shall be located on the Site. A recorded plat showing the lot to be purchased shall be affixed to this Agreement as a part hereof at least fifteen (15) consecutive calendar days prior to closing on Developer's purchase of the Site. The Developer shall provide the City with a recorded deed for the Site within fifteen (15) days after closing on the purchase of the Site to demonstrate compliance with this Paragraph.

2. Both Developer and Company shall join the Seller of the Site by signing a petition to annex the Site into the City limits for the City as part of the closing on the Developer's acquisition of the Site. The joining of and consent to the annexation of the Site by the Developer and the Company shall be irrevocable. Developer and Company shall take such steps as necessary to bind all successors and assigns to the requirements of this Paragraph.

3. As used in this Agreement, the term "**Year**" shall refer to a calendar year in which performance by the Company and/or the Developer is required. "**Investment Year**" shall mean a calendar year in which a taxable capital investment (and/or retention) is required. "**Job Creation Year**" shall mean a year in which jobs creation (and/or retention) is required. Exhibits B and C, attached hereto and incorporated herein by reference, correlate each performance Year to a calendar year.

Real Property Construction and Equipment

4. The Developer shall construct and equip the Site with an industrial facility suitable for the Company's operations, and the Company shall acquire and install the requisite equipment for the same. The building and equipping of the Site, and acquisition and installation of the requisite equipment shall result in a new taxable capital investment by the Developer and Company in real and personal property of at least Thirty-Eight Million Dollars (\$38,000,000.00) that is taxable by the City pursuant to N.C. Gen. Stat. §105-274. The minimum combined taxable capital investment in real and personal property of \$38,000,000 is hereinafter referred to as the "**Capital Investment**" or, as is appropriate, the "**Capital Investment Requirement**." As used herein, "**Allowable Depreciation**" means straight line depreciation over a 7-year period with a 25% residual value.

- a. The Capital Investment Requirement shall consist of a taxable capital investment in real property, excluding the land acquisition cost of the Site, of at least Seventeen Million Dollars (\$17,000,000.00), hereinafter the "**Real Property Investment**" or the "**Real Property Investment Requirement**," as appropriate. The Real Property Investment Requirement will be met over three (3) consecutive calendar years. Each of the three Year's taxable capital investment requirement shall be hereinafter referred to as that particular Year's real property investment requirement, e.g. "Year 1 Real Property Investment Requirement, Year 2 Real Property Investment Requirement, and Year 3 Real Property Investment Requirement." Once made, each Year's Real Property Investment Requirement must be retained throughout the duration of this Agreement. Each Year's Real Property Investment Requirement (including both investment and retention and including the timely receipt by the City of the Annual Capital Investment Certification for that Year as defined below), shall be an express condition precedent to the Company's receipt of any economic incentives payments under this Agreement for that Year. Developer and Company shall be jointly and

severally responsible for meeting the Real Property Investment Requirements within the time frames specified in Exhibit B. For the avoidance of doubt, no incentives will be paid for any Year in which the Real Property Investment Requirement is not met, regardless of who was responsible for making the investment as between the Company and the Developer.

- b. The remainder of the Capital Investment Requirement consists of a taxable capital investment in personal property and equipment of at least Twenty-One Million Dollars (\$21,000,000.00), hereafter the “**Personal Property Investment**” or “**Personal Property Investment Requirement**,” as appropriate. The Personal Property Investment Requirement will be met over a period of five (5) consecutive calendar years. Each of the five Year’s personal property investment requirement shall be hereinafter referred to as that particular Year’s personal property investment requirement, e.g. “Year 1 Personal Property Investment Requirement, Year 2 Personal Property Investment Requirement Year 5 Personal Property Investment Requirement.” Once made, each Year’s Personal Property Investment Requirement must be retained throughout the duration of this Agreement, excluding Allowable Depreciation. Each Year’s Personal Property Investment Requirement (including both investment and retention and including the timely receipt by the City of the Annual Capital Investment Certification for that Year as defined below), shall be an express condition precedent to the Company’s receipt of any economic incentives payments under this Agreement for that Year.

5. The Developer and/or the Company shall complete both the Real Property Investment Requirement and the Personal Property Investment Requirement in a timely manner and with due diligence, and in accordance with the schedule represented on Exhibit B.

6. Not later than January 31st of each calendar year following the Year in which a scheduled portion of the Capital Investment is required to be made or retained pursuant to the schedule in Exhibit B, the Company shall certify in writing by one authorized to execute contracts on behalf of Company to the City whether such Year’s Capital Investment Requirement has been met (and prior Years’ investments retained), hereinafter “**Annual Capital Investment Certification**”. The Company shall include with each Annual Capital Investment Certification evidence that the total portion of the Capital Investment required by the terms of this Agreement for such Year has been completed by the Company, and the required retention of prior Years’ Capital Investment Requirements have been retained. Such Annual Capital Investment Certification shall have attached to it such documentation as will provide proof to the reasonable satisfaction of the City that the Year’s Capital Investment Requirement (including retention) has been met. A real property tax assessment for the Year together with a personal property tax listing that, together, show an assessment of real and personal property for improvements to the real property and for business personal property listings equaling the creation and retention requirement for a Year’s Capital Investment Requirement shall be deemed compliance with the terms of this Agreement for such Year. The City’s obligation to credit or pay an Annual Economic Incentive Payment (defined below) for a Year shall not be triggered until both the Annual Capital Investment Certification, and the Annual Employment Certification (defined below) for the Year, have been received by the City. A schedule of due dates for the Annual Capital Investment Certifications is shown on Exhibit C.

7. The Company and the Developer shall enter into a binding lease agreement for the lease of the Site (including the industrial facility constructed on the Site) from the Developer by the Company for a period extending through at least December 31, 2032. A material breach of the lease agreement by either the Company or the Developer shall be deemed a material breach of this Agreement.

8. It is anticipated that the Developer and/or the Company may use independent third party financing to pay for the Capital Investment, resulting in third party liens on the real and/or personal property comprising the Capital Investment. The material breach (default) by the Developer or the Company of any third party financing agreement secured by the real property or personal property comprising the Capital Investment shall be a material breach of this Agreement.

Job Creation

9. The Company shall create one hundred fifty (150) full-time jobs to be employed at the industrial facility constructed on the Site, collectively providing benefits and paying an average wage of \$39,867 per employee per year (the “**Target Wage**”), in compliance with the schedule on the attached Exhibit B (the “**Job Creation Requirement**.”) Once created, a job shall be retained by the Company throughout the duration of this Agreement. The Job Creation Requirement will be met over a period of four (4) consecutive calendar years, beginning in Year 2 (calendar year 2023). Each of the four Year’s job creation requirement shall be hereinafter referred to as that particular Year’s Job Creation Requirement, e.g. “Year 2 Job Creation RequirementYear 5 Job Creation Requirement.” Once made, each Year’s Job Creation Requirement must be retained throughout the duration of this Agreement. Each Year’s Job Creation Requirement (including both creation and retention) shall be an express condition precedent to the Company’s receipt of any economic incentives payments under this Agreement for that Year.

10. Not later than January 31st of the year following a Year having a job creation and/or a job retention requirement, the Company shall provide to the City in writing, executed by one authorized to execute contracts on behalf of the Company, a certification (collectively, “**Employment Certification**”, and each the “**Annual Employment Certification**”), that that Year’s requirement has been met. The Employment Certification state the average wage for all jobs created and retained for the Year, and shall also have attached to it documentation as necessary to show that the requirement has been met, including but not limited to (1) the first page for each of the quarterly NC____s filed with the Employment Security Commission during the applicable Year, and (2) a list of the positions created and retained as a result of this Agreement, the average wage rate for such positions, and a summary of the other employment benefits received by the persons in those positions. For the avoidance of doubt, a schedule of due dates for each Year’s Employment Certification is shown on Exhibit C. The Company shall provide such other documentation as may be reasonably requested by the City. The City’s obligation to credit or pay an Annual Economic Incentive Payment (as defined below) shall not be triggered until both the Annual Employment Certification and Annual Capital Investment Certification for that year has been received by the City for that Year.

Incentives

11. Compliance with the Personal Property Investment Requirement, the Real Property Investment Requirement, and Job Creation Requirement (including retention requirements for both) shall be determined on a calendar year (tax year) basis. The first calendar year in which at least one of these requirements must be met will be considered Year 1. For the avoidance of doubt, Exhibit B shows each Year’s requirements, and the corresponding calendar year. Requirements must be met within each consecutive calendar year following Year 1 as shown on Exhibit B as provided in this Agreement.

12. Compliance with the Capital Investment Requirement will be determined each Year as indicated in Paragraph 6 above. Company shall timely list all personal property and equipment used at the Site for Company operations with the Henderson County Assessor, annually as required by law. In the event the Developer or Company disagrees with the independent valuation placed upon such real and personal property by the Henderson County Assessor, the Developer and the Company shall have the independent rights to appeal such valuation to the Henderson County Board of Equalization and Review and further to the North Carolina Property Tax Commission in accordance with the North Carolina General Statutes

13. The Capital Investment Requirement, Personal Property Investment Requirement and Job Creation Requirement shall be completed over 5 consecutive calendar years beginning with 2021, in accordance with the schedule shown on Exhibit B, each of these calendar year also representing a Year. Annual Incentives Payments (defined below) associated with each of these 5 Years will be paid for seven consecutive calendar years provided that all other requirements for new investment/retention and job creation/retention shown on Exhibit B have also been

met for those calendar years.¹ Any expenditures toward the Real Property Investment Requirement or Personal Property Investment Requirement made in a year prior to when due under the foregoing schedule shall be credited to the year due. The schedule of the annual requirements and the anticipated Annual Incentives Payments for each of these 5 years is shown on Exhibit B, attached.²

14. Each Year's ad valorem property tax on the Real Property Investment and the Personal Property Investment (less Allowable Depreciation on the Personal Property Investment) as set forth in the City's annual property tax bill must be paid to the City on or before January 4 following the tax year (calendar year) in which it is assessed, hereinafter "**Capital Investment Taxes.**" A schedule setting for the due dates for the payment of each Year's Capital Investment Taxes is shown on Exhibit C.

15. For each Year that both the Capital Investment Requirements and Job Creation Requirements are met, beginning with Year 1 (2021), the City shall pay to the Company an amount equal to eighty percent (80%) of such Year's actual Capital Investment Taxes paid (such amount hereinafter known as such year's "**Annual Economic Incentives Payment**"). Each Year's Annual Economic Incentives Payment will be paid on or before December 31st of the year following the Year for which the job creation and capital investment requirements (including retention) have been met. For example, if the job creation requirement for Year 2 (37 full time jobs) and the total Capital Investment Requirement for Year 2 is met (\$20,000,000.00) in calendar year 2022, Year 1's Capital Investment Requirement is retained, and the Year 2 Capital Investment Taxes are paid by February 4, 2023, then Year 2's Economic Incentives Payment based on Year 2's Capital Investment Requirement (as depreciated for Personal Property) will be paid in calendar year 2023 (by December 31st) and continue until 2029, for a total of 7 years of Economic Incentives Payments for Investment Year 2's investments. A schedule containing the due dates for the Annual Economic Incentives Payments (assuming all requirements are met) is shown on Exhibit C,

16. Notwithstanding any other terms and conditions of this Agreement, no Economic Incentives payment will be made for an Investment Year in which the City does not timely received the Capital Investment Certification and Employment Certification (each Certification as defined hereinabove) for such Year by the deadlines stated in Exhibit C, unless an extension has been received from the City in writing. The City shall not pay any interest to the Company on any portion of the Economic Incentives paid or owed to the Company by the City pursuant to the terms of this Agreement, regardless of when they are actually paid or owed. The total of all Annual Economic Incentives Payments made pursuant to this Agreement shall not in any case exceed Eight Hundred Fifty Thousand Five Hundred Dollars (\$857,500.00).

Extension of Water and Sewer to the Site

17. The City shall extend water and sewer service to the Site in sufficient quantity and quality to meet the reasonable operational needs of the Company for the facility constructed and operated on the Site, consistent with industry standards for a facility and operations substantially similar to the Company's facility and operations. Such water and sewer service shall be completed in accordance with a schedule to be agreed upon between the Company and the City, but in any event not later than December 31, 2021. In the event that the Company fails to meet both the Capital Investment Requirement and the Job Creation Requirement in their entirety, Company shall reimburse the City for all costs associated with the installation of water service to the Cite.

18. The Term of this Agreement shall run from the Effective Date through the last to occur of (i) the date the City makes the last incentive payment hereunder to the Company, or (ii) midnight, December 31, 2032, unless sooner terminated by the mutual agreement by the parties, by a party due to a material breach by the other party, as allowed by any provision of this Agreement, or due to the Company having received the maximum total incentives payments allowed under this Agreement (\$857,500.00). Notwithstanding the termination of the

¹ It is agreed by all parties hereto that the economic incentives payments associated with a year's Personal Property Investment Requirement will decline each year due to accumulated depreciation in tax value.

² The estimated incentives payments shown in Exhibit B are based upon 2020 ad valorem tax rates—actual incentives payments will vary based upon actual tax rates for each calendar year.

Agreement, covenants, conditions, obligations or benefits hereunder which by their nature are to be observed, performed, kept or continued past the end of the Term shall continue in effect for the limitations period provided by law.

19. If the Company shall cease operations of the Facility for a period of not less than six (6) months prior to the end of the Term without announcing plans to resume operations, the City may elect to terminate this Agreement by giving the Company written notice of termination. If the City gives that notice, , the City shall have no further obligations hereunder, including but not limited to the obligation to pay any further installments on the Economic Incentives after the date of such notice.

20. The Company agrees that any duly authorized representative of the City shall have access to and the right to reasonably inspect, copy, audit, and examine all of the books, records, and other documents relating to the fulfillment of this Agreement during the Term.

21. The Company may, at any time during the Agreement Term, refund all Annual Economic Incentives received plus the City's total cost for extension of water services to the Site. Such refund of both the shall end all obligations of the Company to complete the Capital Investment Requirement or create the new jobs pursuant to this Agreement.

22. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as delegating governmental powers, nor as a donation or a lending of the credit of the City within the meaning of the State Constitution. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys, nor properties, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future City governing body. To the extent of any conflict between this Paragraph and any other paragraph of this Agreement, this Paragraph shall take priority.

23. This Agreement shall bind all successors and assigns of the Company; however, neither this Agreement, nor the right to payment under the terms of this Agreement, may be assigned by the Company, or otherwise used as collateral for any obligations of the Company, financial or otherwise without the expressed written consent of the Hendersonville City Council.

24. Notwithstanding anything in this Agreement stated or implied to the contrary, termination of this Agreement for a material breach by the Developer or the Company shall end all any and all obligations of the City to make any further Economic Incentives Payments, period.

25. This Agreement shall be governed by the laws of the State of North Carolina. Exclusive venue for any court action filed related in any manner to this Agreement shall lie with a court having jurisdiction over Henderson County, North Carolina.

26. Each party represents and warrants to the other that it will comply with all applicable local, State, and Federal laws in carrying out its obligations incurred under the terms of this Agreement.

27. As between the parties hereto, the Company and Developer shall be entirely responsible for, and shall bear all risk of loss associated with the construction and operation of the plant at the Site and the employment of persons at the Site.

28. The Company and the City acknowledge that all funds the City appropriates and expends for economic development incentives as provided in this Agreement are for a bona fide public purpose and are expended in good faith reliance on N.C. Gen. Stat. §158-7.1(a) & (b).

29. The Company represents and warrants to the City that as of the Effective Date: (a) it is a corporation duly organized and existing under the laws of the State of Delaware and is authorized to do business in the State of North Carolina; (b) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement; and (c) this Agreement is the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms.

30. The Developer represents and warrants to the City that as of the Effective Date: (a) it is a corporation duly organized and existing under the laws of the State of South Carolina and is authorized to do business in the State of North Carolina; (b) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement; and (c) this Agreement is the legal, valid and binding agreement of the Developer, enforceable against the Developer in accordance with its terms.

31. The City represents and warrants to the Company that: (a) the City is a Municipal corporation of the State of North Carolina with power and authority to enter into and perform this Agreement; (b) the City has taken all action necessary to authorize the execution, delivery and performance of this Agreement; and (c) this Agreement is a legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms.

32. Any written notice or written certification or payment required by the terms of this Agreement shall be deemed given if delivered in person, or mailed certified mail, return receipt requested to the persons named below:

To the City: John Connet, City Manager
160 6th Avenue East
Hendersonville, NC 28792

To the Company: _____

To the Developer: MDT Holdings, Inc.

33. In the event any term, covenant or condition of this Agreement is deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

34. The provisions hereof shall inure to the benefit of and bind the parties hereto and their respective heirs, successor and assigns. This document shall be considered to have been prepared equally by the parties hereto and shall not be construed more strictly against either of them. The provisions hereof shall be liberally construed to give effect to their apparent intent.

35. This Agreement constitutes the entire agreement of the parties hereto and may not be modified or canceled except pursuant to the terms hereof or an instrument in writing signed by the parties hereto. This Agreement is conditioned on it being certified as having been pre-audited in order to comply with the requirements of Article 3 of Chapter 159 of the North Carolina General Statutes.

36. This Agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been signed by all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single instrument.

37. All parties hereto shall have all remedies provided at law or in equity for a material breach of this Agreement by the other party(ies). Failure of the Company and/or the Developer to complete and retain as required (1) the Capital Investment Requirement within the time frames indicated in Exhibit B, whether in whole or in part, and/or (2) the Job Creation Requirement within the time frames indicated in Exhibit B, whether in whole or in part, shall be deemed a material breach of this Agreement. Notwithstanding the foregoing, it is understood and agreed that Developer's obligations hereunder are limited to the Real Property Investment Requirement and retention of the Real Property Investment Requirement through the end of the Agreement Term.

38. This Agreement is intended to benefit the parties hereto only, and therefore no third party shall have any rights under this Agreement, or be deemed a third party beneficiary.

39. This Agreement shall be effective after it has been duly executed by the two parties, the effective date being the date above first written ("**Effective Date**").

(The remainder of this page was left blank intentionally.)

Now, therefore, the two parties have caused this Agreement to be duly approved and duly executed in triplicate, each to have the force and effect of an original as of the date and year above first written.

CITY OF HENDERSONVILLE

By: _____
Barbara G. Volk, Mayor

Attest: _____ (City Seal)

Angela Reece, Clerk to the Board

This instrument has been preaudited to the extent, and in the manner, required by the Local Government Budget and Fiscal Control Act.

City of Hendersonville Finance Director

_____, COMPANY

BY: _____ (Corporate Seal)
Signature, Authorized Signatory for _____

Print Name: _____

Print Title: _____

MDT HOLDINGS, INC., DEVELOPER

BY: _____ (Corporate Seal)
Signature, Authorized Signatory for MDT Holdings, Inc.

Print Name: _____

Print Title: _____

EXHIBIT A SITE PLAN
[ATTACH COPY]

DRAFT

EXHIBIT B

ANNUAL AND TOTAL REQUIRED CAPITAL INVESTMENT AND ESTIMATED INCENTIVES								
Year (Calendar Year/Tax Year)	Required Taxable Capital Investment\$	Required Job Creation and Retention	Estimated Year 1 Incentives if Year 1 Requirements Are Met#	Estimated Year 2 Incentives if Year 2 Requirements Are Met#	Estimated Year 3 Incentives if Year 3 Requirements Are Met#	Estimated Year 4 Incentives if Year 4 Requirements Are Met#	Estimated Year 5 Incentives if Year 5 Requirements Are Met#	Total Estimated Incentives if All Requirements Are Met
Year 1 (2021)*	\$3,000,000.00 (RP) \$0.00 (PP)	0	\$11,760.00	\$0.00	\$0.00	\$0.00	\$0.00	\$11,760.00
Year 2 (2022)	\$12,000,000.00 (RP) \$8,000,000.00 (PP) Retention\$	37 created	\$11,760.00	\$78,400.00	\$0.00	\$0.00	\$0.00	\$90,160.00
Year 3 (2023)	\$2,000,000 (RP) \$7,000,000.00 (PP)	46 created 37 retained	\$11,760.00	\$75,040.00	\$35,280.00	\$0.00	\$0.00	\$122,080.00
Year 4 (2024)	\$0.00 (RP) \$4,000,000.00 (PP)	46 created 83 retained	\$11,760.00	\$71,680.00	\$32,340.00	\$15,680.00	\$0.00	\$131,460.00,
Year 5 (2025)	\$0.00 (RP) \$2,000,000.00 (PP)	21 created 129 retained	\$11,760.00	\$68,320.00	\$29,400.00	\$14,000.00	\$7,840.00	\$131,320.00
Year 6 (2026)	Retention\$	150 retained	\$11,760.00	\$64,960.00	\$26,460.00	\$12,320.00	\$7,000.00	\$122,500.00
Year 7 (2027)	Retention\$	150 retained	\$11,760.00	\$61,600.00	\$23,520.00	\$10,640.00	\$6,160.00	\$113,680.00
Year 8 (2028)	Retention\$	150 retained	\$0.00	\$58,240.00	\$20,580.00	\$8,960.00	\$5,320.00	\$93,100.00
Year 9 (2029)	Retention\$	150 retained	\$0.00	\$0.00	\$17,640.00	\$7,280.00	\$4,480.00	\$29,400.00
Year 10 (2030)	Retention\$	150 retained	\$0.00	\$0.00	\$0.00	\$5,600.00	\$3,640.00	\$9,240.00
Year 11 (2031)	Retention\$	150 retained	\$0.00	\$0.00	\$0.00	\$0.00	\$2,800.00	\$2,800.00
TOTAL			\$82,320.00	478,240.00	\$185,220.00	74,480.00	37,240.00	\$857,500.00

*Year 1 Capital Investment Requirement for Investment Year 1 must be completed in calendar year 2021, Year 2 in 2022, etc. Earned incentives will be paid on or before December 31st of the following year. E.g., Incentives earned in calendar year 2021 will be paid on or before December 31, 2022.

§ All taxable capital investment must be retained throughout the duration of this agreement, excluding Allowable Depreciation on the personal property

#Declines each year due to depreciation of personal property; incentives are estimated based on 80% of taxes paid at 2020 tax rate.

(RP)/(PP) – Year's Real Property/Personal Property Investment Requirement

EXHIBIT C

SCHEDULE OF ANNUAL CERTIFICATIONS AND ECONOMIC INCENTIVES PAYMENTS***								
"Year" (Calendar Year/Tax Year)	Required Taxable Capital Investment Certification Due	Required Job Creation Certification Due	Capital Investment Taxes Payment Due	Estimated Incentives Payment Due based on Year 1 Investment and Job Creation***	Estimated Incentives Payment Due based on Year 2 Investment and Job Creation***	Estimated Incentives Payment Due Based on Year 3 Investment and Job Creation***	Estimated Incentives Payment Due Based on Year 4 Investment and Job Creation***	Estimated Incentives Payment Due Based on Year 5 Investment and Job Creation***
Year 1 (2021)*	January 31, 2022	n/a	January 4, 2022	December 31, 2022	n/a	n/a	n/a	n/a
Year 2 (2022)	January 31, 2023	January 31, 2023	January 4, 2023	December 31, 2023	December 31, 2023	n/a	n/a	n/a
Year 3 (2023)	January 31, 2024	January 31, 2024	January 4, 2024	December 31, 2024	December 31, 2024	December 31, 2024	n/a	n/a
Year 4 (2024)	January 31, 2025	January 31, 2025	January 4, 2025	December 31, 2025	December 31, 2025	December 31, 2025	December 31, 2025	n/a
Year 5 (2025)	January 31, 2026	January 31, 2026	January 4, 2026	December 31, 2026	December 31, 2026	December 31, 2026	December 31, 2026	December 31, 2026
Year 6 (2026)	January 31, 2027	January 31, 2027	January 4, 2027	December 31, 2027	December 31, 2027	December 31, 2027	December 31, 2027	December 31, 2027
Year 7 (2027)	January 31, 2028	January 31, 2028	January 4, 2028	December 31, 2028	December 31, 2028	December 31, 2028	December 31, 2028	December 31, 2028
Year 8 (2028)	January 31, 2029	January 31, 2029	January 4, 2029	n/a	December 31, 2029	December 31, 2029	December 31, 2029	December 31, 2029
Year 9 (2029)	January 31, 2030	January 31, 2030	January 4, 2030	n/a	n/a	December 31, 2030	December 31, 2030	December 31, 2030
Year 10 (2030)	January 31, 2031	January 31, 2031	January 4, 2031	n/a	n/a	n/a	December 31, 2031	December 31, 2031
Year 11 (2031)	January 31, 2032	January 31, 2032	January 4, 2032	n/a	n/a	n/a	n/a	December 31, 2032

***Assumes all requirements under the Agreement are met.

RESOLUTION OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO APPROVE ECONOMIC DEVELOPMENT INCENTIVES AND AUTHORIZE THE CITY MANAGER TO EXECUTE AGREEMENT WITH COMPANY

WHEREAS, the City of Hendersonville has been requested to approve economic incentives for Project Wheel, a Project involving a taxable capital investment of \$38,000,000.00 consisting of \$17,000,000.00 in real property (not including any land acquisition costs), and not less than \$21,000,000.00 in business personal property (equipment), and the creation of 150 jobs paying an average annual wage of \$39,867.00, which is in excess of the average wage in Henderson County for all insured industries for full-time employment, plus provide other employment benefits, all of the foregoing to occur over a five year period; and

WHEREAS, the Project is proposed to be developed on +/- 18.62 acres of real property located in Henderson County, and is proposing to petition for annexation into the City of Hendersonville; and

WHEREAS, Project Wheel is proposing be developed by two companies – one to purchase the site and construct the industrial facility, and one to lease and equip the facility and own and operate the industry to be located there; and

WHEREAS, the public benefit to be derived from Project Wheel is an increase in the property tax base for the City of Hendersonville, a substantial number of new jobs paying above the average wage in Henderson County, and will increase the population of the City of Hendersonville; and

WHEREAS, Project Wheel has requested economic incentives consisting of economic incentives payments totaling to a maximum of \$857,500.00 to be paid over an eleven year period and the extension of water and sewer services to the Project site consisting of the extension of +/- 1040 lineal feet of 8” gravity sewer line, and +/- 3,735 feet of 8” ductile iron water line to the Property to serve the industrial facility to be occupied by Project Wheel and the balance of the Property. The estimated cost for the water and sewer extensions is \$800,000, with the expectation that \$560,000 will be funded by a grant from the Golden Leaf Foundation, and \$240,000 will be funded from the City’s Water and Sewer Capital Reserve Fund (459) which have been previously earmarked by City Council for economic development purposes; and

WHEREAS, Project Wheel has indicated that the City of Hendersonville is in competition with other locations for the location and development of the Project, and that without the approval of economic incentives Project Wheel will not located at the proposed site in Henderson County; and

WHEREAS, the City is authorized to provide the requested economic incentives pursuant to N.C. Gen. Stat. § 158-7.1; and

WHEREAS, a draft contract with has been presented to the City Council for consideration, outlining the respective responsibilities between the Developer of the Site, and the Company to equip, own and operate the industry there, hereinafter the “Agreement”; and

WHEREAS, City Council is desirous of approving the economic incentives for Project Wheel, having held a duly advertised public hearing as required by N.C. Gen. Stat. § 158-7.1;

THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA that:

1. The WHEREAS clauses are incorporated into this Resolution as findings of the City of Hendersonville City Council.
2. The following economic development incentives are approved:
 - a. Extension of public water and public sewer to the Site consisting of the extension of +/- 1040 lineal feet of 8" gravity sewer line, and +/- 3,735 feet of 8" ductile iron water line to the site to serve Project Wheel.
 - b. Economic incentives payments equal to eighty percent (80%) of the ad valorem taxes paid by the Developer and/or the Company for new the taxable capital investment made over a five-year period. The incentives payments would last for a period of seven years from each of the five years over which capital investment would be made by the company. The first year's contemplated incentive, if granted, would be not more than \$11,760.00 (assuming FY 2021 tax rates), based on the new investment, the number of new employees, and the Council's incentives guidelines. The total maximum total amount of incentives payments approved is \$857,500.00.
3. The Agreement between the Developer, the Company, and the City, outlining the respective responsibilities with respect to the economic development and incentives is approved. The City Manager is authorized to sign the Agreement with such changes as he may deem appropriate, after consultation with the City Attorney, provided that the amount and type of taxable capital investment required, the number of jobs to be created, the minimum average annual salary to be paid to the jobs created, and the amount and type of economic incentives to be paid by the City may not be changed without approval from the City Council.
4. The approval of the economic incentives as outlined in this Resolution is conditioned on the Company meeting the taxable capital investment in real and personal property of \$38,000,000.00, consisting of \$17,000,000.00 in new taxable capital investment in real property and improvements (i.e. less site acquisition costs), and \$21,000,000.00 in personal property and equipment over a five year period, meets the job creation requirement of 150 new jobs paying an average wage of \$39,867.00 per year plus benefits, and retains the capital investment (less depreciation) and jobs over the term of the Agreement.
5. 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 signed by the City Manager.

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

(City Seal)

Approved as to form:

Angela S. Beeker, City Attorney

INTERLOCAL AGREEMENT

AN INTERLOCAL AGREEMENT TO PROVIDE FOR THE DEVELOPMENT OF THE GARRISON INDUSTRIAL PARK PROPERTY BETWEEN THE COUNTY OF HENDERSON AND THE CITY OF HENDERSONVILLE MADE PURSUANT TO N.C. GEN. STAT. §160-460 *et seq.*

This Interlocal Agreement (the “**Agreement**”) is made this the ____ day of September 2020, by and among the following parties:

1. The County of Henderson, a body corporate and politic of the State of North Carolina (the “**County**”), whose address is 1 Historic Courthouse Square, Suite 5, Hendersonville, North Carolina 28792.

2. The City of Hendersonville, a North Carolina municipal corporation (the “**City**”), whose address is 160 Sixth Avenue East, Hendersonville, North Carolina 28792.

* * * * *

The parties agree as follows:

Purpose and Background.

3. The **Agreement** is to provide for the financing of the purchase, and for the marketing, development and sale to industries meeting the **City’s** and the **County’s** economic development policy incentive guidelines, in a manner consistent with the land development ordinances of the **City** and the **County**, of the “Garrison Property”, which consists of 41 acres, more or less, and is located off Crest Road in Blue Ridge Township, Henderson County (the “**Property**”).

4. The **Property** is more fully known as those parcels numbered 1-7 on the attached Exhibit A, and shown on the geographical information system of the **County** as the following real estate identification numbers:

- 202522 (less a small portion of this parcel is being retained by the seller to access parcel 202519)
- 9967049
- 202520
- 9966237
- 9966236
- 9966235
- 9967047

5. The Economic Investment Fund of Henderson County, Inc., a North Carolina nonprofit corporation (the “**Fund**”) holds an option to purchase the **Property**, purchased with an earnest money payment of \$20,000.00, and monthly payments of \$10,000 toward a purchase price of \$60,620.76 per acre as determined by an accurate survey of the **Property**. The option period expires September 9, 2021, although the **Fund** has the right to purchase the **Property** outright at any time

prior to September 9, 2021 (the “*Option*”). The *Option* does not give the *Fund* the right to purchase less than the totality of the *Property*. The *Fund* has requested that the *City* and the *County* provide a loan to the *Fund*, sufficient to pay the balance of the purchase price for the *Property*, determined in accordance with the provisions provided hereinbelow, and the *City* and *County* have agreed, subject to the terms of this *Agreement*.

6. The *Fund* has been marketing and will continue to market the *Property* through the The Henderson County Partnership for Economic Development, Inc., a North Carolina nonprofit corporation (the “*Partnership*”).

7. The *City* and the *County* shall require that prior to any transfer of title to any portion of the *Property* by the *Fund* (after the purchase by the *Fund* of the *Property*), the *Fund* shall establish covenants and restrictions on the use of the *Property*, to bind any future owners and users of the *Property*, in form that is acceptable to both the *City* and the *County*. These covenants and restrictions shall establish guidelines for new construction and ongoing maintenance of the *Property*. It is anticipated by all parties that the *City* will annex the *Property*, and the covenants and restrictions would also bridge any difference between the industrial zoning district requirements of the *County* and the *City*, and would also establish the requirement and process for annexation into the *City*. The *City* and the *County* shall require the *Fund* to record the restrictive covenants as part of the closing on the *Fund*’s purchase of the *Property*.

Duration.

8. This *Agreement* shall remain in effect until the later of the repayment in full of the *Loan Amount* to both the *City* and the *County* (reference Paragraph 10 below), or sale of all of the *Property* by the *Fund* to *industrial clients* qualifying for incentives under both the *City*’s and *County*’s Economic Development Assistance Guidelines (Exhibits B and C attached hereto and incorporated herein by reference), at which point this *Agreement* shall expire and terminate as to all provisions except those which, by their terms, survive such expiration and termination. As used herein, “*industrial client*” shall be deemed to include a purchaser or lessee that will occupy a portion of the *Property* for the length of time required to qualify for incentives under the *Economic Development Assistance Guidelines* of both the *City* and the *County*.

Financing of Purchase of the Property.

9. Because the *Fund* is required by the terms of the *Option* to purchase the *Property* in its entirety, and not in parts, the *City* and the *County* agree that they will jointly loan the *Fund* the *Loan Amount*, determined below, for the purchase of the *Property* as a whole.

10. The “*Loan Amount*” and the “*Loan Terms*” shall be as follows:

A. The “*Loan Amount*” shall equal the purchase price of the *Property*, less any pre-payments made by the *Fund*.¹ The *City* and the *County* shall each loan one-half (½) of the *Loan Amount* to the *Fund* for the purchase of the *Property*. Neither the *City* nor the *County* will make the loan until such time as an *industrial client* qualifying for an economic

¹ The *Option* requires monthly payments in the amount of \$10,000 that count as pre-payments against the *Fund*’s purchase price for the *Property*. As used herein, “pre-payment” refers to the initial earnest money deposit paid by the *Fund*, the monthly option payments, and any other payments made by the *Fund* that count against the *Fund*’s purchase price for the *Property*.

development incentive of at least an 80% percent incentive payment under the *City* and the *County's* Economic Development Assistance Guidelines (Exhibits B and C) has contracted with the *Fund* to purchase of all or a portion of the *Property* for development of an industrial site from the *Fund*, and the due diligence period under the sales contract (including all extensions) with the *industrial client* has expired. This shall be referred to as the "*Initial Sale*."

B. The purchase of the *Property* by the *Fund*, and *Initial Sale* shall occur as two separate transactions, each being fully funded. The "*Net Proceeds*" (sale price less closing costs) received from the *Initial Sale* will paid to the *City* and *County* as consideration for the release of the acreage sold by the *Fund* as part of the *Initial Sale* from their jointly held first lien Deed of Trust (see Paragraph 10(C) below).

C. The *City* and the *County* shall require the *Fund* (1) to sign and deliver to the *City* a Promissory Note, payable to the *City* and the *County* jointly, for the *Loan Amount*, and (2) to secure the Promissory Note with a first lien Deed of Trust on the *Property*, also to be delivered to the *City*², naming the *City* and the *County* as to a 50% interest each as beneficiaries. The Promissory Note shall bear interest at a fixed market rate of interest established by the *Wall Street Journal* prime rate of interest per annum on the last business day prior to the closing on the purchase of the balance of the *Property*. The Loan Amount shall be amortized over a twenty (20) year amortization schedule, and interest shall accrue with a balloon payment of all accrued principal and interest being due and payable one hundred twenty (120) months from the date of closing. The initial payment under the Promissory Note shall be the *Net Proceeds* from the *Initial Sale* as provided in Paragraph 10.B, however notwithstanding Paragraph 10.B, the *Net Proceeds* must at least equal the per acre *Release Fee* provided in Paragraph 10.D, or else the *City* and the *County* shall not be obligated to release the acreage for the *Initial Sale*. . The Promissory Note shall also provide that if the *Initial Sale* does not close, or if the *Initial Sale* does not close within thirty (30) days of the purchase of the *Property* by the *Fund* (including if the *Initial Sale* doesn't close as at all), either the *City* or the *County*, or both, shall have the right to accelerate the entire balance due under the Promissory Note. The terms of the Promissory Note and Deed of Trust shall be consistent with the terms of this *Agreement*, and shall be in such form as is acceptable to both the *City* and the *County*.

D. None of the acreage will be released unless the *Property* is being sold to an *industrial client* that would qualify for the payment of incentives under both the *City's* and the *County's* Economic Development Assistance Guidelines (Exhibits B and C) and both the *City* and the *County* determine the probably average hourly wage to be paid to the employees of the *industrial client*. It is agreed that the release fee plus accrued interest is the fair market value of the release. After the *Initial Sale*, and for each subsequent sale, the *City* and the *County* shall release the Deed of Trust on the acreage being sold in exchange for payment of the *Net Proceeds* of the sale, or \$64,500 per acre, whichever is greater, plus the accrued interest attributable to the released acreage. If not sooner paid, the total balance due under the Promissory Note will be due and payable with the release of the final acreage of the *Property*.

² The original promissory note and Deed of Trust will be held by the *City* for the benefit of both the *City* and the *County*. The promissory note and Deed of Trust will not be marked "paid," nor shall a satisfaction of the Deed of Trust be recorded in the Henderson County Registry, without the prior written consent of the *County*.

E. If an *industrial client* qualifies for an 80% incentives payment as defined in both Economic Development Assistance Guidelines, both the *City* and the *County* shall waive the accrued interest upon a finding, in addition to the findings in subparagraph 10.D, by both the *City* and the *County*, after a duly advertised public hearing, that the *industrial client* will stimulate the local economy, promote business and result in the creation of a substantial number of jobs in the *County* paying at or above the median average wage in the *County*.

11. Upon the closing of the purchase of the *Property* by the *Fund*, title to the *Property* shall be in the *Fund*, subject to the first lien Deed of Trust required by Paragraph 10 of this *Agreement*.

Operational Ownership of the Property.

12. The *City* and the *County* shall require that the marketing by the *Partnership* and the negotiations for the sale of the *Property* by the *Fund* shall attempt to locate manufacturing industries compatible with the goals of the area and which qualify for incentives under the Economic Development Assistance Guidelines of the *City* and the *County*, and shall subdivide the *Property* for the same.

13. The *City* and the *County* shall require that the terms of any proposed sale by the *Fund* and the associated Release by both the *City* and the *County*, will be presented, on a confidential basis pursuant to N.C. Gen. Stat. §143-318.11(a)(4), to both the *City* and the *County*. Such proposed sale shall be to a concern which qualifies for incentives under the Economic Development Assistance Guidelines of both the *City* and *County* (Exhibits B and C).

Annexation and Zoning, Subdivision and Stormwater Jurisdiction

14. The *City* and the *County* agree to require the *Fund* to petition the *City* for annexation of the entire *Property* into the *City* by voluntary annexation prior to the transfer of title by the *Fund* of any portion of the *Property*. The *Fund* shall contractually obligate all purchasers named on all sales contracts (and all persons or entities in whose name title will be held if different) and all transferees of any portion of the *Property* to consent to and sign the annexation petition, in addition to the *Fund*. The contract(s) of sale shall also preclude the withdrawal of the purchasers' consent to the annexation for a period of 180 days from the date of their purchase contract(s). The annexation Petition shall be signed and submitted to the *City* as part of the closing on the *Initial Sale*.

15. If the *City* annexes the *Property* into the *City*, the *City* requests and agrees that the *County* shall retain zoning regulation, and subdivision regulation jurisdiction over the *Property* as allowed by NCGS § 160A-360(d) and NCGS § 160D-202(f). For the avoidance of doubt, with respect to zoning regulation and subdivision regulation jurisdiction, the *City* requests that the *County* exercise those powers that the *City* could exercise under NCGS 160A, Article 19, Parts 3 and 4 (or NCGS Chapter 160D, Articles 7 and 8). It is understood and agreed that the *City* may rescind this grant of subdivision and zoning regulation jurisdiction (pursuant to NCGS § 160A-360(g) and NCGS § 160D-202(h)) at any time by providing written notice to the *County* two (2) years in advance of the effective date of such rescission of jurisdiction by the *City*, and at the end of the two (2) year notice period, repealing the terms of the Resolution which approved this grant of jurisdiction. The terms of this Paragraph shall survive the expiration and termination of this *Agreement* pursuant to Paragraph 8 above unless or until this grant of jurisdiction by the *City* is rescinded, in which case this Paragraph shall terminate on the effective date of any such rescission of jurisdiction by the *City*. For the avoidance of doubt, if this *Agreement* is terminated for any other

reason (i.e. other than pursuant to paragraph 8 above), the **City** and the **County** agree that the **County's** zoning and subdivision regulation jurisdiction shall end as of the date of such termination, without further action by any party hereto.

15. The **City** and the **County** shall require the **Fund** to encumber the entirety of the **Property** with covenants and restrictions containing development standards that meet or exceed the standards contained within the Industrial zoning classification of the **City**, prior to the transfer of title to any of the **Property** by the **Fund**. Such covenants and restrictions shall also contain language obligating all future owners of the **Property** to petition for and consent to the voluntary annexation of the entirety of the **Property** by the **City**. The covenants and restrictions (and all amendments thereto) shall be subject to the prior approval of both the **City** and the **County**. The covenants and restrictions shall be recorded as part of the closing for the **Fund's** purchase of the **Property**.

Other Provisions

16. Decisions of whether or not the **City** will provide additional incentives to any **industrial client** beyond those provided herein shall be at the sole and independent discretion of the **City**. Decisions of whether or not the **County** will provide additional incentives to any **industrial client** beyond those provided herein shall be at the sole and independent discretion of the **County**.

17. The **City** and the **County** shall enter into a three-party agreement with the **Fund** consistent with the terms of this **Agreement**. Notwithstanding anything in this **Agreement** to the contrary, if the **Fund** purchases less than the entire **Property**, neither the **City** nor the **County** shall be obligated to make any loan to the **Fund**.

18. This **Agreement** may be amended by a written instrument only, signed by both parties hereto, which has been approved by Resolution of both parties after a duly held and advertised public hearing.

19. This **Agreement** may be terminated prior to the end of its Duration (ref. paragraph 8 above) by written agreement, signed by both parties hereto, which has been approved by Resolution of both parties after a duly held and advertised public hearing.

Executed by the parties, as of the date shown above.

COUNTY OF HENDERSON

By: _____
GRADY HAWKINS, Chairman of the Henderson
County Board of Commissioners

Attest:

(Official Seal)

Clerk, Henderson County Board of Commissioners

CITY OF HENDERSONVILLE

By: _____
BARBARA VOLK, Mayor

Attest: _____ (Official Seal)

Clerk, Henderson County Board of Commissioners

This agreement has been pre-audited in that manner required by the Local Government Fiscal Control Act.

Finance Director for the City of Hendersonville

Finance Director for Henderson County

THREE-PARTY AGREEMENT

A THREE-PARTY AGREEMENT TO PROVIDE FOR THE DEVELOPMENT OF THE GARRISON INDUSTRIAL PARK PROPERTY BETWEEN THE ECONOMIC INVESTMENT FUND OF HENDERSON COUNTY, THE COUNTY OF HENDERSON AND THE CITY OF HENDERSONVILLE MADE PURSUANT TO N.C. GEN. STAT. §158-7.1

This Three-Party Agreement (the “*Agreement*”) is made this the ____ day of September, 2020, by and among the following three parties:

1. Economic Investment Fund of Henderson County, Inc., a North Carolina nonprofit corporation (the “*Fund*”), whose address is 330 North King Street, Hendersonville, North Carolina 28792.
2. The County of Henderson, a body corporate and politic of the State of North Carolina (the “*County*”), whose address is 1 Historic Courthouse Square, Suite 5, Hendersonville, North Carolina 28792.
3. The City of Hendersonville, a North Carolina municipal corporation (the “*City*”), whose address is 160 Sixth Avenue East, Hendersonville, North Carolina 28792.

* * * * *

The parties agree as follows:

Purpose and Background.

4. The *Agreement* is to provide for the financing of the purchase, and for the marketing, development and sale to industries meeting both the *City*’s and the *County*’s Economic Development Assistance Guidelines, in a manner consistent with the land development ordinances of the *City* and the *County*, of the “Garrison Property”, which consists of 41 acres, more or less, and is located off Crest Road in Blue Ridge Township, Henderson County (the “*Property*”).

5. The *Property* is more fully known as those parcels numbered 1-7 on the attached Exhibit A, and shown on the geographical information system of the *County* as the following real estate identification numbers:

- 202522 (less a small portion of this parcel is being retained by the seller to access parcel 202519)
- 9967049
- 202520
- 9966237
- 9966236
- 9966235
- 9967047

6. The **Fund** holds an option to purchase the **Property**, purchased with an earnest money payment of \$20,000.00, and monthly payments of \$10,000 toward a purchase price of \$66,476 per acre as determined by an accurate survey of the **Property**. The option period expires September 9, 2021, although the **Fund** has the right to purchase the **Property** outright at any time prior to September 9, 2021. The option does not give the **Fund** the right to purchase less than the totality of the **Property**. The **Fund** has requested that the **City** and the **County** provide a loan to the **Fund**, sufficient to pay the balance of the purchase price for the **Property**, determined in accordance with the provisions provided hereinbelow, and the **City** and **County** have agreed, subject to the terms of this **Agreement**.

7. The **Fund** has been marketing and will continue to market the **Property** through the The Henderson County Partnership for Economic Development, Inc., a North Carolina nonprofit corporation (the "**Partnership**").

8. Prior to any transfer of title to any portion of the **Property** by the **Fund** (after the purchase by the **Fund** of the **Property**), the **Fund** shall establish covenants and restrictions on the use of the **Property**, to bind any future owners and users of the **Property**, in form that is acceptable to both the **City** and the **County**. These covenants and restrictions shall establish guidelines for new construction and ongoing maintenance of the **Property**. It is anticipated by all parties that the **City** will annex the **Property**, and the covenants and restrictions would also bridge any difference between the industrial zoning district requirements of the **County** and the **City**, and would also establish the requirement and process for annexation into the **City**. The **Fund** shall record the restrictive covenants as part of the closing on the **Fund's** purchase of the **Property**.

Duration.

9. This **Agreement** shall remain in effect until the later of the repayment in full of the **Loan Amount** to both the **City** and the **County** (reference Paragraph 11 below), or sale of all of the **Property** by the **Fund** to **industrial clients** qualifying for incentives under both the **City's** and **County's** Economic Development Assistance Guidelines (attached hereto and incorporated by reference as Exhibits B and C), at which point this **Agreement** shall expire and terminate as to all provisions except those which, by their terms, survive such expiration and termination. As used herein, "**industrial client**" shall be deemed to include a purchaser or lessee that will occupy a portion of the **Property** for the length of time required to qualify for incentives under the **Economic Development Assistance Guidelines** of both the **City** and the **County**.

Financing of Purchase of the Property.

10. Because the **Fund** is required by the terms of the **Option** to purchase the **Property** in its entirety, and not in parts, the **City** and the **County** agree that they will jointly loan the **Fund** the **Loan Amount**, determined below, for the purchase of the **Property** as a whole.

11. The "**Loan Amount**" and the "**Loan Terms**" shall be as follows:

A. The "**Loan Amount**" shall equal the purchase price of the **Property**, less any pre-payments made by the **Fund**.¹ The **City** and the **County** shall each loan one-half (½) of

¹ The **Option** requires monthly payments in the amount of \$10,000 that count as pre-payments against the **Fund's** purchase price for the **Property**. As used herein, "pre-payment" refers to the initial earnest money

the *Loan Amount* to the *Fund* for the purchase of the *Property*. Neither the *City* nor the *County* will make the loan until such time as an *industrial client* qualifying for an economic development incentive of at least an 80% percent incentive payment under both the *City* and the *County's* Economic Development Assistance Guidelines (Exhibits B and C) has contracted with the *Fund* to purchase of all or a portion of the *Property* for development of an industrial site from the *Fund*, and the due diligence period under the sales contract (including all extensions) with the industrial client has expired. This shall be referred to as the "*Initial Sale*."

B. The purchase of the *Property* by the *Fund*, and *Initial Sale* shall occur as two separate transactions, each being fully funded. The *Net Proceeds* (sale price less closing costs) received from the *Initial Sale* shall be paid to the *City* and *County* as consideration for the release of the acreage sold by the *Fund* as part of the *Initial Sale* from their jointly held first-lien Deed of Trust (ref Paragraph 11(C) below).

C. The *Fund* shall be required (1) to sign and deliver to the *City* a Promissory Note, payable to the *City* and the *County* jointly, for the *Loan Amount*, and (2) to secure the Promissory Note with a first lien Deed of Trust on the *Property*, also to be delivered to the *City*², naming the *City* and the *County* as to a 50% interest each as beneficiaries. The Promissory Note shall bear interest at a fixed market rate of interest established by the *Wall Street Journal* prime rate of interest per annum on the last business day prior to the closing on the purchase of the balance of the *Property*. The *Loan Amount* shall be amortized over a twenty (20) year amortization schedule, and interest shall accrue with a balloon payment of all accrued principal and interest being due and payable one hundred twenty (120) months from the date of closing. The initial payment under the Promissory Note shall be the net proceeds from the *Initial Sale* as provided in Paragraph 11.B, however notwithstanding Paragraph 11.B, the *Net Proceeds* must at least equal the per acreage release fee provided in Paragraph 11.D, below, or else the *City* and the *County* shall not be obligated to release the acreage for the *Initial Sale*. The Promissory Note shall also provide that if the *Initial Sale* does not close, or if the *Initial Sale* does not close within thirty (30) days of the purchase of the *Property* by the *Fund* (including if the *Initial Sale* doesn't close as at all), either the *City* or the *County*, or both, shall have the right to accelerate the entire balance due under the Promissory Note. The terms of the Promissory Note and Deed of Trust shall be consistent with the terms of this *Agreement*, and shall be in such form as is acceptable to both the *City* and the *County*.

D. None of the acreage will be released unless the *Property* is being sold to an industrial client that would qualify for the payment of incentives under both the *City's* and the *County's* Economic Development Assistance Guidelines (Exhibits B and C) and both the *City* and the *County* determine the probably average hourly wage to be paid to the employees of the industrial client. It is agreed that the release fee plus accrued interest is the fair market value of the release. After the *Initial Sale*, and for each subsequent sale, the *City* and the *County* shall release the Deed of Trust on the acreage being sold in exchange for payment of the *Net Proceeds* of the sale, or \$64,500.00 per acre, whichever is greater, plus the accrued

deposit paid by the *Fund*, the monthly option payments, and any other payments made by the *Fund* that count against the *Fund's* purchase price for the *Property*.

² The original promissory note and Deed of Trust will be held by the *City* for the benefit of both the *City* and the *County*. The promissory note and Deed of Trust will not be marked "paid," nor shall a satisfaction of the Deed of Trust be recorded in the Henderson County Registry, without the prior written consent of the *County*.

interest attributable to the released acreage. If not sooner paid, the total balance due under the Promissory Note will be due and payable with the release of the final acreage of the **Property**.

E. If an industrial client qualifies for an 80% incentives payment as defined in both the **City's** and **County's** Economic Development Assistance Guidelines, both the **City** and the **County** shall waive the accrued interest upon a finding, in addition to the findings in subparagraph 11.D, by both the **City** and the **County**, after a duly advertised public hearing, that the **industrial client** will stimulate the local economy, promote business and result in the creation of a substantial number of jobs in the **County** paying at or above the median average wage in the **County**.

12. Upon the closing of the purchase of the **Property** by the **Fund**, title to the **Property** shall be in the **Fund**, subject to the first lien Deed of Trust required by Paragraph 11 of this **Agreement**.

Operational Ownership of the Property.

13. The marketing by the **Partnership** and the negotiations for the sale of the **Property** by the **Fund** shall attempt to locate manufacturing industries compatible with the goals of the area and which qualify for incentives under the Economic Development Assistance Guidelines of the **City** and the **County**, and shall subdivide the **Property** for the same.

14. The terms of any proposed sale by the **Fund** and the associated Release by both the **City** and the **County**, will be presented, on a confidential basis pursuant to N.C. Gen. Stat. §143-318.11(a)(4), to both the **City** and the **County**. Such proposed sale shall be to a concern which qualifies for incentives under the Economic Development Assistance Guidelines of both the **City** and **County** (Exhibits B and C).

15. Upon the **Initial Sale**, and all sales following, the proceeds of such sale(s) shall be applied as follows:

A. Repayment to the **City** and the **County** of the **Loan Amount**. If the net proceeds any given sale of a portion of the **Property** is for less than the total amount remaining owed to both the **City** and the **County** for repayment of the purchase price, then the **City** and the **County** shall each receive one-half (½) of such net proceeds; however release deeds will only be signed by the **City** and the **County** for the amount of acreage qualifying for release at the per acre price, plus interest (if not waived), pursuant to Paragraph 10 above.

B. Once the **City** and the **County** are repaid in full for the **Loan Amount** plus any accrued interest not waived, then any amounts received from the sale of any remaining portions of the **Property** shall belong to the **Fund**, to be used by the **Fund** for its purposes.

16. Obligations of the parties:

A. The **Fund** shall:

(i) Take title to the **Property**.

(ii) Encumber the *Property* with a first deed of trust benefitting the *City* and *County* equally.

(iii) Petition the *City* for annexation of the entire *Property* into the *City* by voluntary annexation prior to the transfer of title by the *Fund* of any portion of the *Property*. The *Fund* shall contractually obligate all purchasers named on all sales contracts (and all persons or entities in whose name title will be held if different) and all transferees of any portion of the *Property* to consent to and sign the annexation petition, in addition to the *Fund*. The contract(s) of sale shall also preclude the withdrawal of the purchasers' consent to the annexation for a period of 180 days from the date of the contract. The annexation Petition shall be signed and submitted to the *City* as part of the closing on the *Initial Sale*.

(iv) Encumber the entirety of the *Property* with covenants and restrictions containing development standards that meet or exceed the standards contained within the Industrial zoning classification of the *City*, prior to the transfer of title to any of the *Property* by the *Fund*. Such covenants and restrictions shall also contain language obligating all future owners of the *Property* to petition for and consent to the voluntary annexation of the entirety of the *Property* by the *City*. The covenants and restrictions (and all amendments thereto) shall be subject to the prior approval of both the *City* and the *County*. The covenants and restrictions shall be recorded as part of the closing for the *Fund's* purchase of the *Property*.

(iv) Market the *Property* through the *Partnership* for sale to the owner or operator of a qualified industrial or manufacturing facility under the both the *City's* and the *County's* Economic Development Assistance Guidelines, attached hereto as Exhibits B and C.

(v) Negotiate with such owners or operators to insure the future use of the *Property* for the purposes set out herein.

(vi) Repay the *City* and the *County* all amounts loaned to the *Fund* and all accrued interest not waived.

B. The *County* shall:

(i) Loan to the *Fund* one-half ($\frac{1}{2}$) of the *Loan Amount*. Notwithstanding anything in this *Agreement* to the contrary, if the *Fund* purchases less than the entire *Property*, the *County* shall not be obligated to make any loan to the *Fund*.

(ii) Release the subdivided lots in the *Property* upon payment to the *County* of the release fee provided in paragraph 11.D above. Should any proposed sale of one of such lots bring less than the total amount required to pay the release fee for the acreage included in the proposed sale, then the *County* shall not be obligated to release the acreage from the first lien Deed of Trust held for the benefit of the *City* and the *County*.

(iii) Decisions of whether or not the *County* will provide additional incentives to any *industrial client* beyond those provided herein shall be at the sole and independent discretion of the *County*.

C. The *City* shall:

(i) Loan to the *Fund* one-half ($\frac{1}{2}$) of the *Loan Amount*. Notwithstanding anything in this *Agreement* to the contrary, if the *Fund* purchases less than the entire *Property*, the *City* shall not be obligated to make any loan to the *Fund*.

(ii) Release the subdivided lots in the *Property* upon payment to the *City* of the release fee provided in paragraph 11.D above. Should any proposed sale of one of such lots bring less than the total amount required to pay the release fee for the acreage included in the proposed sale, then the *City* shall not be obligated to release the acreage from the first lien Deed of Trust held for the benefit of the *City* and the *County*.

(iii) Decisions of whether or not the *City* will provide additional incentives to any *industrial client* beyond those provided herein shall be at the sole and independent discretion of the *City*.

17. This *Agreement* provides the entire agreement of the parties hereto, and all prior or contemporaneous discussions, written communications, emails, are superseded by the terms hereof. This *Agreement* may only be amended by written instrument signed by all parties hereto.

18. This *Agreement* may not be assigned by any party hereto without the express written consent of all other parties.

19. There shall be no intended nor incidental third-party beneficiaries to this *Agreement*.

20. The *Fund* shall require all purchasers of the *Property* to certify to all of the following as part of the purchase agreement:

A. That the purchaser will 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;

B. That the purchaser is 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; and

C. That the purchaser is 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.

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DRAFT

Executed by the parties, as of the date shown above.

ECONOMIC INVESTMENT FUND
OF HENDERSON COUNTY, INC.

By: _____
JOHN GOULD, Chairman

COUNTY OF HENDERSON

By: _____
GRADY HAWKINS, Chairman of the Henderson
County Board of Commissioners

Attest: _____ (Official Seal)

Clerk, Henderson County Board of Commissioners

CITY OF HENDERSONVILLE

By: _____
BARBARA VOLK, Mayor

Attest: _____ (Official Seal)

Clerk, Henderson County Board of Commissioners

This *Agreement* has been pre-audited in that manner required by the Local Government Fiscal Control Act.

Finance Director for the City of Hendersonville

Finance Director for Henderson County

RESOLUTION OF THE CITY OF HENDERSONVILLE CITY COUNCIL TO APPROVE AN INTERLOCAL AGREEMENT AND A THREE PARTY AGREEMENT TO PROVIDE FOR A LOAN TO THE HENDERSON COUNTY ECONOMIC INVESTMENT FUND, INC. FOR THE PURCHASE OF LAND FOR AN INDUSTRIAL PARK

WHEREAS, the City of Hendersonville has been requested to approve economic incentives for Project Wheel, a Project involving a taxable capital investment of \$38,000,000.00 consisting of \$17,000,000.00 in real property (not including any land acquisition costs), and not less than \$21,000,000.00 in business personal property (equipment), and the creation of 150 jobs paying an average annual wage of \$39,867.00, which is in excess of the average wage in Henderson County for all insured industries for full-time employment, plus provide other employment benefits, all of the foregoing to occur over a five year period; and

WHEREAS, the Project is proposed to be developed on +/- 18.62 acres of real property located in Henderson County; and

WHEREAS, Project Wheel is proposing be developed by two companies – one to purchase the site and construct the industrial facility, and one to lease and equip the facility and own and operate the industry to be located there; and

WHEREAS, the Economic Investment Fund (the “Fund”) is developing an industrial park located off Upward Road in Henderson County, consisting of +/- 41.46 acres (the “Park”), has an option to purchase the Park site and is proposing to petition for annexation of the Park property into the City of Hendersonville; and

WHEREAS, the Fund has requested a loan from the City of Hendersonville and Henderson County for the purchase of the Park property, to be secured by a first lien deed of trust on the Park property; and

WHEREAS, Project Wheel is proposing to purchase +/- 18.62 acres of the Park property from the Fund for the development of Project Wheel; and

WHEREAS, the City will be requested to release the +/- 18.62 acres from the lien of the Deed of Trust for the benefit of Project Wheel, and to waive any accumulated interest thereon; and

WHEREAS, the public benefit to be derived from Project Wheel is an increase in the property tax base for the City of Hendersonville, a substantial number of new jobs paying above the average wage in Henderson County, and will increase the population of the City of Hendersonville; and

WHEREAS, the public benefit to be derived from the development of the Park is an increase in the property tax base for the City of Hendersonville, and the availability of industrial land which will likely result in the use by industries that will provide jobs to City residents jobs paying at or above the

average wage for all insured industries in Henderson County, and will increase the population of the City of Hendersonville; and

WHEREAS, a draft interlocal agreement between the City of Hendersonville and Henderson County for the joint provision of a loan to the Fund for the purchase of the Park site, and to outline the responsibilities of each with respect to the loan has been presented to City Council pursuant to N.C. Gen. Stat. § Chapter 160A, Article 20, hereinafter the “Interlocal Agreement”; and

WHEREAS, a draft three-party agreement between the City of Hendersonville, Henderson County and the Fund outlining the responsibilities of each with respect to the loan for the Fund’s purchase of the Park property, hereinafter the “Three Party Agreement,” has been presented to City Council; and

WHEREAS, the terms of the Interlocal Agreement and Three Party Agreement are complementary and provide for the following:

An estimated net investment by the City of approximately \$470,000 as a loan to the FUND (as well as a like investment by the Henderson County) to be used to purchase the Park Property to be used for location of industry; The Fund would borrow approximately \$1,170,000 from each of the City of Hendersonville and Henderson County, for a total estimated loan amount of \$2,340,000, would impose restrictive covenants on the property and subdivide it as an industrial subdivision, and then sell a portion of the Property to Project Wheel, and repay the County and the City the amounts loaned to the Fund except for the approximate loan amount noted above (\$470,000 each). Both the County and the City would then jointly hold a first lien deed of trust on the remaining Property securing the remaining balance of the sums loaned to the FUND, at a fair market value rate of interest. Release of the acreage from the lien of the deed of trust would be made in exchange for payment of a release fee of \$64,500 per acre but only if the acreage is sold by the FUND to entities that would qualify for economic development incentives under The City’s Economic Assistance Guidelines. The City and the County will retain the ability to release the acreage for less than this stated per acre price, or to waive accrued interest, but only as allowed by N.C. Gen. Stat. § 158-7.1, and only after holding duly authorized public hearing, and making the findings required under N.C. Gen. Stat. § 158-7.1; and

WHEREAS, the City is authorized to undertake economic development activities pursuant to N.C. Gen. Stat. § 158-7.1; and

WHEREAS, City Council is desirous of approving the Interlocal Agreement and the Three Party Agreement, having held a duly advertised public hearing as required by N.C. Gen. Stat. § 158-7.1 and N.C. Gen. Stat. § Chapter 160A, Article 20;

THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA that:

1. The WHEREAS clauses are incorporated into this Resolution as findings of the City of Hendersonville City Council.

2. The Interlocal Agreement and the Three Party Agreement are approved. The Mayor is authorized to sign both agreements.
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 Interlocal Agreement and Three Party Agreement.

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

(City Seal)

Approved as to form:

Angela S. Becker, City Attorney



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

Submitted By: John Connet, City Manager

Department: Admin

Date Submitted: 11/13/2020

Presenter: John Connet, City Manager

Title of Item: Closed Session as permitted in NC General Statute § 143-318.11(a)(5)

Nature of Item: Council Action

Council Meeting Date: November 18, 2020

Summary of Information/Request:

Item # 4

City staff is requesting a closed session to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease.

Suggested Motion(s):

I move that City Council enter into closed session pursuant to NCGS § 143-318.11(a) (5) to establish, or to instruct the public body's staff concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease.