

# AGENDA

## CITY OF HENDERSONVILLE CITY COUNCIL – REGULAR MEETING

SEPTEMBER 6, 2018 – 5:45 P.M.

Council Chambers - City Hall

1. **Call to Order**
2. **Invocation and Pledge of Allegiance**
3. **Public Comment Time:** *Up to 15 minutes is reserved for comments from the public for items not listed on the agenda*
4. **Consideration of Agenda**
5. **Consideration of Consent Agenda:** *These items are considered routine, noncontroversial in nature and are considered and approved by a single motion and vote.*
  - A. **Consideration of Minutes:** August 2, 2018 Regular Meeting
  - B. **Consideration of Budget Amendments (2)**
  - C. **Consideration of Changing the Intersection at Third Avenue/Blythe Street to a Three-Way Stop**
  - D. **Consideration of Capital Project Ordinance and Associated Budget Amendment for the Ladson Road Economic Development Project**
  - E. **Consideration of Residential Anti-Displacement and Relocation Assistance Plan per Section 104(d) of the Housing and Community Development Act of 1974**
  - F. **Consideration of Amendment to the Fee Schedule to Include a Flat-Rate Sewer Charge**
  - G. **Consideration of a Residential Anti-Displacement and Relocation Assistance Plan Under Section 104(D) of the Housing and Community Development Act of 1974, as Amended**
  - H. **Consideration of Resolution to Apply for a Neighborhood Revitalization Program (NRP), Community Development Block Grant Funding for The Grey Mill Apartment Project**
  - I. **Consideration of Resolution to Apply for a State Revolving Fund (SRF) Loan for:**
    - i. **Ashe Street Neighborhood & Fourth Avenue Water Replacement**
    - ii. **Ashe Street Neighborhood & Fourth Avenue Sewer Replacement**

- J. Consideration of the French Broad River & Mills River Intakes Design Engineering Agreement with Black & Veatch-Amendment 2
- K. Consideration of an Agreement for Mills River Fire and Rescue to Reimburse the City for a Portion of the Highway 280 Water Project
- L. Consideration of a Utility Relocation Agreement with NCDOT for Project U-5840, Old Airport Road Widening
- M. Consideration of Etowah Water Improvements Engineering Agreement-Amendment 2
- N. Consideration of Utility Extension Request for Water Service to Adventure Golf Carts Located on East Prince Road
- O. Consideration of a Grant Project Ordinance and Associated Budget Amendment for:
  - i. 319 Stormwater Grant Project
  - ii. SAFER Grant for the Fire Department
- P. Consideration of a Request by the United Way of Henderson County to Serve Beer and Wine at their Event at the Berkeley Mills Ballfield

- 6. **Public Hearing to Solicit Public Input on Local Community Development and Needs in Relation to the Community Development Block Grant (CDBG) Neighborhood Revitalization Fund for Proposed Revitalization Projects Including Home Rehabilitation, Reconstruction, Acquisition, Replacement Housing, Clearance and the Temporary Relocation of Residents**  
*Presenter: City Manager John Connet/ Ashlynn Landreth*
- 7. **Public Hearing – Consideration of Installment Financing Agreement in an Amount not to exceed \$3,000,000 in principal to provide funding for several previously approved projects: Construction of the Public Works Maintenance Facility at Patton Park, Main Street Corridor Restroom Facility and Whitmire Building Improvements**  
*Presenter: Finance Director John Buchanan*
- 8. **Presentation on Small Boat Access along the Oklawaha Greenway at Berkeley Road**  
*Presenter: Jayhawk Reese-Julien*
- 9. **Consideration of Sidewalks on Grove Street**  
*Presenter: City Manager John Connet*
- 10. **Consideration of Contracts for the Construction of the Public Works Maintenance Facility**  
*Presenter: City Manager John Connet*
- 11. **Discussion Regarding Additional Parking for the Whitmire Activity Center**  
*Presenter: City Manager John Connet*
- 12. **Consideration of Engineering On-Call Agreements for Water, Sewer and Stormwater Services**  
*Presenter: Utilities Director Lee Smith*

**13. Comments from Mayor and City Council Members**

**14. Reports from Staff**

**A. Contingencies Report**

**B. Reminder of Special Council Meeting, September 25, 2018, 3:30 p.m. at City Hall to Consider the Bank Bids for the Construction of the Public Works Maintenance Facility, the Main Street Corridor Restroom Facility and the Whitmire Building Improvements and Revisions to the Development Agreement for the Grey Mill Building**

**15. Consideration of Appointment to the Historic Preservation Commission and Report of Board Vacancies**

*Presenter: City Clerk Tammie Drake*

**16. New Business**

**17. Request for Closed Session**

**18. Adjourn**





# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle/Adam Murr

**Department:** Admin

**Date Submitted:** 08/23/18

**Presenter:** Brian Pahle/Adam Murr

**Date of Council Meeting to consider this item:** 09/06/18

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05b

Budget Amendments (2):

- 1) Fund 460 | Increase | \$17,823 | Wastewater AIA CPO- personnel expense tracking
- 2) Fund 467 | Increase | \$3,650 | Adjust overage in Buncombe St. Stormwater Project

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

Described Above.

## Suggested Motion:

I move City Council to approve the budget amendments as presented.

**Attachments:**

See Below.

**BUDGET AMENDMENT**

FUND: 460

ACCOUNT NUMBER				
ORG	OBJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
4600000	512100	SALARIES & WAGES - REGULAR	14,600	
4600000	518100	FICA TAX EXPENSE	1,093	
4600000	518200	RETIREMENT EXPENSE	1,081	
4600000	518300	GROUP MED & LIFE INS	1,049	
4600000	998060	TRANSFER IN FROM SW	17,823	
<b>FUND 460</b>		<b>TOTAL REVENUES</b>	17,823	-
		<b>TOTAL EXPENDITURES</b>	17,823	-
609900	999460	TRANSFER TO WWAIA	17,823	
607114	512100	SALARIES & WAGES - REGULAR		14,600
607114	518100	FICA TAX EXPENSE		1,093
607114	518200	RETIREMENT EXPENSE		1,081
607114	518300	GROUP MED & LIFE INS		1,049
<b>FUND 60</b>		<b>TOTAL REVENUES</b>	-	-
		<b>TOTAL EXPENDITURES</b>	17,823	17,823

Adjustment to move engineering personnel budget to the Wastewater AIA Capital Project Ordinance to more accurately reflect personnel time spent on the project. This amendment will not change personnel payment for time; this is an amendment to better track expenses.

  
 \_\_\_\_\_  
 CITY MANAGER

Date: 8-26-18

APPROVED BY CITY COUNCIL: \_\_\_\_\_ DATE: 9/6/2018

**BUDGET AMENDMENT**

FUND:

ACCOUNT NUMBER				
ORG	OBJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
4670000	559850	CONSTRUCTION CONTRACT	3,650	
4670000	998067	TRANSFER IN FROM SW	3,650	
FUND 467		TOTAL REVENUES	3,650	-
		TOTAL EXPENDITURES	3,650	-
679900	999467	TRANSFER TO BUNCOMBE ST SW	3,650	-
674720	529900	SUPPLIES & MATERIALS		3,650
FUND 67		TOTAL REVENUES	-	-
		TOTAL EXPENDITURES	3,650	3,650

Budget amendment to correct an overage in the Buncombe St. Stormwater Capital Project Ordinance.

  
 \_\_\_\_\_  
 CITY MANAGER

Date: 8-26-18

APPROVED BY CITY COUNCIL: \_\_\_\_\_ DATE:



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/29/2018

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05c

City Council received a request from a concerned citizen regarding the lack of a pedestrian crosswalk at the intersection of Blythe Street and 3rd Avenue. City staff has review this intersection and believes that the best solution to the citizen's concerns would be the installation of stop signs on 3rd Avenue, which would create a three way stop at this busy intersection.

**Budget Impact:** \$ < \$500.00      Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup>      If no, describe how it will be funded.

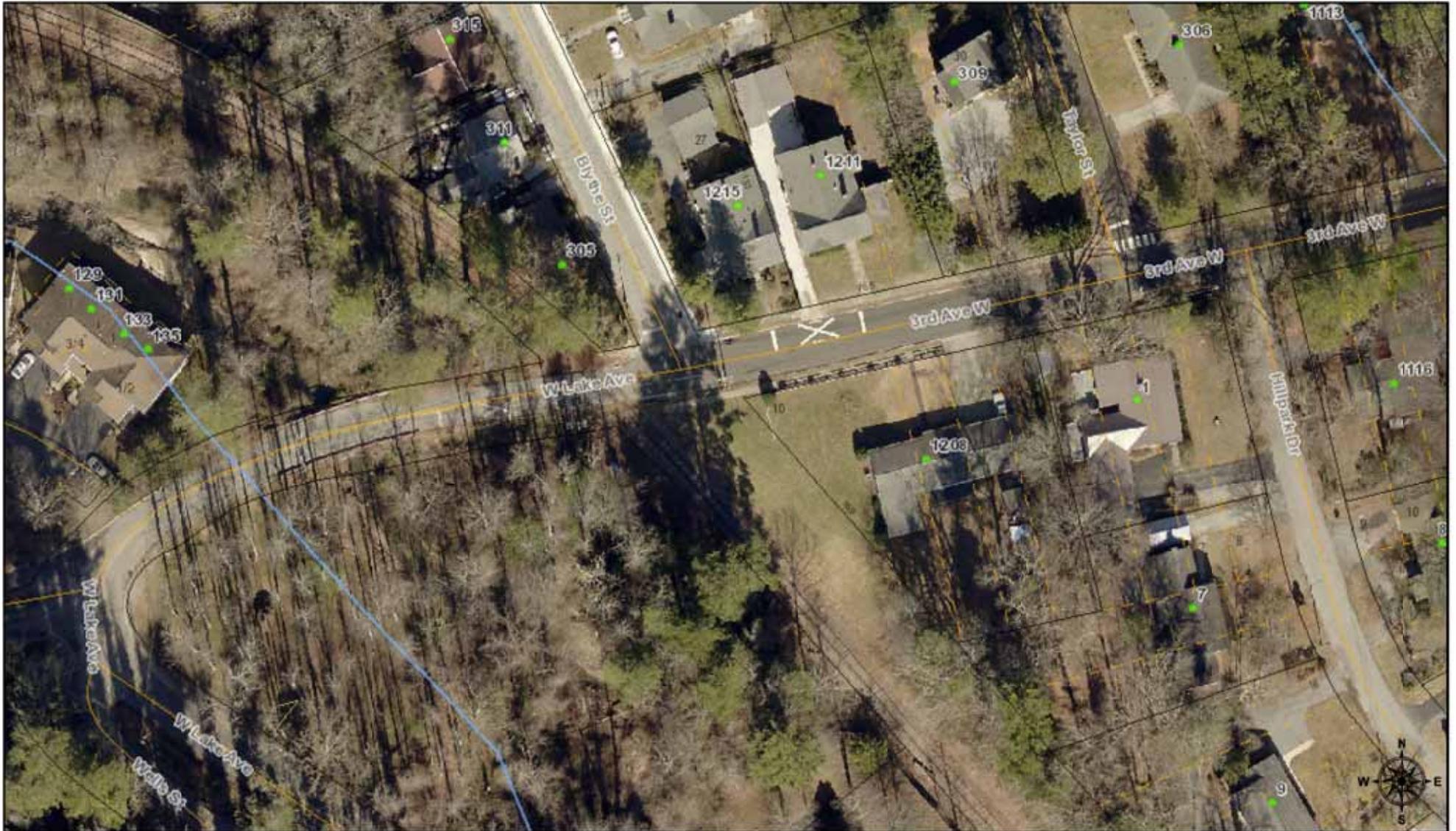
### Suggested Motion:

I move that the City Council approve the installation of two additional stops at the intersection of 3rd Avenue and Blythe Street.

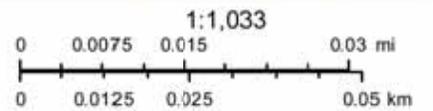
### Attachments:

Aerial picture of intersection

# 3rd and Blythe



August 29, 2018



Henderson County IT/GIS  
Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community



**CAPITAL PROJECT ORDINANCE FOR  
THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF  
THE LADSON ROAD ECONOMIC DEVELOPMENT PROJECT**

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

**Section 1:** The project authorized is a City infrastructure project described as the Ladson Road Economic Development Project.

**Section 2:** The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
4220000	519000	Professional Services	\$ 30,900
4220000	559850	Contracted Services	\$ 208,300
4220000	599100	Contingencies	\$ 31,250
<b>Total Project Appropriation</b>			<b>\$ 270,450</b>

**Section 3:** The following revenues are anticipated to be available via transfers from the Water and Sewer Fund for project expenses:

Account Number		Account Name	Total Budget
4220000	998403	Transfer in from Pump Equip	\$ 220,450
4220000	447100	Reimbursements	\$ 50,000
<b>Total Project Revenue</b>			<b>\$ 270,450</b>

**Section 4:** The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the Water and Sewer Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this sixth day of September, 2018.

\_\_\_\_\_  
Barbara G. Volk, Mayor

ATTEST:

\_\_\_\_\_  
Tammie K. Drake, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

**BUDGET AMENDMENT**

FUND: 422

ACCOUNT NUMBER				
ORG	OBJECT	DESCRIPTION OF ACCOUNT	INCREASE	DECREASE
4220000	998403	TRANSFER IN FROM PUMP EQUIPMENT	220,450	
4220000	447100	REIMBURSEMENTS	50,000	
4220000	519000	PROFESSIONAL SERVICES	30,900	
4220000	559850	CONTRACTED SERVICES	208,300	
4220000	599100	CONTINGENCIES	31,250	
FUND 422		TOTAL REVENUES	270,450	-
		TOTAL EXPENDITURES	270,450	-
4030000	999422	TRANSFER TO LADSON	220,450	
4030000	559850	CONSTRUCTION CONTRACT		201,259
4030000	519400	PROF SERVICES-ENGRING		9,191
4030000	519425	PROF SVC-CONSTRUCT ADMIN		10,000
FUND 403		TOTAL REVENUES	-	-
		TOTAL EXPENDITURES	220,450	220,450

Amendment to create the Ladson Road Economic Development Project Capital Project Ordinance (CPO). Amendment moves remaining funds from the nearly complete WTP Pumps & Equipment CPO to the Ladson Road Project. This amendment also establishes a mechanism for reimbursement from Henderson County for a portion of the project and authorizes expenditures as detailed above.

  
 \_\_\_\_\_  
 CITY MANAGER

Date: 8/28/18

APPROVED BY CITY COUNCIL:

DATE:

9/6/2018



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Lew Holloway

**Department:** Downtown

**Date Submitted:** 8/20/2018

**Presenter:** Lew Holloway

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05e

Adoption of Neighborhood Revitalization Program CDBG required anti-displacement and relocation resolution.

**Budget Impact:** \$ 0 Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:**

I move that City Council adopt the Residential Anti-Displacement and Relocation Assistance Plan per Section 104(d) of the Housing and Community Development Act of 1974.

**Attachments:**

**CITY OF HENDERSONVILLE, NC  
RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN  
UNDER SECTION 104(d) OF THE HOUSING & COMMUNITY  
DEVELOPMENT ACT OF 1974, AS AMENDED**

WHEREAS, the City of Hendersonville anticipates award of 2018 Neighborhood Revitalization Program funds:

WHEREAS, the City of Hendersonville is required to adopt a Residential Anti-Displacement and Relocation Assistance Plan;

WHEREAS, the purpose of this plan is to minimize residential displacement and to provide relocation assistance to displaced residents in a timely manner;

NOW, THEREFORE, BE IT RESOLVED that the following constitutes the Residential Anti-Displacement and Relocation Assistance Plan for the City of Hendersonville:

The City of Hendersonville will replace all occupied and vacant occupiable low/moderate income dwelling units demolished or converted to a use other than low/moderate income housing as a direct result of activities assisted with funds provided under the Housing & Community Development Act of 1974, as amended, as described in 24 CFR 570.606 (b) (1).

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the City of Hendersonville will make public the following information in writing:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units; and
6. The basis for concluding that each replacement dwelling unit will remain a low/moderate income dwelling unit for at least 10 years from the date of initial occupancy.

The City of Hendersonville will provide relocation assistance, as described in 570.606 (b) (2), to each low/moderate income household displaced by demolition of housing or by the conversion of a low/moderate income dwelling to another use as a direct result of assisted activities.

Adopted this 6th day of September, 2018.

\_\_\_\_\_  
Barbara G. Volk, Mayor

ATTEST: \_\_\_\_\_  
Tammie K. Drake, MMC, Clerk



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Adam Murr

**Department:** Admin

**Date Submitted:** 08/27/2018

**Presenter:** Lee Smith

**Date of Council Meeting to consider this item:** 09/06/2018

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05f

The City's current fee schedule is missing sewer only customer rates. Currently, there are four (4) customers who receive sewer service (and no water service) from the City. To bill these customers for their usage properly, Staff propose reinstatement of a flat-rate sewer charge. This fee was inadvertently left off of the new fee schedule created in coordination with Water and Sewer rate consultants, Raftelis. The fee schedule can be found attached, with proposed additions highlighted in yellow.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:**

I move that the City's fee schedule be amended to include flat rate sewer-only fees.

**Attachments:**

Below.

**CITY OF HENDERSONVILLE FEE SCHEDULE**  
**ADOPTED BY BUDGET ORDINANCE FOR FISCAL YEAR 2018 - 2019**

*PUBLIC HEARING REQUIRED FOR ITEMS DENOTED WITH ASTERIK*

DESCRIPTION	COST/CHARGE/FEE
<b>WATER AND SEWER</b>	
<i>Inside City Limits</i>	
<b>Base Charge by Meter Size</b>	
3/4"	\$7.21
1"	\$8.66
1 <sup>1/2</sup> "	\$12.25
2"	\$16.56
3"	\$26.65
4"	\$41.06
6"	\$77.04
8"	\$120.24
<b>Volumetric Charges</b>	
All Usage	\$5.05 per 1000 gallons
<b>Sewer Only- Flat Rate</b>	
	\$29.58 per month
<i>Outside City Limits</i>	
<b>Base Charge by Meter Size</b>	
3/4"	\$10.82
1"	\$12.99
1 <sup>1/2</sup> "	\$18.37
2"	\$24.84
3"	\$39.97
4"	\$61.58
6"	\$115.56
8"	\$180.35
<b>Volumetric Charges</b>	
All Usage	\$7.58 per 1000 gallons
<b>Sewer Only- Flat Rate</b>	
	\$44.66 per month



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Lew Holloway

**Department:** Downtown

**Date Submitted:** 8/20/2018

**Presenter:** Lew Holloway

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05g

Adoption of Neighborhood Revitalization Program CDBG required anti-displacement and relocation resolution.

**Budget Impact:** \$ 0 Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:**

I move that City Council adopt the Residential Anti-Displacement and Relocation Assistance Plan per Section 104(d) of the Housing and Community Development Act of 1974.

**Attachments:**

**CITY OF HENDERSONVILLE, NC  
RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN  
UNDER SECTION 104(d) OF THE HOUSING & COMMUNITY  
DEVELOPMENT ACT OF 1974, AS AMENDED**

WHEREAS, the City of Hendersonville anticipates award of 2018 Neighborhood Revitalization Program funds:

WHEREAS, the City of Hendersonville is required to adopt a Residential Anti-Displacement and Relocation Assistance Plan;

WHEREAS, the purpose of this plan is to minimize residential displacement and to provide relocation assistance to displaced residents in a timely manner;

NOW, THEREFORE, BE IT RESOLVED that the following constitutes the Residential Anti-Displacement and Relocation Assistance Plan for the City of Hendersonville:

The City of Hendersonville will replace all occupied and vacant occupiable low/moderate income dwelling units demolished or converted to a use other than low/moderate income housing as a direct result of activities assisted with funds provided under the Housing & Community Development Act of 1974, as amended, as described in 24 CFR 570.606 (b) (1).

All replacement housing will be provided within three years of the commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the City of Hendersonville will make public the following information in writing:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;
4. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
5. The source of funding and a time schedule for the provision of replacement dwelling units; and
6. The basis for concluding that each replacement dwelling unit will remain a low/moderate income dwelling unit for at least 10 years from the date of initial occupancy.

The City of Hendersonville will provide relocation assistance, as described in 570.606 (b) (2), to each low/moderate income household displaced by demolition of housing or by the conversion of a low/moderate income dwelling to another use as a direct result of assisted activities.

Adopted this 6th day of September, 2018.

\_\_\_\_\_  
Barbara G. Volk, Mayor

ATTEST: \_\_\_\_\_  
Tammie K. Drake, MMC, Clerk



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Lew Holloway

**Department:** Downtown

**Date Submitted:** 8/20/2018

**Presenter:** Lew Holloway

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05h

Adoption of Neighborhood Revitalization Program CDBG required application resolution.

**Budget Impact:** \$ 0 \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

**Suggested Motion:**

I move that City Council adopt the resolution for application to the Neighborhood Revitalization Program of the state Community Development Block Grant.

**Attachments:**

***CDBG-NRP RESOLUTION***

**RESOLUTION FOR THE CITY OF HENDERSONVILLE, NC APPLICATION  
FOR NEIGHBORHOOD REVITALIZATION PROGRAM, COMMUNITY  
DEVELOPMENT BLOCK GRANT, FUNDING FOR THE GREY MILL  
APARTMENT PROJECT**

**WHEREAS**, the City of Hendersonville's Council has previously indicated its desire to assist in economic development efforts within the City; and,

**WHEREAS**, the Council has held two public hearings concerning the proposed application for Neighborhood Revitalization Program funding to benefit Grey Mill Ventures, LLC; and,

**WHEREAS**, the Council wishes the City of Hendersonville to pursue a formal application for Community Development Block Grant funding to benefit Grey Mill Ventures, LLC; and, in partnership with project partners, will invest monies in the amount of \$6,000,000 into the project as committed to in the application.

**WHEREAS**, the Council certifies it will meet all federal regulatory and statutory requirements of the Small Cities Community Development Block Grant Program,

**NOW, THEREFORE BE IT RESOLVED**, by the City of Hendersonville Council that the City of Hendersonville is authorized to submit a formal application to the North Carolina Department of Commerce for approval of a Community Development Block Grant for the North Carolina Neighborhood Program to benefit Grey Mill Ventures, LLC.

Adopted this the 6<sup>th</sup> day of September, 2018 in Hendersonville, North Carolina.

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Barbara G. Volk, Mayor  
City of Hendersonville, NC

ATTEST:

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Tammie K. Drake, CMC, City Clerk



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brent Detwiler

**Department:** Engineering

**Date Submitted:** 8/29/18

**Presenter:** Brent Detwiler

**Date of Council Meeting to consider this item:** 9/6/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05i

Ashe Street Neighborhood and 4th Avenue Water and Sewer Replacement Projects SRF Application Resolutions:

The North Carolina Department of Environmental Quality Division of Water Infrastructure (DWI) is accepting State Revolving Fund (SRF) loan applications by September 28, 2018 for water and wastewater projects. Staff is putting together applications for the Ashe Street Neighborhood and 4th Avenue Water and Sewer Replacement Projects. The projects will include the replacement of old and undersized water distribution and sewer collection lines in the neighborhood around Ashe Street and along 4th Avenue. These projects are in the Water and Sewer CIP. We plan to combine the areas into one, but note that the SRF applications for water and sewer must be separate, so we have included a resolution for each.

The attached TWO resolutions are required as part of the application process, and staff is asking for their execution so that we can proceed with the applications. Please let me know if you have any questions. Thank you

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

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I hereby move City Council to authorize the Mayor to execute the attached resolutions in order to apply for North Carolina Department of Environmental Quality Division of Water Infrastructure SRF loans to fund the Ashe Street Neighborhood and 4th Avenue Water Replacement Project and the Ashe Street Neighborhood and 4th Avenue Sewer Replacement Project. I also hereby move the Council to authorize that the City Manager shall be considered the City's Authorized Official when executing or providing any funding applications or other documents associated with the projects.

### Attachments:

Resolutions  
Certifications by Recording Officer

## RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL

- WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of drinking water distribution systems, and
- WHEREAS, The City of Hendersonville has need for and intends to construct a drinking water distribution system project described as the Ashe Street Neighborhood and 4th Avenue Water Replacement, and
- WHEREAS, The City of Hendersonville intends to request state loan assistance for the project,

### NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE:

That The City of Hendersonville, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan award.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Hendersonville to make scheduled repayment of the loan, to withhold from the City of Hendersonville any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That John F. Connet, City Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a loan to aid in the construction of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 6<sup>th</sup> day of September, 2018 at 145 5<sup>th</sup> Avenue East, Hendersonville, North Carolina.

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(Signature of Chief Executive Officer)

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(Title)

**CERTIFICATION BY RECORDING OFFICER**

The undersigned duly qualified and acting City Clerk of the City of Hendersonville does hereby certify:  
That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the City Council duly held on the 6<sup>th</sup> day of September, 2018; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature of Recording Officer)

\_\_\_\_\_  
(Title of Recording Officer)

## RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL

- WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of drinking water distribution systems, and
- WHEREAS, The City of Hendersonville has need for and intends to construct a sewer collection system project described as the Ashe Street Neighborhood and 4th Avenue Sewer Replacement, and
- WHEREAS, The City of Hendersonville intends to request state loan assistance for the project,

### NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE:

That The City of Hendersonville, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan award.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Hendersonville to make scheduled repayment of the loan, to withhold from the City of Hendersonville any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That John F. Connet, City Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a loan to aid in the construction of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 6<sup>th</sup> day of September, 2018 at 145 5<sup>th</sup> Avenue East, Hendersonville, North Carolina.

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(Signature of Chief Executive Officer)

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(Title)

**CERTIFICATION BY RECORDING OFFICER**

The undersigned duly qualified and acting City Clerk of the City of Hendersonville does hereby certify:  
That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the City Council duly held on the 6<sup>th</sup> day of September, 2018; and, further, that such resolution has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Signature of Recording Officer)

\_\_\_\_\_  
(Title of Recording Officer)



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brent Detwiler

**Department:** Engineering

**Date Submitted:** 8/29/2018

**Presenter:** Brent Detwiler

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05j

Staff has received and reviewed a proposed amendment 2 to the professional engineering services agreement already in place with Black & Veatch for engineering services associated with the new French Broad River intake and pump station and the Mills River intake relocation. This additional work will include design, permitting and bidding services required to construct the French Broad River raw water pump station and intake and to relocate the existing Mills River intake upstream of the NC Highway 280 (Bolyston) bridge.

**Budget Impact:** \$ 1,048,876.00  Is this expenditure approved in the current fiscal year budget?  Yes  If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to approve the City Manager to execute Amendment 2 to the existing professional engineering services agreement with Black & Veatch for the design, permitting and bidding services required to construct the French Broad River raw water intake and pump and to relocate the existing Mills River intake in the amount of \$1,048,876.00, as presented and recommended by staff.

### Attachments:

Amendment 2 to Black & Veatch's existing professional engineering services agreement for the French Broad River intake and pump station and the Mills River intake relocation project.

**AMENDMENT 2  
ATTACHMENT A  
SCOPE OF SERVICES**

**Owner: City of Hendersonville, NC  
Engineer: Black & Veatch International Company  
Project: New French Broad River Intake & Pumping Station and Mills River Intake  
Relocation**

**Project Description**

The City of Hendersonville (City) provides water service to over 65,000 residents and businesses in Hendersonville and Henderson County. The current average daily demand of the water system is approximately 7.5 MGD, with peaks of over 9 MGD. The Hendersonville Water Treatment Plant (WTP), located on North Carolina Highway 191, has permitted treatment capacity of 12 MGD, expandable to 15 MGD with minor modifications and to 18 MGD with installation of a new sedimentation basin.

The City's current raw water sources consist of:

- Mountain Source:
  - Bradley Creek, located in the Pisgah National Forest
  - The North Fork of the Mills River, located in the Pisgah National Forest
- Mills River:
  - Mills River intake and pumping station, located downstream of the intersection of Boylston Highway Bridge

The water sources located in the Pisgah National Forest provide a combined 4.5 MGD under normal operating conditions. Additional raw water, as required to meet system demand, is pumped from an intake located along the Mills River. The City is permitted to withdraw up to 12 MGD from the Mills River. As such, during drought conditions, withdrawal from the Pisgah National Forest is reduced and withdrawal from the Mills River is increased.

In 2009, the City permitted and constructed an 11,500 linear foot, 30-inch ductile iron pipe raw water line that extends from the proposed French Broad River intake site to the WTP. The City has also purchased property along the French Broad River for the new intake. The French Broad River has been reclassified by the North Carolina Department of Environmental Quality (NCDEQ) Division of Water Resources (DWR) to a classification of WS-IV (highly developed) in this area.

The objectives of this project are to provide an additional, drought tolerant intake on the French Broad River in order to increase water supply resiliency at the WTP, specifically

during drought conditions. Additionally, the existing intake structure on the Mills River shall be relocated upstream of Boylston Highway Bridge in order mitigate the risk of contamination should fuel or other contaminants enter the water as a result of an accident on the bridge.

Engineer completed a Preliminary Engineering Report (PER) for the New French Broad River Intake & Mills River Intake Modification. The PER serves as the basis for the Scope of Services described below.

#### **New French Broad River Intake**

The Scope of Services for this portion of the project is to design, permit, and bid a new raw water intake and pumping station along the French Broad River. This new intake will have an initial pumping capacity of 15 MGD with expansion capability to 21 MGD with minimal modifications. The new pumping station will discharge into the existing 30-inch raw water line which extends from the pumping station to the Water Treatment Plant (WTP). An additional pump will be provided for irrigation purposes for the neighboring agricultural business.

#### **Mills River Intake Modification**

The City also intends to relocate the existing intake structure and associated piping along the Mills River to a point upstream of the Boylston Highway Bridge. The purpose of this construction activity is to mitigate the risk of contamination should fuel or other contaminants enter the water as a result of an accident on the bridge. The bridge is currently located upstream of the intake structure.

This scope of services includes the following work elements as described herein:

- Project Administration
- Surveying
- Subsurface Utility Engineering
- Environmental Assessment
- Detailed Design
- Permitting
- Bidding & Award

#### **Phase 1000. Project Administration**

1. Provide project management and administration for a 15 month period (through Bidding & Award) to:
  - a. Correspond and consult with Owner,
  - b. Coordinate activities of the project team,
  - c. Develop and implement specific work plans, procedures and a quality control and quality assurance plan, and
  - d. Provide overall project direction to meet Owner's objectives.
  - e. Maintain a project filing system to document and retain project records.
  - f. Prepare monthly invoices and status reports to document project progress.

2. Coordinate a project kick-off meeting to discuss the following items:
  - a. Project team introductions
  - b. Owner's requirements
  - c. Project goals
  - d. Communication points of contact
  - e. Schedule
  - f. Design preferences
  - g. Data Request
3. Arrange for and participate in project status meetings to review progress, budget, schedule, and deviations from this scope of services and exchange ideas and information. Meetings shall include a mix of in-person and conference calls
  - a. Prepare and distribute the minutes for project meetings. Minutes for the project meetings will include a record of decisions made.
4. Provide administration and coordination of sub-consultants.

#### **Phase 2000. Environmental Assessment**

Refer to Phase 6000

#### **Phase 3000. Detailed Design**

- A. **Survey:** Provide, through a subcontract, site surveying services including topographical information in the intake area of the facility impacted by the project. The survey will be completed using NAD 83/NC State Plane coordinates. Subcontracted surveyor will also provide Recombination Survey & Platting for property purchased from the City of Asheville for the new intake.
- B. **Geotechnical Services:** Provide, through a subcontract, geotechnical engineering services including exploratory work and laboratory and field testing, and including professional interpretations or exploratory and test data. The services include geotechnical borings (up to 6), subsurface explorations, laboratory tests of soils and rock samples that are required to provide information for design, and other field and laboratory tests and analyses that are required to provide design information.
- C. As part of Detailed Design, Engineer shall produce interim documents for the purpose of review by Owner's staff and Engineer's quality control. The interim documents shall serve as milestones wherein certain features shall be fixed after a period of Owner review. The purpose of the interim documents and fixing certain features shall be to communicate the design progress and avoid later revisions that would impact design efficiency, cost and schedule. Changes made after fixing features will be considered Additional Services. Engineer's Detailed Design services include:

1. Conduct internal quality control reviews at Project milestones.
2. Conduct design review meetings with Owner at each Project milestone: Level 1.5 (50% complete), Level 3 (90% complete), and Final (100%).
3. Prepare detailed drawings and specifications and other Contract Documents for the proposed construction work and for the materials and equipment required.

The documents shall be prepared for selection of private construction contractors on a competitive bid basis, in accordance with North Carolina State bidding laws.

The Owner's standard front-end documents shall be used. The Engineer's technical specifications and standard detailing techniques shall be used. Contract drawings shall be produced using Auto CAD 2018 (Revit and Civil 3D).

4. Engineer will coordinate with the Owner's preferred systems integrator, Fortech, Inc. who will provide (during construction) the SCADA panels and antennas at the intake site and SCADA interface programming at the Owner's Mills River Water Treatment Plant.
5. Prepare an opinion of probable construction cost following the review by Owner of Level 3 documents.
6. Prepare detailed drawings and specifications for two construction contracts. The French Broad River Intake and Pumping Station will be bid and constructed first. The Mills River Intake will be bid and constructed after the French Broad River Intake and Pump Station is operational and able to supply the City's raw water needs while the Mills River Intake is being relocated. The Mills River Intake bidding and construction phase services will be provided through an Amendment at the time Owner gives notice to proceed.

D. Level 1.5 Design

This level of detailed design coincides with a 50 percent completion and builds upon the information from the final Preliminary Engineering Report. P&IDs will be completed along with the majority of site and earthwork design.

1. Deliverables.
  - a. Technical specifications.
  - b. Table of Contents indicating technical specifications to be incorporated.

- c. Level 1.5 Drawings.
- 2. Decisions. Verify general layout of intake sites, verify pump station site layout, verify pump sizing, pump type, and suppliers, verify pump station layout
- 3. Discussion. Level 1.5 drawings will include the following:
  - a. Pump station layout, civil, structural, architectural plans and preliminary electrical and I&C schematics.
  - b. Standard civil details.

Upon completion of Level 1.5, the Engineer's quality control team will review the deliverables. Revisions shall be finalized prior to delivery to Owner for review. Owner will provide Engineer review comments prior to Engineer proceeding with Design Level 3. Level 1.5 represents approximately 50 percent of the design effort.

#### E. Level 3 Design

- 1. Deliverables.
  - a. Front-end documents
  - b. Division 1 specifications
  - c. Technical specifications
  - d. Level 3 drawings
  - e. Signed and sealed documents for permitting/agency review
  - f. Opinion of Probable Construction Cost
- 2. Decisions. Make final coordination checks and remaining decisions on plans and specifications.
- 3. Discussion. Level 3 drawings shall include the following:
  - a. Final pump station and intakes documents including civil, structural, architectural plans and final electrical and I&C diagrams
  - b. Final details

Level 3 Design shall include providing sealed drawings for submittal to state review agencies. Drawings shall be annotated to be a review set only and not for construction.

## **Phase 4000. Permitting & Final Design**

### **A. Permitting Assistance – French Broad River Intake**

Engineer will:

1. Provide assistance to Owner in obtaining permits and approvals from federal, state, and local agencies and from utility companies. The following permits and approvals are anticipated:
  - a. Authorization to Construct (NCDEQ/DWR/PWS)
  - b. Erosion & Sedimentation Control Permit (Henderson County and NCDEQ)
  - c. Storm Water Management Permit (NCDEQ/DEMLR/Stormwater)
  - d. Nationwide Permit 12 (US Army Corp of Engineers)
  - e. North Carolina Division of Water Resources (NCDWR) 401/404 Water Quality Certification
  - f. Henderson County
    - 1) Floodplain Development Permit
    - 2) Water Supply Watershed Management Permit
    - 3) Building Permit
    - 4) Zoning Permit
2. Meet with local officials or permitting agencies to identify and discuss their requirements.
3. Update and finalize plans and specification with required regulatory revisions.

### **B. Permitting Assistance - Mills River Intake**

Engineer will:

1. Provide assistance to Owner in obtaining permits and approvals from federal, state, and local agencies and from utility companies. The following permits and approvals are anticipated:

- a. Nationwide Permit 12 (US Army Corp of Engineers)
  - b. North Carolina Division of Water Resources (NCDWR) 401/404 Water Quality Certification
  - c. Encroachment Agreement with NC Department of Transportation (General and Controlled Access).
2. Update and finalize plans and specification with required regulatory revisions.

**Phase 5000. Bidding & Award (French Broad River Intake & Pumping Station)**

Following receipt of authorization from Owner, Engineer shall perform the following services related to Bidding and Award of Contract.

- A. Assist Owner in advertising for a single prime contract for construction, materials, equipment, and services as required for a complete project; attend and conduct pre-bid conferences, and develop minutes of the pre-bid conferences.
- B. Reproduce and distribute Contract Documents to prospective bidders.
- C. Maintain a record of prospective bidders and others to whom Contract Documents have been issued.
- D. Prepare, as appropriate, interpretation, clarification, or further definition of the Contract Documents and provide to the Owner. Develop addenda for issuance by the Owner.
- E. Consult with and advise Owner to determine the acceptability of substitute materials and equipment proposed by the Contractor(s) when substitution prior to award of contracts is allowed by the Contract Documents.
- F. Conduct the bid opening and prepare the certified bid tabulation.
- G. Evaluate bids and make a recommendation to Owner regarding award.

**Phase 6000. Drinking Water SRF Administration and Environmental Assessment**

- A. Loan administration services will include development of the required ER/EA documents during Detailed Design and compliance assistance as part of Construction Phase Services.
- B. Prepare and submit an Engineering Report (ER)/Environmental Assessment (EA) for the City of Hendersonville WTP expansion project. It is assumed that a single report in combination with the new Intake EA (See Amendment 1 for scope of EA) will be prepared for the work. Services associated with preparing the (ER) / (EA) will

comply with NCDWR requirements for a DWSRF loan. The following is a list of assumptions for this task:

1. The requirements of the North Carolina Environmental Policy Act (SEPA) will be satisfied by an EA. An Environmental Impact Statement (EIS) will not be required.
  2. Agency review of the EA will proceed according to typical timeframes (approximately six months) published by the agencies.
  3. Agency comments on the EA can be addressed using readily available information and will not require additional investigations, studies, or environmental programs.
  4. The Mills River Intake is added to the Environmental Assessment scope of services provided in Amendment 1.
- C. Prepare and submit bid and design package including application, specifications, drawings, and supporting documentation for NCDEQ – DWI review.
- D. Prepare and submit bid information to NCDEQ – DWI for authority to award contract. Bid information to include required forms, bid tabulation, proposals of the successful bidders, tentative award resolution (prepared by Owner), Engineer’s recommendation, proof of advertisement, and MBE/WBE documentation.
- E. Since the Owner has developed their own standard contract language, Engineer will suggest changes to the documents to meet the SRF Loan Requirements.

### **Supplemental Services**

Any work requested by Owner that is not included in one of the items listed in any other phase will be classified as supplemental services. Supplemental Services

Supplemental services may include, but are not limited to:

1. Additional meetings with local, State, or Federal agencies to discuss the project.
2. Supplemental engineering work required to meet the requirements of regulatory or funding agencies that become effective subsequent to the date of this agreement.
3. Special consultants or independent professional associates required by Owner.
4. Changes in the general scope, extent, or character of the project, including, but not limited to:
  - a. Changes in size or complexity.
  - b. Method of financing.
  - c. Owner’s schedule, design, or character of construction.
  - d. Revision of previously accepted studies, reports, design documents, or construction contract documents when such

revisions are required by changes in laws, rules, regulations, ordinances, codes, or orders enacted subsequent to the preparation of such studies, reports, documents, or designs; or are required by any other causes beyond Engineer's control.

5. Additional permitting or regulatory meeting assistance. Payment of permitting fees.
6. Value engineering reviews or services.
7. Revisions of design, drawings, and specifications to incorporate changes arising from value engineering type reviews.
8. Assistance in financially related transactions for the Project.
9. Hazardous materials testing and subsequent provisions for hazardous material handling and disposal.
10. Equipment procurement services.
11. Special consultants or independent professional associates requested or authorized by Owner.
12. Assistance with Bid protests and rebidding.
13. Preparation for litigation, arbitration, or other legal or administrative proceedings; and appearances in court or at arbitration sessions, in connection with bid protests, change orders or construction incidents.
14. Appearances at public hearings or before special boards.
15. Assistance in financially related transactions for the project other than those specifically included in the scope of services.
16. Special reports requested by Owner concerning facilities operations and personnel matters during the operation startup period.

## **OWNER'S RESPONSIBILITIES**

- A. The Owner will be responsible for the following in support of this project:
  1. Operation of all pipeline valves, pumps, and other equipment.
  2. Provide property access and land purchase of intake property from the City of Asheville
  3. Bidding and award services.
    - a. Advertise for a single prime contract for construction materials, equipment, and services.
    - b. Post addenda to website as appropriate.
    - c. Attend the bid opening.

## AMENDMENT 2

### ATTACHMENT B

**Owner: City of Hendersonville, NC**

**Engineer: Black & Veatch International Company**

**Project: New French Broad River Intake & Mills River Intake Modification**

### COMPENSATION

For the Scope of Services in Attachment A, Owner will compensate Engineer a fee not exceed \$1,048,876.00 unless authorized by the Owner in writing. Engineer will invoice Owner in accordance with the attached Budget Estimate, plus reimbursable expenses times 1.0, plus subconsultant expenses times 1.10. The estimated cost of each phase of work is included in the Budget Estimate following this page. Owner agrees Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but not exceed the total amount unless approved in writing by the Owner. Standard hourly rates are subject to review and adjustment annually.

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

## Billing Rate Schedule

Hourly rates effective on the date of this Agreement are as follows:

<b>HOURLY RATE SCHEDULE</b>	
Effective through December 31, 2018	
Principal	\$255
Sr. Planning Manager	\$205-250
Sr. Project Manager	\$205-250
Project Manager	\$190-250
Sr. Engineering Manager	\$200-255
Engineering Manager	\$180-225
Project Engineer	\$155-195
Staff Engineer 4	\$145-170
Staff Engineer 3	\$135-160
Staff Engineer 2	\$125-150
Staff Engineer 1	\$100-135
Sr. Architect	\$160-210
Architect	\$140-180
Sr. Construction Manager	\$175-230
Construction Manager	\$150-190
Resident Project Representative	\$100-170
Construction Inspector	\$80-125
Technical Specialist	\$170-250
Sr. Engineering Technician	\$155-180
Engineering Technician	\$105-150
Sr. Drafter	\$95-150
Drafter	\$80-120
Project Controls	\$100-175
Finance/Accountant	\$95-160
Project Administrator	\$95-125
Clerical	\$74-95

All rates shall be subject to annual adjustment on January 1 of each year. The billable hourly rates include computer, telephone, and miscellaneous copying. The following expenses are reimbursable work items: bulk reproduction of documents; charges for review of drawings and specifications by government agencies, if any; vehicular transportation costs at the rate established by the Internal Revenue Service; airline tickets, meals, and lodging with out-of-town travel.

**AMENDMENT 2**

**ATTACHMENT C**

**Owner: City of Hendersonville, NC**

**Engineer: Black & Veatch International Company**

**Project: New French Broad River Intake & Mills River Intake Modification**

**SCHEDULE**

The scope of services is anticipated to be performed as follows:

Level 1.5 (50%) Detailed Design	4 months
Level 3 (90%) Detailed Design	4 months
Permitting and Final Design	4 months
Bid Phase Services	3 months

French Broad River Intake & Mills River Intake (MRI - Design and Reduced permitting)

Construction estimate: \$ 10,767,600.00

<u>Professional Services Fees</u>	<u>Not Design</u>	
PER		\$ 436,500.00
Less Alternatives Analysis	\$ 175,000.00	\$ (175,000.00)
Amedment 1 - EA	\$ 65,000.00	
Design, permitting & bid Fee		\$ 1,048,876.00
Less EA and Loan Admin	\$ 47,948.00	\$ (47,948.00)
Sub Total Design		\$ 1,000,928.00
Estimated Construction Services Fee (FBR Only)		\$ 600,000.00
<hr/>		
Total		\$ 1,862,428.00

Design % of construction 9%  
Total % of construction 17%

Owner: Hendersonville, City of																										
Project: New French Broad River Intake & Mills River Intake Mod																										
PHASE/Task	Project Director	Sr Project Manager	Admin	Sr Engineering Manager	Civil Sr. Engineer - Genlcs	Civil Engineer	Civil Director/GC	Structural Director/GC	Structural Sr. Engineer	Structural Engineer	Architect Director/GC	Architect	Rtg Mech Director/GC	Rtg Mech Engineer	Proc Mech Director/GC	Proc Mech Sr. Engineer	Proc Mech Engineer	Electrical Director/GC	Electrical Sr. Engineer	Electrical Engineer	Electrical Technician	I&C Director/GC	I&C Sr. Engineer	I&C Engineer	I&C Sr. Technician	
																										\$250.00
(Billing Rate: \$5/Hr.)																										
<b>WORK BREAKDOWN STRUCTURE</b>	<b>PHASE</b>																									
PROJECT ADMINISTRATION	1000	8	52	30	18	--	18	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
DETAILED DESIGN	3000	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Survey & Geotechnical	3000	--	8	14	8	12	5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Level 1 (30%) Design	3000	30	122	50	235	--	325	48	30	70	180	18	80	14	10	7	60	90	3	2	110	77	12	35	64	7
Level 2 (50%) Design	3000	38	122	50	214	--	318	48	44	80	201	20	80	14	10	3	13	14	20	18	100	110	10	40	80	10
Final Design	3000	12	32	19	70	--	140	20	7	17	40	2	15	9	25	1	13	3	--	2	30	18	8	8	20	--
PERMITTING	4000	8	30	19	40	--	130	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
BIDDING & AWARD	3000	--	10	8	24	--	28	--	3	3	--	8	--	8	--	--	--	--	--	--	8	--	--	8	--	--
DRINKING WATER SRF & Environmental Assessment	6000	4	24	9	60	--	90	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
<b>Total, Hours</b>		101	600	189	670	12	1,864	119	90	185	410	44	170	33	173	10	80	79	23	22	311	200	36	89	154	18
<b>Total, Billings</b>		\$ 25,200	\$ 84,000	\$ 17,020	\$ 134,000	\$ 2,880	\$ 127,020	\$ 23,790	\$ 19,890	\$ 36,480	\$ 95,760	\$ 9,800	\$ 34,680	\$ 8,567	\$ 30,102	\$ 2,310	\$ 14,964	\$ 11,890	\$ 6,321	\$ 5,544	\$ 46,454	\$ 24,800	\$ 6,640	\$ 19,348	\$ 18,404	\$ 1,880

Owner: Hendersonville, City of		PHASE/Task																
Project: New French Broad River Intake & Mills River Intake Mo		PM Coordinator	PM Technician	PM Technician	Estimator Director/DC	Estimator	Estimator	St. Project Controls	SUBTOTAL, hours	SUBTOTAL, Billings \$	Other Expenses	SUBTOTAL, EXPENSES	ClearWater	SUBCONTRACTS \$BASE	Max Cost	SUBTOTAL, SUBCONTRACTS with MULTIPLIER	SUBTOTAL, SUBCONTRACTS	TOTAL COST
(Billing Rate: \$5/Hr.)		\$140.00	\$140.00	\$108.00	\$237.00	\$205.00	\$200.00	\$190.00										
<b>WORK BREAKDOWN STRUCTURE</b>		<b>PHASE</b>																
PROJECT ADMINISTRATION	1000	-	-	-	-	-	-	32	192	\$ 28,118	\$ 2,500	\$ 2,500				\$ -	\$ -	\$ 30,618
DETAILED DESIGN	3000	-	-	-	-	-	-	-	-	\$ -	\$ -	\$ -				\$ -	\$ -	\$ -
Survey & Geotechnical	3000	7	-	-	-	-	-	-	48	\$ 6,720	\$ -	\$ -		\$ 31,200	\$ 4,000	\$ 35,200	\$ 35,200	\$ 47,920
Level 1 (30%) Design	3000	83	104	104	-	-	-	-	2,091	\$ 292,680	\$ 4,500	\$ 4,500				\$ -	\$ -	\$ 297,180
Level 2 (50%) Design	3000	87	135	135	16	40	200	-	2,393	\$ 335,010	\$ 4,500	\$ 4,500				\$ -	\$ -	\$ 339,510
Final Design	3000	48	96	96	-	-	-	-	141	\$ 197,040	\$ 3,200	\$ 3,200				\$ -	\$ -	\$ 200,240
PERMITTING	4000	-	8	10	-	-	-	-	342	\$ 47,880	\$ 6,000	\$ 6,000				\$ -	\$ -	\$ 53,880
BIDDING & AWARD	5000	-	-	-	-	-	-	-	134	\$ 18,760	\$ 3,000	\$ 3,000				\$ -	\$ -	\$ 21,760
DRINKING WATER SUPPLY & Environmental Assessment	6000	-	-	-	-	-	-	-	186	\$ 25,980	\$ 3,500	\$ 3,500	\$ 12,200			\$ 12,200	\$ 13,420	\$ 29,400
<b>Total, Hours</b>		260	380	338	16	40	200	32	6,967									
<b>Total, Billings</b>		\$ 38,800	\$ 55,960	\$ 42,600	\$ 3,712	\$ 8,200	\$ 41,000	\$ 6,120	\$ 68,878	\$ 27,200	\$ 27,200	\$ 27,200	\$ 13,420	\$ 34,120	\$ 5,040	\$ 82,800	\$ 82,800	\$ 1,046,876



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Lee Smith

**Department:** Utilities

**Date Submitted:** 8/22/2018

**Presenter:** Lee Smith

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05k

City staff recently had designed and permitted a project to extend an 12-inch water main along NC Highway 280 in Mills River from Presbyterian Church Road to Turnpike Road. This project is referred to as the NC Highway 280 Water System Improvements Project and will be constructed with City forces. The City has partnered with Mills River Fire and Rescue and Airo Way, LLC (developer of Mills River Crossing) to construct this water main. Both partners require an 8-inch water main to serve their respective projects and agreed to reimburse the City for their respective portions of the project. The City's water system master plan calls for a 12-inch water main on this portion of NC Highway 280, so the City will construct a 12-inch water main. The City will cover the cost difference between an 8-inch water main and a 12-inch water main.

The total estimated cost for the project is \$420,000. Mills River Fire and Rescue's portion of the reimbursement to the City is approximately \$270,000 while Airo Way's portion of the reimbursement is approximately \$150,000. After the completion of this project, City staff will determine the final cost of the project, including the City's portion for oversizing this water main from 8-inch to 12-inch. An invoice will be generated and submitted to each of our partners in this project which will be based on the actual costs for the project.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  No  Yes  
If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to approve the City Manager to execute the agreements with Mills River Fire and Rescue and with Airo Way, LLC, representing Mills River Crossing subdivision, to reimburse the City for their proportionate shares of cost for the water main to be installed by City forces along NC Highway 280 in Mill River, NC in amounts not to exceed \$270,000 and \$150,000, respectively, as recommended and presented by staff.

## Attachments:

Executed Reimbursement Agreement with Mills River Fire & Rescue  
Executed Reimbursement Agreement with Airo Way, LLC - Developer for Mills River Crossing

**THIS REIMBURSEMENT AGREEMENT** made this 31<sup>st</sup> day of July 2018, by and between the City of Hendersonville, a North Carolina municipality operating pursuant to N.C.G.S. Chapter 160A (the "City") and Mills River Fire and Rescue, a North Carolina Volunteer Fire Department (the "Fire Department") located in Mills River, North Carolina:

WHEREAS, The City has caused or will cause to be installed the water lines and appurtenances utilizing City forces and utility subcontractors, in a project referred to as "*NC Highway 280 Water Improvements*" (the "Project") and is to be owned and maintained by the City and will result in improvements to the municipal water distribution system; and

WHEREAS the project may benefit the residents of and visitors to Hendersonville and surrounding areas by providing a water distribution system to an area subject to growth and development; and

WHEREAS the original estimated expenditure by the City for the Project is \$420,000 U.S., of which approximately 15% represents a construction contingency; and

WHEREAS the Fire Department shall be responsible for their portion of the original estimated expenditure by the City for the Fire Department's portion of the Project in an amount not to exceed \$270,000 U.S., of which approximately 15% represents a construction contingency; and

NOW, THEREFORE, IN CONSIDERATION of the covenants herein contained, the parties hereto hereby agree as follows:

1. The City shall complete or have completed construction of a water distribution system in accordance with the plans attached to this agreement as Exhibit A (the "Project").
2. Within 60-days after completion of the Project the City shall cause to be delivered to the Fire Department a final sworn statement from the City, itemizing in detail the following costs associated with the Fire Department's portion of the Project to be reimbursed, in full, to the City by the Fire Department (the "Reimbursable Costs") within 60-days of receipt of the final sworn statement of costs by the City:
  - a. The cost of water pipes, hydrants, valves, other goods and fixtures making up the tangible portion of the Project, of a regional nature as determined by the Utilities Director for the City, or otherwise to be part of the Project; plus
  - b. Labor costs directly arising from construction of the Project; plus
  - c. Equipment costs directly arising from construction of the Project.
3. All subcontractors engaged in any work for the Project shall be fully North Carolina licensed in accordance with the work done or to be done by such subcontractors.
4. The City may make taps and furnish service on the mains installed under this agreement under its existing rules, regulations and rates, reserving the right to change or modify its rules, regulations and rates, at any time all without impairing the validity of this agreement or incurring any obligation to the Fire Department or reducing any obligation of the Fire Department.
5. This agreement is executed in the State of North Carolina and shall be construed in

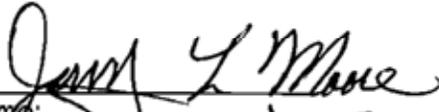
accordance with the laws of the State of North Carolina. The parties consent to jurisdiction over their persons by the courts for the State of North Carolina. The parties further agree that exclusive venue for any action brought hereunder or in connection herewith or in connection with any claimed breach hereof shall be in the federal or state courts for Henderson County, North Carolina.

Done in the place and on the date first above written.

CITY OF HENDERSONVILLE

by: \_\_\_\_\_  
John Connet  
City Manager

\*

by:   
Name: \_\_\_\_\_  
Title: *CHAIRMAN OF BOARD*

**THIS REIMBURSEMENT AGREEMENT** made this 24<sup>th</sup> day of July 2018, by and between the City of Hendersonville, a North Carolina municipality operating pursuant to N.C.G.S. Chapter 160A (the "City") and Airo Way, LLC, a North Carolina Limited Liability Corporation (the "Developer") currently located at 21 Westmont Drive, Asheville, North Carolina 28806:

WHEREAS, The City has caused or will cause to be installed the water lines and appurtenances utilizing City forces and utility subcontractors, in a project referred to as "*NC Highway 280 Water Improvements*" (the "Project") and is to be owned and maintained by the City and will result in improvements to the municipal water distribution system; and

WHEREAS the project may benefit the residents of and visitors to Hendersonville and surrounding areas by providing a water distribution system to an area subject to growth and development; and

WHEREAS the original estimated expenditure by the City for the Project is \$420,000 U.S., of which approximately 15% represents a construction contingency; and

WHEREAS the Developer shall be responsible for their portion of the original estimated expenditure by the City for the Developer's portion of the Project in an amount not to exceed \$150,000 U.S., of which approximately 15% represents a construction contingency; and

NOW, THEREFORE, IN CONSIDERATION of the covenants herein contained, the parties hereto hereby agree as follows:

1. The City shall complete or have completed construction of a water distribution system in accordance with the plans attached to this agreement as Exhibit A (the "Project").
2. Within sixty days after completion of the Project the City shall cause to be delivered to the Developer a final sworn statement from the City, itemizing in detail the following costs associated with the Developer's portion of the Project to be reimbursed, in full, to the City by the Developer (the "Reimbursable Costs") within 60-days of receipt of the final sworn statement of costs by the City:
  - a. The cost of water pipes, hydrants, valves, other goods and fixtures making up the tangible portion of the Project, of a regional nature as determined by the Utilities Director for the City, or otherwise to be part of the Project; plus
  - b. Labor costs directly arising from construction of the Project; plus
  - c. Equipment costs directly arising from construction of the Project.
3. All subcontractors engaged in any work for the Project shall be fully North Carolina licensed in accordance with the work done or to be done by such subcontractors.
4. The City may make taps and furnish service on the mains installed under this agreement under its existing rules, regulations and rates, reserving the right to change or modify its rules, regulations and rates, at any time all without impairing the validity of this agreement or incurring any obligation to the Developer or reducing any obligation of the Developer.
5. This agreement is executed in the State of North Carolina and shall be construed in accordance with the laws of the State of North Carolina. The parties consent to jurisdiction over

their persons by the courts for the State of North Carolina. The parties further agree that exclusive venue for any action brought hereunder or in connection herewith or in connection with any claimed breach hereof shall be in the federal or state courts for Henderson County, North Carolina.

Done in the place and on the date first above written.

CITY OF HENDERSONVILLE

by: \_\_\_\_\_  
John Connet  
City Manager

\*

by:  \_\_\_\_\_  
Name: *VLADIMIR GREBENYUK*  
Title: *member/manager*



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brent Detwiler

**Department:** Engineering

**Date Submitted:** 8/29/18

**Presenter:** Brent Detwiler

**Date of Council Meeting to consider this item:** 9/6/18

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 051

NCDOT Utility Agreement for U-5840 Old Airport Road:

NCDOT will soon be making improvements to SR-1545 (Old Airport Road) from US 25 to Mills Gap Road in Fletcher (Project U-5840). As part of the project they will need to relocate a portion of the City's existing water distribution. Note that per NC statute the City is responsible for 25% of the costs associated with the relocation and 100% of "betterment" costs. There are several sections of the existing distribution system in that area that are undersized and have been identified in our water master plan as needing to be improved. Therefore, there are betterment costs associated with the project. An estimate has been provided by NCDOT's consultant detailing all of the costs.

We have attached a draft copy of the utility agreement and ask that you allow the City Manager to execute the final version of the agreement.

**Budget Impact:** \$ 604,508.10 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

It will be budgeted in a future year. NCDOT will request reimbursement upon completion of the project.

## Suggested Motion:

I move to approve the NCDOT Utility Agreement for U-5840 Old Airport Road; and to authorize the City Manager to execute the finalized agreement for said work; as presented and recommended by staff.

## Attachments:

Draft utility agreement including exhibits

NORTH CAROLINA  
HENDERSON COUNTY

UTILITY AGREEMENT

DATE: 8/22/2018

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

Project: U-5840

AND

WBS Elements: 50231.3.1

CITY OF HENDERSONVILLE

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the City of Hendersonville, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Department has prepared and adopted plans to make certain street and highway improvements under Project U-5840, in Henderson County, said plans consists of SR 1545 (Old Airport Road) from US 25 to Mills Gap Road; Henderson County; said project having a right-of-way width as shown on the project plans on file with the Department's office in Raleigh, North Carolina; and,

WHEREAS, the parties hereto wish to enter into an agreement for certain utility work to be performed by the Department's construction contractor with full reimbursement by the Municipality for the costs thereof as hereinafter set out.

NOW, THEREFORE, it is agreed as follows:

1. The Department shall place provisions in the construction contract for Project U-5840, Henderson County, for the contractor to adjust and relocate water lines. Said work shall be accomplished in accordance with the cost estimate attached hereto as Exhibit "A", and the plan sheets attached hereto as Exhibit "B".
2. The Municipality shall be responsible for the water lines cost as shown on the attached Exhibit "B". The estimated cost to the Municipality is \$604,508.10 as shown on the attached Exhibit "A".

It is understood by both parties that this is an estimated cost and is subject to change. The Municipality shall reimburse the Department for said costs as follows:

- A. Upon completion of the highway work, the Department shall submit an itemized invoice to the Municipality for costs incurred. Billing will be based upon the actual bid prices and actual quantities used.
  - B. Reimbursement shall be made by the Municipality in one final payment within sixty (60) days of said invoice.
  - C. If the Municipality does not pay said invoice within sixty (60) days of the date of the invoice, the Department shall charge interest on any unpaid balance at a variable rate of the prime plus (1%) in accordance with G.S. 136-27.3.
  - D. Said interest rate shall be set upon final execution of the Agreement by the Department. The Municipality will be notified of the set interest rate by the Department's approval letter upon receipt of the fully executed agreement.
  - E. Any cost incurred due to additional utility work requested by the Municipality after award of the construction contract, shall be solely the responsibility of the Municipality. The Municipality shall reimburse the Department 100% of the additional utility cost.
3. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by North Carolina General Statute, Section 136-41.1, until such time as the Department has received payment in full.
4. Upon the satisfactory completion of the relocations and adjustments of the utility lines covered under this Agreement, the Municipality shall assume normal maintenance operations to the said utility lines. Upon completion of the construction of the highway project, the Municipality shall release the Department from any and all claims for damages in connection with adjustments made to its utility lines; and, further, the Municipality shall release the Department of any future responsibility for the cost of maintenance to said utility lines. Said releases shall be deemed to be given by the Municipality upon completion of construction of the project and its acceptance by

the Department from its contractor unless the Municipality notifies the Department, in writing, to the contrary prior to the Department's acceptance of the project.

5. It is further agreed that the following provisions shall apply regarding the utilities covered in this Agreement.
  - A. The Municipality obligates itself to service and to maintain its facilities to be retained and installed over and along the highway within the Department's right-of-way limits in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.
  - B. If at any time the Department shall require the removal of or changes in the location of the encroaching facilities which are being relocated at the Municipality's expense, the Municipality binds itself, its successors and assigns, to promptly remove or alter said facilities, in order to conform to the said requirement (if applicable per G.S. 136-27.1), without any cost to the Department.
6. 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).

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST: CITY OF HENDERSONVILLE  
BY: \_\_\_\_\_ BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

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 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.

Approved by \_\_\_\_\_ of the local governing body of the City of Hendersonville as attested to by the signature of Clerk of said governing body on \_\_\_\_\_ (Date)

(SEAL)

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

\_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_

Remittance Address:

City of Hendersonville

\_\_\_\_\_

\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(CHIEF ENGINEER)

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)

North Carolina Department of Transportation  
90% Estimate

158000  
US-940 - SR1547 (Old Airport Road)  
90% CONSTRUCTION COST ESTIMATE

County: Henderson

Est. By: STV Engineers, Inc.

Date: 8/15/2018

TAKOFF BY SHEET

Sec No.	Description	Quantity	Unit	Price	Amount
<b>UTILITIES</b>					
858	ADJUSTMENT OF VALVE BOXES	1	EA	\$ 525.00	\$ 525.00
858	ADJUSTMENT OF MANHOLES	14	EA	\$ 2,100.00	\$ 29,400.00
15306	6" WATER LINE	747	EA	\$ 68.25	\$ 50,982.75
15308	8" WATER LINE	1,675	EA	\$ 84.00	\$ 140,700.00
15320	20" WATER LINE	2,091	EA	\$ 115.50	\$ 241,660.50
15320	24" WATER LINE	945	EA	\$ 183.75	\$ 173,643.75
15320	DI WATER MAIN FITTINGS	12,340	EA	\$ 5.25	\$ 64,360.00
15325	4" VALVE	1	EA	\$ 1,000.00	\$ 1,000.00
15325	6" VALVE	8	EA	\$ 1,912.50	\$ 15,300.00
15325	8" VALVE	9	EA	\$ 1,575.00	\$ 14,175.00
15325	20" VALVE	4	EA	\$ 2,415.00	\$ 9,660.00
15325	RECONNECT WATER METER	9	EA	\$ 1,050.00	\$ 9,450.00
15335	FIRE HYDRANT	3	EA	\$ 5,870.00	\$ 17,610.00
15335	FIRE HYDRANT LEG	82	EA	\$ 52.50	\$ 4,305.00
15335	6" LINE STOP	3	EA	\$ 7,350.00	\$ 22,050.00
15335	RELOCATE WATER METER	9	EA	\$ 1,575.00	\$ 14,175.00
15320	1" SANITARY GRAVITY SEWER	26	EA	\$ 42.30	\$ 1,099.80
15320	2" SANITARY GRAVITY SEWER	35	EA	\$ 42.30	\$ 1,480.50
15320	3" SANITARY GRAVITY SEWER	418	EA	\$ 115.50	\$ 48,279.00
15320	SANITARY SEWER CLEAN-OUT	2	EA	\$ 262.50	\$ 525.00
15335	WATER SERVICE LINE	448	EA	\$ 15.75	\$ 7,056.00
15335	2" WATER SERVICE LINE	33	EA	\$ 35.30	\$ 1,170.90
15335	4" WATER SERVICE LINE	31	EA	\$ 26.25	\$ 813.75
15335	1" BLOWOFF	1	EA	\$ 500.30	\$ 500.30
15325	UTILITY MANHOLE WALL 8" DIAMETER	8	EA	\$ 262.50	\$ 2,100.00
15325	8" DIA UTILITY MANHOLE	3	EA	\$ 4,200.00	\$ 12,600.00
15330	ABANDON 6" UTILITY PIPE	2,254	EA	\$ 6.30	\$ 14,200.20
15330	ABANDON 20" UTILITY PIPE	2,075	EA	\$ 10.50	\$ 21,787.50
15330	ABANDON 36" UTILITY PIPE	946	EA	\$ 12.60	\$ 11,919.60
15330	REMOVE WATER METER	2	EA	\$ 575.00	\$ 1,150.00
15330	REMOVE FIRE HYDRANT	4	EA	\$ 1,050.00	\$ 4,200.00
15340	16" ENCASMENT PIPE	89	EA	\$ 150.00	\$ 13,350.00
15340	20" ENCASMENT PIPE	248	EA	\$ 157.50	\$ 39,060.00
15350	BORE AND JACK OF 30"	83	EA	\$ 262.50	\$ 21,817.50
SP-1	16" BUTTERFLY VALVE	1	EA	\$ 25,200.00	\$ 25,200.00
SP-2	16" BUTTERFLY VALVE	2	EA	\$ 8,400.00	\$ 16,800.00
SP-3	RAILROAD INSPECTION ALLOWANCE	1	EA	\$ 20,000.00	\$ 20,000.00
	6" TO 8" WATER LINE UPSIZE	674	\$	\$ 15.75	\$ 10,615.50
<b>MATERIAL &amp; CONSTRUCTION SUBTOTAL</b>					<b>\$ 1,063,277.55</b>
ENGINEERING FEE & DESIGN					\$ 98,006.42
INCORP PWS PERMIT FEE					\$ 200.00
BILLY RIDGE I&E APPLICATION FEE					\$ 1,250.00
<b>ENGINEERING &amp; PERMIT FEES SUBTOTAL</b>					<b>\$ 99,456.42</b>
<b>TOTAL COST OF PROJECT</b>					<b>\$ 1,162,733.97</b>

UC-4	UC-5	UC-6	UC-7	UC-8
	1			
4	4	3	1	
	580	129	38	
1169	506			
	89	1943	1079	
			945	
1301	1745	1430	7560	
	1			
	2	3	3	
2	6	1		
		1	9	
4	1	2	2	
	1	2	2	
	24	46	12	
1				
3	4	2		
	26			
	25			
	418			
	2			
206	48	33	341	
			35	
	31			
			1	
	8			
	3			
1168	1024	76		
	91	1842	940	
			946	
2				
	1	2	1	
80		26	228	
			85	
			1	
			2	
			1	
8	580	94		

		25% CITY WATER COSTS		300% CITY WATER COSTS	
		QUANTITY	AMT	QUANTITY	AMT
		1	\$ 131.25		\$ -
			\$ -		\$ -
		747	\$ 12,540.60		\$ -
			\$ -	1,675	\$ 140,700.00
		1,968	\$ 56,126.80	223	\$ 21,756.50
			\$ -	945	\$ 173,643.75
		12,340	\$ 16,465.00		\$ -
			\$ -	1	\$ 1,000.00
		3	\$ 984.50	8	\$ 6,942.50
		3	\$ 1,811.25	4	\$ 6,430.00
		3	\$ 1,811.25	1	\$ 2,415.00
			\$ 2,362.50		\$ -
			\$ 4,612.50		\$ -
		82	\$ 1,678.25		\$ -
			\$ -	1	\$ 7,350.00
			\$ 2,443.75		\$ -
			\$ -		\$ -
			\$ -		\$ -
			\$ -		\$ -
			\$ -		\$ -
			\$ -		\$ -
		448	\$ 1,764.00		\$ -
		33	\$ 288.75		\$ -
		31	\$ 203.44		\$ -
			\$ -	1	\$ 500.30
			\$ -		\$ -
			\$ -		\$ -
			\$ -		\$ -
		450	\$ 1,213.75	1,664	\$ 16,188.20
			\$ 2,448.84		\$ -
			\$ -	946	\$ 11,919.60
			\$ -	2	\$ 1,150.00
			\$ 1,350.00		\$ -
			\$ -	89	\$ 12,600.00
			\$ 4,972.50	248	\$ 3,150.00
			\$ 1,178.13		\$ -
			\$ -		\$ 21,200.00
			\$ -	2	\$ 16,800.00
			\$ 2,800.00		\$ -
			\$ -	474	\$ 10,615.50
			\$ 190,522.25		\$ 447,702.65
			\$ 26,883.36		\$ 200.00
			\$ 26,883.36		\$ 200.00

TOTAL COST BY ENTITY	
CITY OF HENDERSONVILLE	\$ 684,508.15
<b>TOTAL COST OF PROJECT</b>	<b>\$ 1,162,733.97</b>

Changes since last submitted estimate  
Contingency 2% built within unit prices  
Added the following per City of Hendersonville:  
16" inserts valve  
16" butterfly valve  
Upgraded some 6" branches on main streets to 8"  
Upgraded 6" valves to 8" valves  
Upgraded 8" branches on east end to 10"  
Added PWS per City  
Added valves on 8" line



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brent Detwiler

**Department:** Engineering

**Date Submitted:** 8/29/18

**Presenter:** Brent Detwiler

**Date of Council Meeting to consider this item:** 9/6/18

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05m

Amendment 2 of the Etowah Area Water System Improvements Project Engineering Agreement:

An engineering agreement with Black and Veatch was executed in November 2016 to complete the design, permitting, bidding and award work associated with the Etowah Area Water System Improvements Project. Amendment 1 to this agreement was executed in March 2018 to cover the adjustment of the design and aligning several thousand feet of water line outside of its original alignment. The redesign required construction of an access drive from another location to the tank site. Easement acquisition for the tank access has been challenging and would likely require condemnation. Recently another opportunity has presented itself and another access route has been identified. The property owners are willing to work with the City, and the new route would result in approximately 800 less feet of 12" water line and several hundred less feet of asphalt drive. This will reduce construction costs significantly (well over \$100,000) not to mention costs associated with condemnation.

Unfortunately, the project design was nearly complete when the property owners approached us, so there are design costs to finish the project - a not to exceed amount of \$75,000. The proposed amendment 2 to the design services agreement is attached for your reference. We welcome any questions that you may have.

**Budget Impact:** \$ 75,000 Is this expenditure approved in the current fiscal year budget?  Yes If no, describe how it will be funded.

There are funds set aside for this project as part of a Capital Project Ordinance. Funds may need to be moved from project contingencies or fund balance in order to cover costs associated with redesign.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to approve Amendment 2 to the Black & Veatch engineering agreement for final design of the Etowah Area Water System Improvements Project and to authorize the City Manager to execute the Amendment for said work; as presented and recommended by staff.

### Attachments:

Black and Veatch Engineering Amendment 2 for Etowah Area Water System Improvements

August 27, 2018

City of Hendersonville  
305 Williams Street  
Hendersonville, NC 28792

Attention: Mr. Brent Detwiler, PE,  
City Engineer

**Subject: Etowah Area Water System Improvement Project  
Amendment 2**

Dear Mr. Detwiler:

Black & Veatch submitted 90% complete plans and specifications for review and approval by the City. Following that submittal, the City was contacted by property owner's Tom and Laura Kirk, offering an easement for the water main and an access drive to the tank site. As a result, the City has requested Black & Veatch to revise the water main alignment to be located on the Kirk Property. The revised alignment requires new plan sheets showing the design of the water main and the design of the access drive. We propose to complete the design of the revised water main alignment and access drive for a fee not to exceed \$75,000 (See attached budget worksheet).

Therefore, the Agreement for Engineering Services dated November 16, 2016 for the Etowah Area Water System Improvements Project is hereby amended to modify the Scope of Services to be provided to the Owner.

Please indicate your acceptance of this proposal by signing below.

Very truly yours,

BLACK & VEATCH INTERNATIONAL COMPANY



Mike Osborne, PE  
Project Manager

IN WITNESS WHEREOF, Owner and Engineer have executed this Amendment 2, effective as of \_\_\_\_\_, 2018 (Effective Date).

\_\_\_\_\_  
OWNER:

\_\_\_\_\_  
ENGINEER:

Printed Name: John F. Connet

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

Title: City Manager

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

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

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

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

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

Date \_\_\_\_\_

6	Owner:	City of Hendersonville, NC												
7	Project:	Amend 2 Etowah Area Water System Improvement Project - Budget Estimate												
10	PHASE/Task	PHASE	Project Manager Osborne	Engineering Manager Sly	Engineer	Cadd Technicians	SR. Project Engineer	GC	Estimator	SUBTOTAL, hours	SUBTOTAL, Billings \$	Auto / Travel	SUBTOTAL, EXPENSES	TOTAL COST
11	(Billing Rate, \$\$,Hr.)		\$216.00	\$192.00	\$135.00	\$106.00	\$186.00	\$100.00	\$162.00					
42	Subtotal, Hours		-	-	-	-	-	-	-	-				
43	Subtotal, Billings		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
44	Re-alignment Detailed Design													
45	Final Design		16	24	105	70		6	20	241	\$ 33,969	\$ 700	\$ 700	\$ 34,669
46	Road					100	160			260	\$ 40,260		\$ -	\$ 40,260
47	Subtotal, Hours		16	24	105	170	160	6	20	501				
48	Subtotal, Billings		\$ 3,456	\$ 4,608	\$ 14,175	\$ 17,850	\$ 29,760	\$ 1,140	\$ 3,240		\$ 74,229	\$ 700	\$ 700	\$ 74,929
73	Subtotal, Hours		-	-	-	-	-	-	-	-				
74	Subtotal, Billings		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -
126	Total, Hours		16	24	105	170	160	6	20	501				
127	Total, Billings		\$ 3,456	\$ 4,608	\$ 14,175	\$ 17,850	\$ 29,760	\$ 1,140	\$ 3,240		\$ 74,229	\$ 700	\$ 700	\$ 74,929



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Rhonda Wiggins

**Department:** Utilities

**Date Submitted:** August 29, 2018

**Presenter:** Lee Smith, Utilities Director

**Date of Council Meeting to consider this item:** September 6, 2018

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 05n

Water Extension Request

Adventure Golf Carts  
East Prince Road

This project requires an extension of the City of Hendersonville's water system to provide service to a proposed 12,000 sq ft retail business.

Water service will be provided by 350 lf of 6" DIP

This project is within the Zoning and Planning Jurisdiction of Henderson County and has received approval dated March 6, 2018

Based on the above information, the Water and Sewer Department has the capacity to support this additional infrastructure and associated connections and hereby recommends approval of said project contingent upon final approval of construction plans and specifications by the Water and Sewer Department.

**Budget Impact:** \$ 0.00 Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

This project will be funded by the developer, East Prince Road Properties of Hendersonville, NC

## Suggested Motion:

"I move to accept the Utility Extension on East Prince Road."

## Attachments:

Vicinity Map  
Availability Request  
Governing Body Approval

**WATER AND SEWER AVAILABILITY REQUEST**

Project Name: Adventure Golf Carts Phase/Section: 

1	
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Property Owner(s): East Prince Road Properties Submittal Date: \_\_\_\_\_

PIN(s) or PID(s): 9579636457

Submitted By: Tyson Griswold, P.E. Phone Number: 828-393-5820

Engineering Firm: Tyson Griswold, P.E. Engineer: Tyson Griswold

Mailing Address: PO Box 533, Hendersonville, NC 28793

**GENERAL INFORMATION -**

This is a project to extend existing (water/sewer) line(s) to provide service to: (Brief Facility Description)  
 The proposes construction is for a 12,000 square foot commercial retail business  
 for the purpose of selling golf carts to the public. The operation will have 8 employees  
 requiring 200 GPD. Fireflow of 1000 GPM for 2 hours is also a design consideration  
 at this point of the development. Wastewater treatment provided by onsite septic.

Water Project

No. of Lots or Units: 

1
---

Estimated Demand Per Day: 

200
-----

 gallons per day

Adjacent Street(s) or Road(s): \_\_\_\_\_

Sewer Project

No. of Lots or Units: 

--

Estimated Demand Per Day: 

--

 gallons per day

Adjacent Street(s) or Road(s): \_\_\_\_\_

Does the project require a pump station:  Yes  No    If yes, check one:  Proposed  Existing

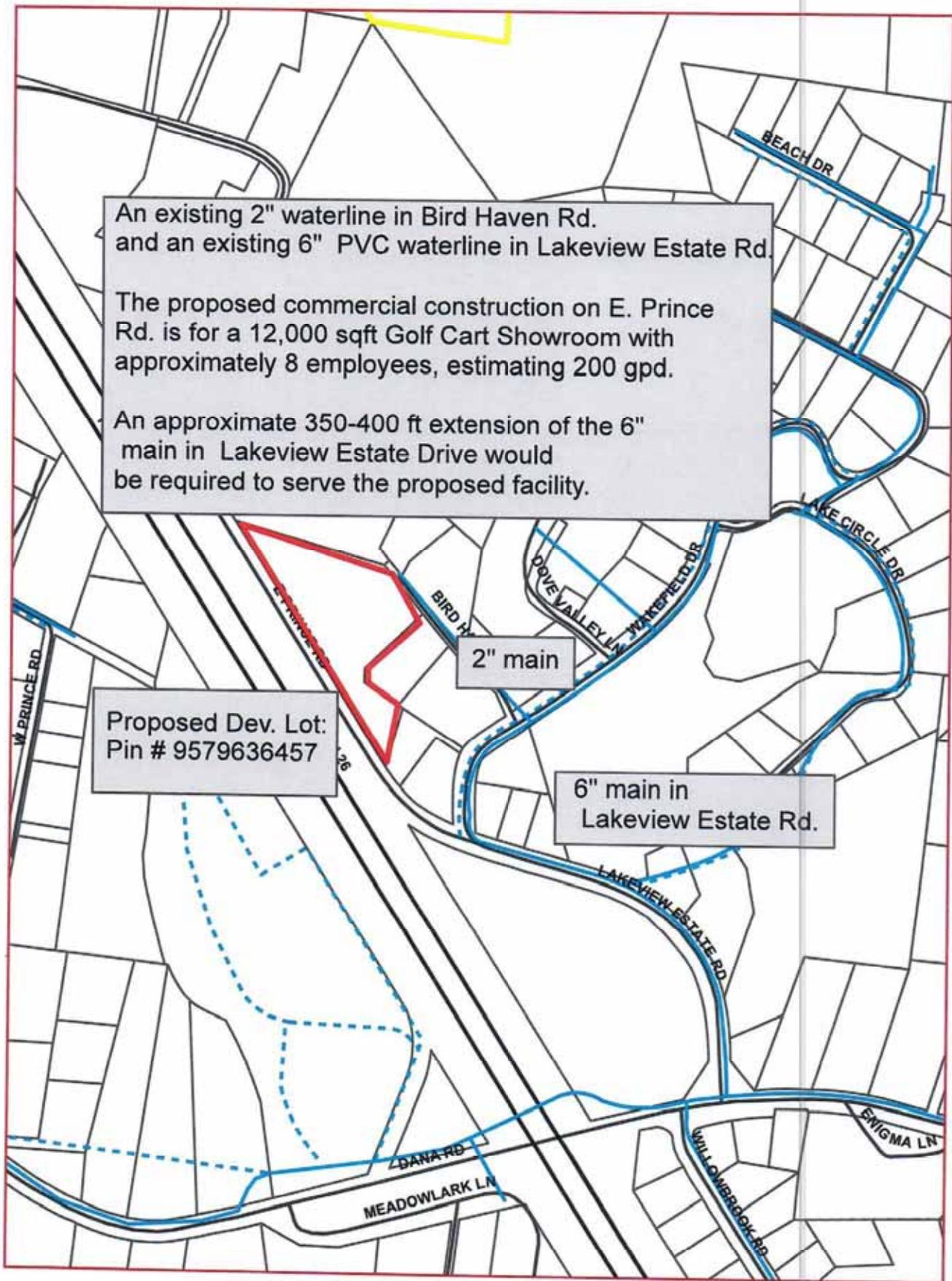
HENDERSONVILLE WATER AND SEWER

**REVIEW**

**COMMENTS:**

Henderson County - will require waterline extension to access City Main (6") (see in Lakeside Estate Rd.

CITY OF HENDERSONVILLE/GOVERNING BODY USE ONLY	
COH Reviewed by: <i>M. P. [Signature]</i>	Date: <i>March 6, 2018</i>
Reviewing Jurisdiction: <i>Toby</i>	<small>Digitally signed by Toby Linville DN: cn=Toby Linville, o=Henderson County, ou=Code Enforcement Services, email=linville@hendersoncountync.gov, c=US Date: 2018.08.28 09:35:33 -0400</small>
Reviewer: <i>Linville</i>	Date: _____
Approved <input type="checkbox"/> -or- Disapproved <input type="checkbox"/> by the City Council	Date: _____



Adventure Golf: Water Availability 03/05/18



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle

**Department:** Admin

**Date Submitted:** 08/29/18

**Presenter:** Brian Pahle

**Date of Council Meeting to consider this item:** 09/06/18

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05oi

Establishment of the budget and grant project ordinance for the 319 stormwater grant received by the Engineering Department.

**Budget Impact:** \$ 177,000 Is this expenditure approved in the current fiscal year budget?  No If no, describe how it will be funded.

Grant and loan proceeds provided in a separate grant project ordinance.

**Suggested Motion:**

I move to adopt the grant project ordinance and budget amendment as presented.

**Attachments:**

Grant Project Ordinance  
Budget Amendment  
Project Detail

**GRANT PROJECT ORDINANCE FOR  
THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSALLATION OF THE  
319 STORMWATER GRANT PROJECT**

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

**Section 1:** The project authorized is a grant project described as the 319 Stormwater Grant Project.

**Section 2:** The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
3700000	559850	Contruction Contract	\$ 175,000
3700000	529900	Supplies & Materials	\$ 2,000
<b>Total Project Appropriation</b>			<b>\$ 177,000</b>

**Section 3:** The following revenues are anticipated to be available via grant and loan proceeds:

Account Number		Account Name	Total Budget
3700000	499100	Loan Proceeds	\$ 77,000
3700000	498900	Grant Revenue	\$ 100,000
<b>Total Project Revenue</b>			<b>\$ 177,000</b>

**Section 4:** The Finance Director is hereby directed to maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the Stormwater Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this sixth day of September, 2018.

\_\_\_\_\_  
Barbara G. Volk, Mayor

ATTEST:

\_\_\_\_\_  
Tammie K. Drake, City Clerk

Approved as to form:

\_\_\_\_\_  
Samuel H. Fritschner, City Attorney



# NC Application for Section 319 NPS Pollution Control Grant

<b>16. Project Milestone Schedule</b>					
<i>Note that all 319 funded projects are required to submit quarterly progress reports and a detailed final project report due by the end of the contract for DWR review before receipt of full payment of invoices.</i>					
Time Period/Date	Activities (List specific outputs or activities that will be achieved in each quarter)	Anticipated % of Requested Funding Spent <sup>1</sup>			
		Q\$	Q%	Cum \$	Cum %
First Quarter Jan-Mar 2018	N/A	N/A	N/A	N/A	N/A
Second Quarter Apr-June 2018	Begin site analysis Submit grant application 1 quarterly report	\$1,500	1.5%	\$1,500	1.5%
Third Quarter July-Sept 2018	Begin retrofit designs 1 quarterly report	\$2,000	2.0%	\$3,500	3.5%
Fourth Quarter Oct-Dec 2018	Complete retrofit design Bid project Matching: Complete construction of bioretention project at PW Facility 1 quarterly report	\$2,000	2.0%	\$5,500	5.5%
Fifth Quarter Jan-Mar 2019	Begin construction of retrofit projects and rainwater harvesting system 1 quarterly report	\$90,000	90%	\$95,500	95.5%
Sixth Quarter Apr-Jun 2019	Complete Construction of retrofits and rainwater harvesting system Conduct public outreach and education events 1 quarterly report	\$2,000	2.0%	\$97,500	97.5%
Seventh Quarter July-Sept 2019	Continue education and outreach 1 quarterly report 1 final report	\$2,500	2.5%	\$100,00	100% <sup>2</sup>

<sup>1</sup> Please show anticipated dollar amount, percent of grant spent that quarter, and cumulative percent of grant spent for project. Quarterly invoices will only be reimbursed up to percent indicated. Unused funds will carry forward to next quarter.

<sup>2</sup> 10% of grant will be held until receipt of Final Project Report, whether project lasts 3 years or is shorter

**Note:** Sum of funds spent in quarters 1-2 MUST equal year 1 total in Budget Table #16  
 Sum of funds spent in quarters 3-6 MUST equal year 2 total in Budget Table #16  
 Sum of funds spent in quarters 7-10 MUST equal year 3 total in Budget Table #16  
 Sum of funds spent in quarters 11-12 MUST equal year 4 total (min. 10% of 319 funds)

## NC Application for Section 319 NPS Pollution Control Grant

<b>17. Funding Requested</b>											
Budget Categories (itemize all categories)	Section 319				319 Total	Non-Federal Match *				Total (with match)	Justification (Include detailed explanation for each budget line item)
	Year 1	Year 2	Year 3	Year 4		Year 1	Year 2	Year 3	Year 4		
Personnel/ Salary	\$5,000	\$5,000			\$10,000	\$10,000				\$20,000	<p><b>Match:</b> Design and Engineering, Construction Administration, Project Management for installation of bioretention cell at PW Facility.</p> <p>Site analysis, design and engineering, construction administration, and project management for bioretention retrofits at Patton Park and RWH System at PW Facility, Public Outreach and Education, Quarterly and Final reports.</p>
Fringe Benefits											
Supplies							\$2,000			\$2,000	Educational Signage
Equipment											
Travel											
Contractual		\$90,000			\$90,000		\$65,000			\$155,000	<p><b>Match:</b> grading, clearing, planting, erosion control, bioretention materials, stormwater structures, and</p>



# NC Application for Section 319 NPS Pollution Control Grant

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<b>18. Budget Summary (Combined federal and match funds)</b>							
	BMP Implementation	Project Management	Education, Training or Outreach	Monitoring	Technical Assistance	Other	Total
Personnel	\$10,000	\$10,000					\$20,000
Fringe Benefits							
Supplies			\$2,000				\$2,000
Equipment							
Travel							
Contractual	\$155,000						\$155,000
Operating Costs							
Other							
<b>Total</b>							<b>\$177,000</b>

<b>19. Local and State Match (non-federal) Summary</b>	
Total Match amount	\$77,000
Cash Match (includes staff salaried time)	\$67,000
In-kind Match (includes goods or services)	\$10,000
Source(s) of Cash Match	Construction of bioretention cell and stormwater infrastructure at new PW Facility, Educational signage.
Source(s) of In-kind Match	Engineering Design and Administrative Costs for installation of bioretention cell at new PW Facility



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Brian Pahle

**Department:** Admin

**Date Submitted:** 08/29/18

**Presenter:** Brian Pahle

**Date of Council Meeting to consider this item:** 09/06/18

**Nature of Item:** Council Action

**Summary of Information/Request:**

**Item #** 05oii

Establishment of the budget and grant project ordinance for the SAFER grant received by the Hendersonville Fire Department.

**Budget Impact:** \$ 299,291 \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  No \_\_\_\_\_ If no, describe how it will be funded.

Grant proceeds provided in a separate grant project ordinance.

**Suggested Motion:**

I move to adopt the grant project ordinance and budget amendment as presented.

**Attachments:**

- Grant Project Ordinance
- Budget Amendment
- Supporting Cost Impact Analysis

**GRANT PROJECT ORDINANCE FOR  
THE EXECUTION, ACQUISITION, CONSTRUCTION, AND INSALLATION OF THE  
SAFER FIREFIGHTER PROJECT**

**BE IT ORDAINED** by the Governing Board of the City of Hendersonville, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

**Section 1:** The project authorized is a grant project described as the SAFER Firefighters Project.

**Section 2:** The following amounts are appropriated for the project:

Account Number		Account Name	Total Budget
3650000	512100	Salary & Wages - Regular	\$ 197,943
3650000	512250	Salary & Wages - Holiday Pay	\$ 10,199
3650000	512800	Salary & Wages - Half-time	\$ 11,774
3650000	518100	FICA Tax Expense	\$ 14,932
3650000	518200	Retirement Expense	\$ 15,524
3650000	518300	Health Insurance	\$ 47,997
3650000	599100	Contingencies	\$ 922
<b>Total Project Appropriation</b>			<b>\$ 299,291</b>

**Section 3:** The following revenues are anticipated to be available via grant proceeds:

Account Number		Account Name	Total Budget
3650000	498900	Grant Revenue	\$ 299,291
<b>Total Project Revenue</b>			<b>\$ 299,291</b>

**Section 4:** The Finance Director is hereby directed to maintain within the grant project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

**Section 5:** Funds may be advanced from the General Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

**Section 6:** The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

**Section 7:** The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

**Section 8:** Copies of this grant project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

**ADOPTED** by the City Council of the City of Hendersonville, North Carolina, on this sixth day of September, 2018.

\_\_\_\_\_  
Barbara G. Volk, Mayor

ATTEST:

\_\_\_\_\_  
Tammie K. Drake, City Clerk

Approved as to form:

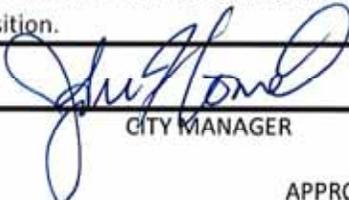
\_\_\_\_\_  
Samuel H. Fritschner, City Attorney

**BUDGET AMENDMENT**

FUND: 10 | 365

ACCOUNT NUMBER			INCREASE	DECREASE
ORG	OBJECT	DESCRIPTION OF ACCOUNT		
3650000	498900	Grant Revenue	299,291.00	
3650000	512100	Salary & Wages - Regular	197,943.00	
3650000	512250	Salary & Wages - Holiday Pay	10,199.00	
3650000	512800	Salary & Wages - Half-time	11,774.00	
3650000	518100	FICA Tax Expense	14,932.00	
3650000	518200	Retirement Expense	15,524.00	
3650000	518300	Health Insurance	47,997.00	
3650000	599100	Contingencies	922.00	
<b>TOTAL REVENUES</b>			299,291.00	-
<b>TOTAL EXPENDITURES</b>			299,291.00	-
<b>FUND 365</b>				
104340	512100	Salary & Wages - Regular	14,873.00	
104340	512250	Salary & Wages - Holiday Pay	757.00	
104340	512800	Salary & Wages - Half-time	874.00	
104340	518100	FICA Tax Expense	1,108.00	
104340	518200	Retirement Expense	1,123.00	
104340	518300	Health Insurance	3,655.00	
104340	512200	Salary & Wages - O/T		13,266.00
104340	512900	Salary & Wages - P/T		9,124.00
<b>TOTAL REVENUES</b>			-	-
<b>TOTAL EXPENDITURES</b>			22,390.00	22,390.00
<b>FUND 10</b>				

An amendment to establish the budget for the SAFER grant received by the Hendersonville Fire Department. This grant will provide funding for 3 additional fire fighters, bringing our capacity to 10 per shift. The minimum staffing will be kept at 9 per shift which will provide overtime and parttime savings to pay for the City's portion of the match for the grant. The City will be responsible for 25% of the cost the first and second years, 65% of the cost the third year, and 100% for the fourth year and moving forward. Additional overtime and parttime savings will be used for an additional Administrative Assistant, Training, or Logistics position once discussed with staff and the highest and best use of funds is determined. An additional amendment will be proposed in the coming months relating to this position.



CITY MANAGER

Date: 8-29-18

APPROVED BY CITY COUNCIL:

DATE: 9/6/2018

\*Increasing each FY\*

FY18-19

7.75%

8.00%

8.25%

8.50%

342

323

332.5

Average

144

7.65%

704 per month

Average

Position	Min. Salary	5% Probation Completion	Half-Time	Overtime	Holiday Pay	FICA Tax Expense	Retirement Expense	Med./Life Ins.	Worker's Comp. Ins.	Total
Firefighter/EMT (Y1)	33,481.13	1,674.06	2,019.68	-	1,749.38	2,561.31	2,594.79	8,448.00	-	52,528.34
Firefighter/EMT (Y2)	36,034.07	-	2,173.68	-	1,882.77	2,756.61	2,882.73	8,701.44	-	54,431.29
Firefighter/EMT (Y3)	36,934.92	-	2,228.02	-	1,929.84	2,825.52	3,047.13	8,962.48	-	55,927.92
Firefighter/EMT (Y4)	37,858.29	-	2,283.72	-	1,978.08	2,896.16	3,217.96	9,231.36	-	57,465.57
Fire Training Officer (Y1)	47,111.31	2,355.57	-	2,258.06	-	3,604.02	3,651.13	8,448.00	-	67,428.08
Fire Training Officer (Y2)	50,703.55	-	-	2,258.06	-	3,878.82	4,056.28	8,701.44	-	69,598.15
Fire Training Officer (Y3)	51,971.14	-	-	2,258.06	-	3,975.79	4,287.62	8,962.48	-	71,455.09
Fire Training Officer (Y4)	53,270.41	-	-	2,258.06	-	4,075.19	4,527.99	9,231.36	-	73,363.00
Administrative Assistant I (Y1)	28,922.26	1,446.11	-	-	-	2,312.55	2,241.48	8,448.00	-	43,270.40
Administrative Assistant I (Y2)	31,127.58	-	-	-	-	2,381.26	2,490.21	8,701.44	-	44,700.49
Administrative Assistant I (Y3)	31,905.77	-	-	-	-	2,440.79	2,632.23	8,962.48	-	45,941.27
Administrative Assistant I (Y4)	32,703.41	-	-	-	-	2,501.81	2,779.79	9,231.36	-	47,216.37

GRANT BUDGET	FY18-19		FY19-20		FY20-21		FY21-22		FY22-23		TOTAL
FUND 365	R	E	R	E	R	E	R	E	R	E	
Grant Revenue	498900	299,291		232,119		111,460		25,767		922	
Salaries Reg.	512100		44,620		80,240		56,676		16,408		197,943
Holiday Pay	512250		2,271		4,109		2,961		857		10,199
Half-Time	512800		2,622		4,744		3,419		990		11,774
FICA	518100		3,325		6,016		4,336		1,255		14,932
Retirement	518200		3,368		6,212		4,590		1,354		15,524
Health Ins.	518300		10,966		19,337		13,712		3,981		47,997
TOTAL		299,291	67,172	232,119	120,659	111,460	85,694	25,767	24,845		
FUND 10 FIREFIGHTERS		*BUDGET AMENDMENT*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*	
Salaries Reg.	512100		14,873		26,747		52,986		95,995		190,601
Holiday Pay	512250		757		1,370		2,768		5,016		9,911
Half-Time	512800		874		1,581		3,196		5,791		11,442
FICA	518100		1,108		2,005		4,053		7,344		14,511
Retirement	518200		1,123		2,071		4,343		8,083		15,620
Health Ins.	518300		3,655		6,446		12,844		23,371		46,316
TOTAL			22,391		40,220		80,190		145,600		
FUND 10 TRAINING OFFICER		*BUDGET AMENDMENT*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*	
Salaries Reg.	512100		24,733		50,085		51,337		52,621		178,777
Salaries O/T	512200		1,129		2,258		2,258		2,258		7,903
FICA	518100		1,802		3,741		3,927		4,025		13,496
Retirement	518200		1,826		3,854		4,172		4,408		14,259
Health Ins.	518300		4,224		8,575		8,832		9,097		30,728
TOTAL			33,714		68,513		70,527		72,409		
FUND 10 ADMINISTRATIVE ASSISTANT I		*BUDGET AMENDMENT*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*		*BUDGET ORDINANCE*	
Salaries Reg.	512100		15,184		30,748		31,517		32,305		109,753
FICA	518100		1,106		2,297		2,411		2,471		8,286
Retirement	518200		1,121		3,611		3,878		4,096		12,706
Health Ins.	518300		4,224		8,575		8,832		9,097		30,728
TOTAL			21,635		45,231		46,637		47,969		
FUND 10 O/T & P/T											
Salaries O/T	512200		(37,173)		(50,868)		(50,868)		(50,868)		
Salaries P/T	512900		(25,568)		(34,988)		(34,988)		(34,988)		
TOTAL			(62,741)		(85,856)		(85,856)		(85,856)		
FF + TO + OT/PT			(6,636)		22,877		64,861		132,153		
FF + AA + OT/PT			(18,715)		(405)		40,972		107,713		



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Lew Holloway

**Department:** Development Asst Dept

**Date Submitted:** 8/30/2018

**Presenter:** L. Holloway

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 05p

The United Way of Henderson County has requested that be allowed to serve beer and wine at their inaugural Small Business League Kickball Tournament @ Historic Berkley Park. The event is associated with the initiation of the Small Business League, a new initiative being undertaken by the board of the United Way of Henderson County to engage small business leaders within the community in the work of the United Way.

**Budget Impact:** \$ 0 \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move that City Council allow the United Way of Henderson County to serve beer and wine and their event on Sunday September 8th between noon and 7:00 pm, these hours corresponding with rental of the Berkley ball field for the inaugural Kickball Tournament.

**Attachments:**



August 30, 2018

City of Hendersonville  
Attn: Lew Holloway  
Economic Development Director

To whom it may concern,

The United Way of Henderson County will host the 1<sup>st</sup> annual Small League Kickball Tournament on Sunday, September 9, 2018. We appreciate the approval of Berkley Mills Park for this tournament from the City of Hendersonville.

United Way of Henderson County would appreciate the ability to serve beer and wine donated by Southern Appalachian Brewery to tournament participants. Pepsi products have been donated by Pepsi Distribution of Mills River and water will be provided as well.

United Way does not plan to charge for the beer and wine and will take all necessary steps to check identification of all participants to ensure those that are not of age will not consume alcohol. Participants over the age of 21 will be given a special color wrist band to identify their legal age.

We appreciate your consideration of this request at Berkley Mills Park.

Regards,

A handwritten signature in black ink, appearing to read "Tate Johnson".

Tate Johnson  
Director of Resource Development



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/28/2018

**Presenter:** John Connet / Ashlynn Landreth

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 06

The City of Henderson and Housing Assistance Corporation are in the process of preparing a CDBG application for \$750,000 in grant funds to revitalize the Ashe Street neighborhood. The funds will be spend to construct sidewalks and improve housing conditions in the area. This grant will be submitted in conjunction with a State Revolving Loan application to replace the water and sewer in this same neighborhood. Staff is requesting the City Council to conduct a public hearing and approve the attached resolution authorizing the City of Hendersonville to submit a formal application for a Community Development Block Grant. The City of Hendersonville will only be responsible for providing funding for land use planning, surveying and infrastructure design.

**Budget Impact:** \$ 750,000 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

CDBG funds will cover the costs of the improvements and City will provide in kind services for land use planning, surveying and infrastructure design.

### Suggested Motion:

I move that the City Council approve the resolution authorizing the City of Hendersonville to make a formal application for Community Development Block Grant funding in the amount of \$750,000.

### Attachments:

Public Hearing Notice  
Resolution

The City of Hendersonville will hold a public hearing on September 6, 2018 at 5:45 p.m. in the Council Chambers located in City Hall, at 145 Fifth Avenue East Hendersonville, NC to solicit public input on local community development and needs in relation to the Community Development Block Grant (CDBG) fund for a project in our community. The public is invited to attend and comment. Written comments addressed to the City Council, at 145 Fifth Avenue E. Hendersonville, NC, will be accepted prior to the hearings.

The City of Hendersonville will submit an application for the Community Development Block Grant – Neighborhood Revitalization Fund for proposed revitalization projects including, home replacement, new home construction and the construction of sidewalks for the 7<sup>th</sup> avenue area. The amount of the grant funding being pursued is \$750,000.

All facilities are handicapped accessible. All interested persons are invited to attend this hearing. Auxiliary aids will be supplied to the disabled if requested five days prior to the public hearing. Person needing special assistance or non-English speaking persons desiring to participate in this hearing should contact the City Manager at 828.697.3000 or 1.800.735.0533 (TDD/TTY) for the hearing impaired. A public Information file about the CDBG program is available to the public, please contact the city manager for additional information @ 828.697.3000 or 1.800.735.0533.

Esta Informacion esta disponible en espanol on en cualquier otro idioma bajo peticion. Por favor, pongase en contacto con Susan Frady al 828.233.3010 o en City Hall, 145 Fifth Avenue E., Hendersonville NC. De alojamiento para esta solicitud.

RESOLUTION FOR THE CITY OF HENDERSONVILLE APPLICATION FOR  
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE  
7<sup>TH</sup> AVENUE REVITALIZATION PROJECT

**WHEREAS**, the City of Hendersonville's Council has previously indicated its desire to assist in economic development efforts for small businesses/entrepreneurs within the City; and,

**WHEREAS**, the Council has held two public hearings concerning the proposed application for Community Development Block Grant funding to benefit the revitalization of 7<sup>th</sup> Avenue area ; and,

**WHEREAS**, the Council wishes the City to pursue a formal application for Community Development Block Grant funding to benefit the revitalization of the 7<sup>th</sup> Avenue area; and will invest monies in the amount of \$750,000.00 into the project as committed to in the application.

**WHEREAS**, the Council certifies it will meet all federal regulatory and statutory requirements of the State of North Carolina Community Development Block Grant Program,

**NOW, THEREFORE BE IT RESOLVED**, by the City of Hendersonville's Council that the City of Hendersonville is authorized to submit a formal application to the North Carolina Department of Commerce for approval of a Community Development Block Grant for the North Carolina Neighborhood Program to benefit the revitalization of the 7<sup>th</sup> Avenue area.

Adopted this the 6th day of September, 2018 in Hendersonville, North Carolina.

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Barbra Volk, Mayor of Hendersonville

ATTEST:

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Clerk to the Board



# CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Buchanan

**Department:** Finance

**Date Submitted:** 8/23/18

**Presenter:** John Buchanan

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

## Summary of Information/Request:

**Item #** 07

Public Hearing to consider whether to enter into an installment financing contract.

City staff are requesting City Council approval to negotiate an installment financing agreement in an amount not to exceed \$3,000,000 in principal to provide funding for several previously approved projects:

- \* Construction of the Public Works Maintenance Facility at Patton Park
- \* Main Street corridor restroom facility
- \* Whitmire Building improvements

We have issued a request for financing proposals and will submit the staff recommendation for final approval at the September 25, 2018 meeting.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? Yes  If no, describe how it will be funded.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move that City Council adopt the resolution authorizing the negotiation of an installment financing contract and providing for certain other related matters thereto

**Attachments:**

Resolution

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**

*WHEREAS*, the City of Hendersonville, North Carolina (the “City”) is a municipal corporation validly existing as such under and by virtue of the constitution, statutes and laws of the State of North Carolina (the “State”);

*WHEREAS*, the City has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment contracts in order to finance or refinance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

*WHEREAS*, the City Council of the City (the “City Council”) has retained (A) Parker Poe Adams & Bernstein LLP, as special counsel (“*Special Counsel*”) and (B) First Tryon Advisors, a business unit of First Tryon Securities, LLC, as financial advisor (collectively, the “*Financing Team*”), in connection with the installment financing;

*WHEREAS*, the City staff has solicited requests for proposal from financial institutions for the installment financing;

*WHEREAS*, the City Council hereby determines that it is in the best interest of the City to (1) enter into an installment financing contract (the “*Contract*”) with a financial institution to be selected through the requests for proposal process (the “*Lender*”) in order to provide funds to pay the capital costs of the (1) construction and equipping of a public works maintenance facility to be located at 1369 N. Main Street, (2) construction of public restroom facilities to be located at 125 5<sup>th</sup> Avenue W. and (3) improvements to the Whitmire Building, a recreation center, including parking lot expansion/repaving and the replacement of interior flooring, located at 310 Lily Pond Drive (the “*Projects*”) and (2) in order to provide security for the City’s obligations under the Contract, grant to the Lender a security interest under a deed of trust, security agreement and fixture filing (the “*Deed of Trust*”) in all or such portion of the City’s fee simple interest in the sites where the Projects are or will be located, together with all improvements and fixtures located thereon, as the Lender may require;

*WHEREAS*, the City hereby determines that the Projects are essential to the City’s proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Projects will provide an essential use and will permit the City to carry out public functions that it is authorized by law to perform; and that entering into the Contract and Deed of Trust is necessary and expedient for the City by virtue of the findings presented herein;

*WHEREAS*, the City hereby determines that the Contract allows the City to purchase the Projects and take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the City and that the sums to fall due under the Contract are adequate and not excessive for its proposed purpose;

*WHEREAS*, the City hereby determines that the estimated cost of financing the Projects is an amount not to exceed \$3,000,000 and that such cost of the Projects exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the City in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

*WHEREAS*, although the cost of financing the Projects pursuant to the Contract is expected to exceed the cost of financing the Projects pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the Projects pursuant to the Contract and Deed of Trust and the obligations of the City thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring and constructing the Projects; and (3) insufficient revenues are produced by the Projects so as to permit a revenue bond financing;

*WHEREAS*, the City has determined and hereby determines that the estimated cost of financing the Projects pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

*WHEREAS*, the City does not anticipate a future property tax increase to pay installment payments falling due under the Contract, but the increase in taxes, if any, necessary to meet the sums to fall due under the Contract will not be excessive;

*WHEREAS*, Special Counsel will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

*WHEREAS*, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any money due under the Contract;

*WHEREAS*, the City is not in default under any of its debt service obligations;

*WHEREAS*, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget Ordinance;

*WHEREAS*, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the Local Government Commission of North Carolina (the "LGC"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

*WHEREAS*, a public hearing on the Contract after publication of a notice with respect to such public hearing was held on September 6, 2018 and approval of the LGC with respect to entering the Contract must be received; and

*NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, AS FOLLOWS:*

Section 1. ***Authorization to Negotiate the Contract.*** The City Manager, the Assistant City Manager and the Finance Officer, with advice from the City Attorney and Special Counsel, are hereby authorized and directed to negotiate on behalf of the City for the financing of the Projects for a principal amount not to exceed \$3,000,000 under the Contract to be entered into with the Lender in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina, as amended, and to

provide in connection with the Contract, as security for the City's obligations thereunder, a security interest in all or such portion of the City's fee simple interest in the sites where the Projects are or will be located, together with all improvements and fixtures located thereon, as may be required by the Lender providing the funds to the City under the Contract.

Section 2. ***Application to LGC.*** The Finance Officer or his designee is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the City and its financial condition as may be required by the LGC.

Section 3. ***Approval of the Financing Team.*** The Financing Team is hereby approved in connection with the financing of the Projects, and the City Manager, the Assistant City Manager and the Finance Officer are each hereby authorized to retain other persons or organizations as may be necessary and appropriate to carry out the intention of this Resolution.

Section 4. ***Ratification and Approval.*** All actions of the City, the City Manager, the Assistant City Manager and the Finance Officer, including anyone serving as such in an interim capacity, or their respective designees, whether previously or hereinafter taken, in effectuating the proposed financing are hereby ratified, approved and authorized pursuant to and in accordance with the transactions contemplated by this Resolution.

Section 5. ***Repealer.*** All motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 6. ***Effective Date.*** This Resolution is effective on the date of its adoption.

STATE OF NORTH CAROLINA            )  
  )     SS:  
CITY OF HENDERSONVILLE            )

I, *Tammie Drake*, City Clerk of the City of Hendersonville, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO**” adopted by the City Council of the City of Hendersonville, North Carolina, at a meeting held on the 6th day of September, 2018.

***WITNESS*** my hand and the corporate seal of the City of Hendersonville, North Carolina, this the \_\_\_ day of \_\_\_\_\_, 2018.

[Seal]

\_\_\_\_\_  
Tammie Drake  
City Clerk  
City of Hendersonville, North Carolina



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Michael Huffman

**Department:** Engineering

**Date Submitted:** 8/29/18

**Presenter:** Jayhawk Reese-Julien

**Date of Council Meeting to consider this item:** 9/6/18

**Nature of Item:** Presentation Only

**Summary of Information/Request:**

**Item #** 08

A young man, Jayhawk Reese-Julien, has been working with the city to install a small boat access along the Oklawaha Greenway at Berkeley Road. This project is the focus of his Eagle Scout project. Jayhawk will be presenting on the project to Council and asking for their approval of the project. He has already reached out to Friends of the Oklawaha and is collaborating with the Eng. Department

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

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

To approve the installation of the boat access for Jayhawk's Eagle Scout Project

**Attachments:**

Presentation



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/28/2018

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 09

The Henderson County Transportation Advisory Committee (TAC) has just started their process to rank the next group of transportation projects in Henderson County. The highest ranking pedestrian improvement project is the construction of sidewalks along Grove Street. NCDOT's cost sharing program would require the city to contribute 20% of the funding for the project. The current estimates indicate our share would be \$144,608 and payment could occur in 2025 or 2026. Staff is asking the City Council to provide Councilman Caraker with guidance on whether or not you support this project and recommend that funds be allocated for the project in future Capital Improvement Programs.

**Budget Impact:** \$ 144,608 (estimate) \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget?  No  Yes If no, describe how it will be funded.

Funds would be allocated in a future fiscal year.

### Suggested Motion:

I move that the City Council support the construction of sidewalks on Grove Street and recommend that funding to cover the cost of this project be included in future Capital Improvement Projects.

**Attachments:**

TAC Priority List

French Broad River MPO

# Henderson County Project Prioritization Discussion

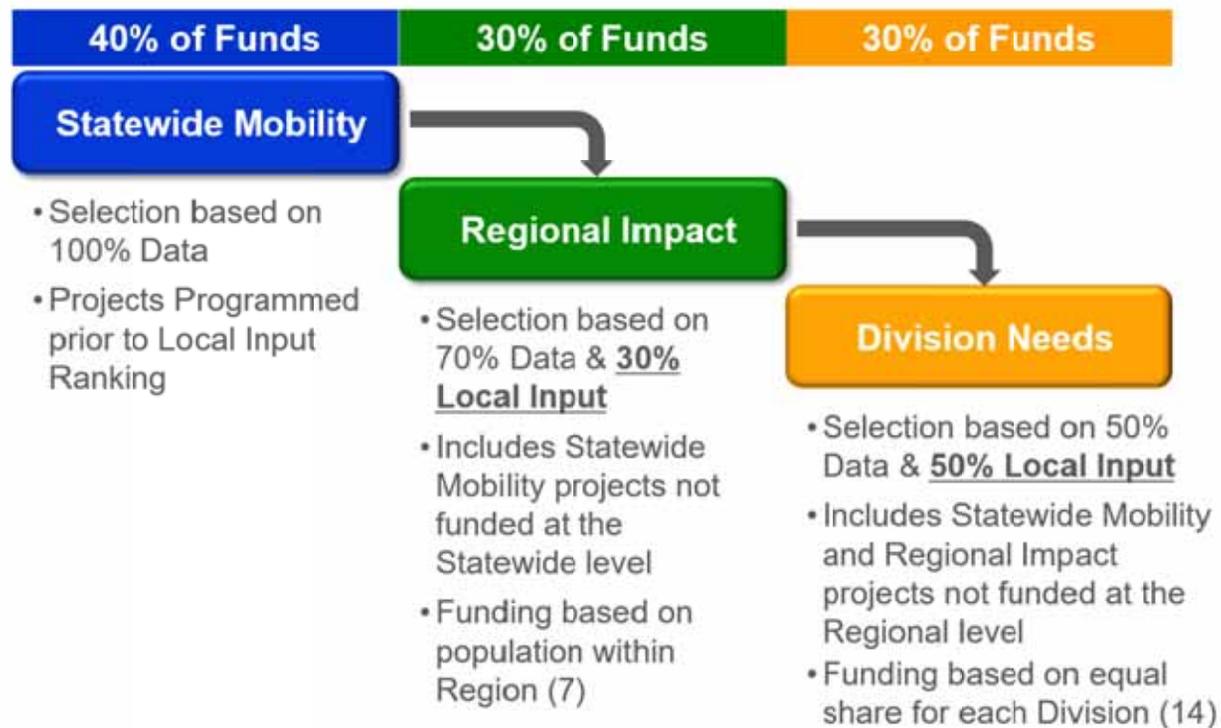
A discussion on projects considered for MPO Local Input Points in the Division Needs tier for P 5.0

French Broad River MPO  
8-8-2018

## INTRODUCTION

The Strategic Transportation Investments (STI) law governs the process in which the State of North Carolina prioritizes transportation projects. The law was passed in 2013 with the intent of creating a data-driven, collaborative process between NCDOT, planning organizations, local governments, and the public to efficiently utilize funding for transportation improvements across the state.

As part of the prioritization process, projects are solicited from planning organizations and NCDOT Divisions. Projects submitted into the prioritization process are placed into three different funding categories based on facility and project types: Statewide Mobility, Regional Impact, and Division Needs. Project scoring for the Statewide Mobility funding category is based solely on quantitative data developed by the Prioritization Workgroup. Metropolitan Planning Organizations (MPOs), Rural Planning Organizations (RPOs), and Division Engineers assign local input points to projects in the Regional Impact and Division Needs funding categories. These points are applied in the calculation of the final project scores for Prioritization 5.0 to determine which projects are funded at the Regional Impact and Division Needs funding categories.



## P 5.0 Updates

NCDOT released the scores for projects in P 5.0 as well as projects programmed in the Statewide Mobility tier. The French Broad River MPO had the following projects programmed:

TIP	Route / Facility Name	From / Cross Street	To / Cross Street	Description	Cost to NCDOT	Statewide Mobility Quantitative Score (Out of 100)	County(s)	Right-of-Way Date - Initial Draft STIP	Construction Date - Initial Draft STIP
I-6018	I-40	I-240 / US 74 Alt		Upgrade interchange	\$ 35,000,000	78.89	Buncombe	FY 2028	After 2029
AV-5882	AVL - Asheville Regional Airport	AVL - Terminal Apron Expansion-South	N/A	Expand the existing terminal apron south of existing apron (3412 and 3500).	\$ 500,000	78.66	Buncombe		FY 2020
AV-5883	AVL - Asheville Regional Airport	AVL - Terminal Apron Expansion - North	N/A	Expand terminal apron to the north of the existing apron (3621).	\$ 500,000	75.72	Buncombe		FY 2020
I-6021	I-40	SR 2838 (Porters Cove Road), Exit 55		Upgrade interchange, improve EB off-ramp connection to SR 2838 (Porters Cove Road)	\$ 22,100,000	75.47	Buncombe	FY 2028	After 2029

### Regional Impact Tier Updates

No official updates have from NCDOT in terms of what projects were funded at the Regional Impact tier but MPO staff does anticipate that the following projects have a high likelihood of being funded in some capacity and therefore would **NOT** need local input points at the Division Needs tier.

Mode	Project Category	Route / Facility Name	From / Cross Street	To / Cross Street	Description	Cost to NCDOT	Regional Impact Total Score (Out of 100)	Notes
Highway	Regional Impact	NC 280 (Boylston Hwy)	NC 191 Northern Intersection (Old Haywood Road)	NC 191 Southern Intersection (Haywood Road)	Upgrade Roadway with Access Management and Intersection realignment and improvements.	\$ 9,600,000	47.36	*Likely* Funded
Highway	Statewide Mobility	I-26	US 25	US 64 (Four Seasons Blvd)	Add Additional Lanes.	\$ 80,000,000	41.27	*Likely* Funded

**Henderson TAC Action: No Action Required; Strictly Informational**

## Prioritizing Projects

For the Henderson County TAC to consider projects to prioritize, there are two steps:

(1) Consider Cascading Projects from the Statewide Mobility tier and Regional Impact tier (see list of projects above)

(2) **Select up to THREE projects as Henderson County priorities.** These may include projects selected to cascade from the Statewide Mobility and Regional Impact tiers in Step #1 or Regional Impact projects listed below:

What does this selection do? Projects selected as “priorities” by the Henderson TAC will receive 25 points in the MPO's Prioritization Methodology and makes projects more likely to receive MPO Local Input points. MPO Local Input points add 25 points to a project's Division Needs Score and make them more likely to be funded.

### **AN IMPORTANT NOTE ON BIKE/PED PROJECTS**

Bike/Ped projects require a 20% match from local governments (20% of the total project cost) due to state legislation that prohibits state funds from being put towards stand-alone bike/ped projects. Per the MPO's prioritization policy, local input points will not be put on a bike/ped project unless the local government makes clear that it is committed to providing the required match.

Henderson County Statewide Mobility and Regional Impact projects eligible to cascade:

Mode	Project Category	Route / Facility Name	From / Cross Street	To / Cross Street	Description	Cost to NCDOT	Division Needs Total Score (Out of 100)	Notes
Highway	Regional Impact	NC 280 (Boylston Hwy)	NC 191 Northern Intersection (Old Haywood Road)	NC 191 Southern Intersection (Haywood Road)	Upgrade Roadway with Access Management and Intersection realignment and improvements.	\$ 9,600,000	39.29	*Likely* Funded
Highway	Regional Impact	NC 225 (Greenville Highway)	US 176 (Spartanburg Highway)	SR 1164 (Erkwood Drive)	Modernize roadway.	\$ 15,000,000	33.07	
Highway	Statewide Mobility	I-26	US 25	US 64 (Four Seasons Blvd)	Add Additional Lanes.	\$ 80,000,000	27.34	*Likely* Funded
Highway	Regional Impact	NC 191	US 25 (Asheville Highway)	SR 1381 (Mountain Road)	Widen to Multi-Lanes.	\$ 35,900,000	21.08	
Highway	Regional Impact	NC 191 (Brevard Road/Old Haywood Road)	NC 280	NC 146	Widen to Multi-Lanes with Bicycle Lanes	\$ 39,800,000	14.08	

NOTE: No preliminary MPO Score will be applied until a project is requested to be cascaded.

Division Needs Projects in Henderson County

Mode	Project Category	Route / Facility Name	From / Cross Street	To / Cross Street	Description	Cost to NCDOT	Division Needs Total Score (Out of 100)
BikePed	Division Needs	Grove Street Sidewalks	Barnwell Street	US 176 (Spartanburg Highway)	Construct a new sidewalk in the City of Hendersonville from Barnwell Street to US 176.	\$ 723,040	38.62
Highway	Division Needs	New Route - Balfour Parkway	NC 191 (Brevard Road)	US 25 Business	Balfour Parkway - Construct New 4-Lane Expressway, Hendersonville	\$ 61,890,000	34.66
Highway	Division Needs	New Route - Balfour Parkway	I-26	US 64	Balfour Parkway - Construct New 4-Lane Expressway, Hendersonville	\$ 50,105,000	34.66
BikePed	Division Needs	Flat Rock Greenway	Highland Lake Road	Carl Sandburg Home	Construct a new multi-use path in the Village of Flat Rock from Highland Lake Road to the Carl Sandburg Home.	\$ 988,264	29.28
BikePed	Division Needs	Greenway-Jackson Park to Blue Ridge CC	Jackson Park	Blue Ridge Community College	Construct greenway along existing sewer easement from terminus of existing Oklawaha Greenway in Jackson Park to Blue Ridge Community College.	\$ 862,431	26.00

Mode	Project Category	Route / Facility Name	From / Cross Street	To / Cross Street	Description	Cost to NCDOT	Score
Highway	Division Needs	SR 1525 (Duncan Hill Road ), SR 1508 (Signal Hill Road), SR 1503 (N Main Street)	US 64 (Four Seasons Boulevard)	US 25 Bus (Asheville Highway)	Modernize roadway. Add turn lanes, widen shoulders, and improve geometrics and intersection operations as appropriate.	\$ 30,300,000	24.13
Highway	Division Needs	SR 1365 (N. Rugby Rd), SR 1309 (S. Rugby Rd.)	US 64 West	Butler Ridge Road	Modernize Roadway.	\$ 6,500,000	22.58
BikePed	Division Needs	French Broad River Multimodal Bridge	Westfeldt Park	Future Park	Construct a bicycle and pedestrian bridge over the French Broad River near NC 280	\$ 813,809	22.55
BikePed	Division Needs	Oklawaha Greenway North	Brookside Camp Rd	Berkeley Ball Park	Construct a new multi-use path from Berkley Park to Brookside Camp Road.	\$ 1,657,660	21.95
BikePed	Division Needs	Oklawaha Greenway North (Phase IV)	Westfeldt Park	Butler Bridge Road	Construct a new multi-use path from Westfeldt Park to Butler Bridge Road in Henderson County	\$ 872,000	21.01

Mode	Project Category	Route / Facility Name	From / Cross Street	To / Cross Street	Description	Cost to NCDOT	Score
Highway	Division Needs	SR 2162 (Blythe Street)	NC 191(Haywood Road)	US 64 (6th Avenue W)	Modernize roadway. Add turn lanes, widen shoulders, and improve geometrics and intersection operations as appropriate. Include complete streets improvements.	\$ 10,200,000	18.41
BikePed	Division Needs	NC 280 Multi-Use Path	North Mills River Road	French Broad River	Construct a new multi-use path from the French Broad River to North Mills River Road	\$ 1,263,362	18.13
BikePed	Division Needs	NC 280 Multi-Use Path	North Mills River Road	Haywood Road (NC 191)	Construct Multi-Use Path on NC 280 from North Mills River Road to Haywood Road (NC 191)	\$ 618,028	17.89
Highway	Division Needs	SR 1331 (Banner Farm Road)	SR 1426 (School House Road)		Improve the intersection of SR 1331 (Banner Farm Road) and SR 1426 (School House Road)	\$ 1,500,000	16.28
Highway	Division Needs	SR 1345 (Butler Bridge Rd)	NC 280 (Boylston Highway)	US 25 (Hendersonville Road)	Widen roadway.	\$ 42,900,000	13.02
Highway	Division Needs	SR 1173 (White Pine Drive)	US 64 (Brevard Road)	Hebron Road	Upgrade Roadway	\$ 15,800,000	10.77

Mode	Project Category	Route / Facility Name	From / Cross Street	To / Cross Street	Description	Cost to NCDOT	Score
Highway	Division Needs	SR 1358 (Fanning Bridge Road)	US 25	NC 280	Modernize roadway. Add turn lanes, widen lanes and shoulders, and improve geometrics and intersection operations as appropriate. Incorporate complete streets improvements.	\$ 28,000,000	9.18

## HENDERSON COUNTY PUBLIC SURVEY RESPONSES

The Henderson County survey was taken by 613 people- the second most of the five counties.

The Henderson County survey had both the shortened survey and the deep-dive options due to the number of projects being considered in the county.

As background, Henderson County had been experiencing considerable public opposition to several funded transportation projects in the County, including the Balfour Parkway, Kanuga Road, and North Highland Lake Road. More opposition was seen in response to several proposed projects in Henderson County, including Balfour Parkway Sections A & C and two proposed widenings of NC 191. The two sections of Balfour Parkway and the section of NC 191 between US 25-Business and Mountain Road were the most negatively rated projects in the entire region.

Across modes, bike/ped projects were received much more positively than highway projects, with exceptions for a proposed widening on I-26 (from US 64 to US 25) and the Flat Rock Greenway. The proposed widening of I-26 was received the most positively of any highway project in Henderson County with 81.3% of users rating the project positively and only 15.6% of users rating project negatively. The Flat Rock Greenway was the most negatively received bike/ped project but still had 66.2% of users rating the project positively and 24.8% of users rating the project negatively.

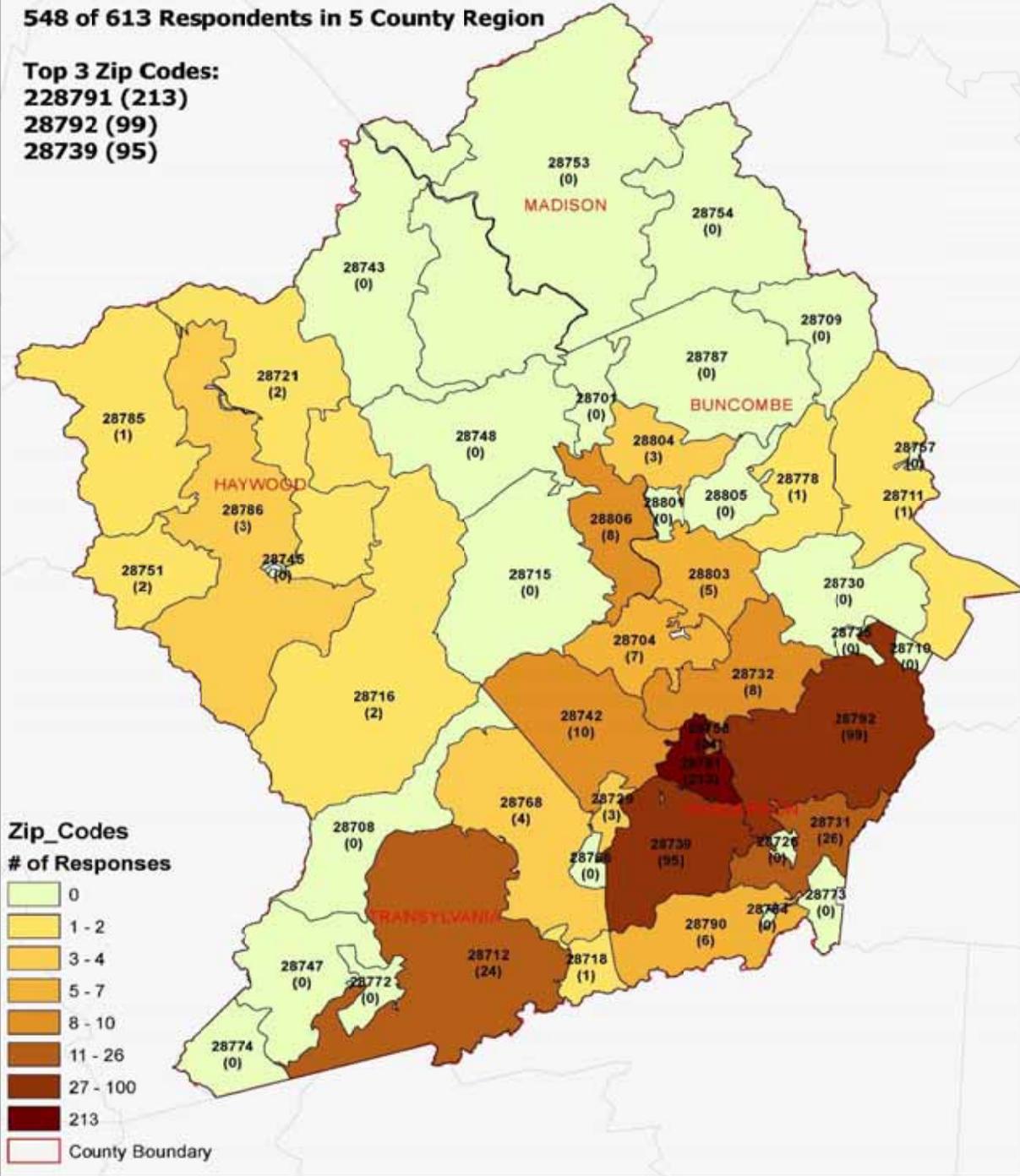
The map on the following page shows the respondents for the Henderson County survey by zip code. 548 of the 613 respondents live or travel within the 5 county region. The charts following show the survey results of each individual project, first with results from the "short" survey and then the "deep dive" results.

County	Respondents
Transylvania	910
<b>Henderson</b>	<b>613</b>
Buncombe	595
Madison	209
Haywood	160

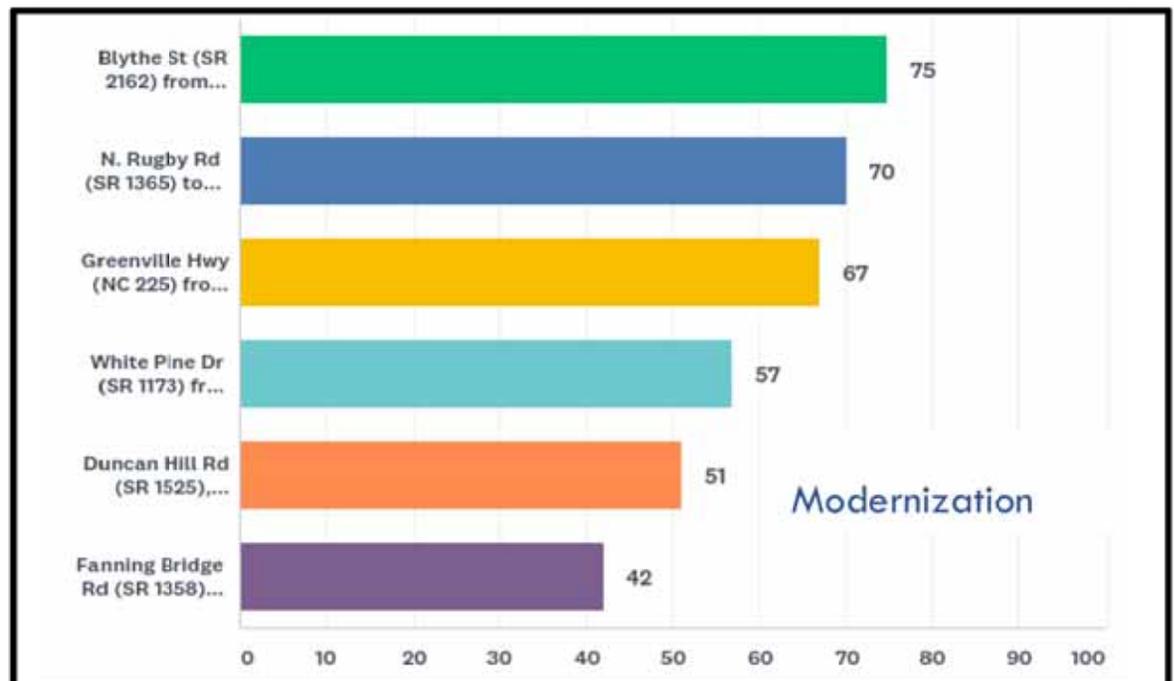
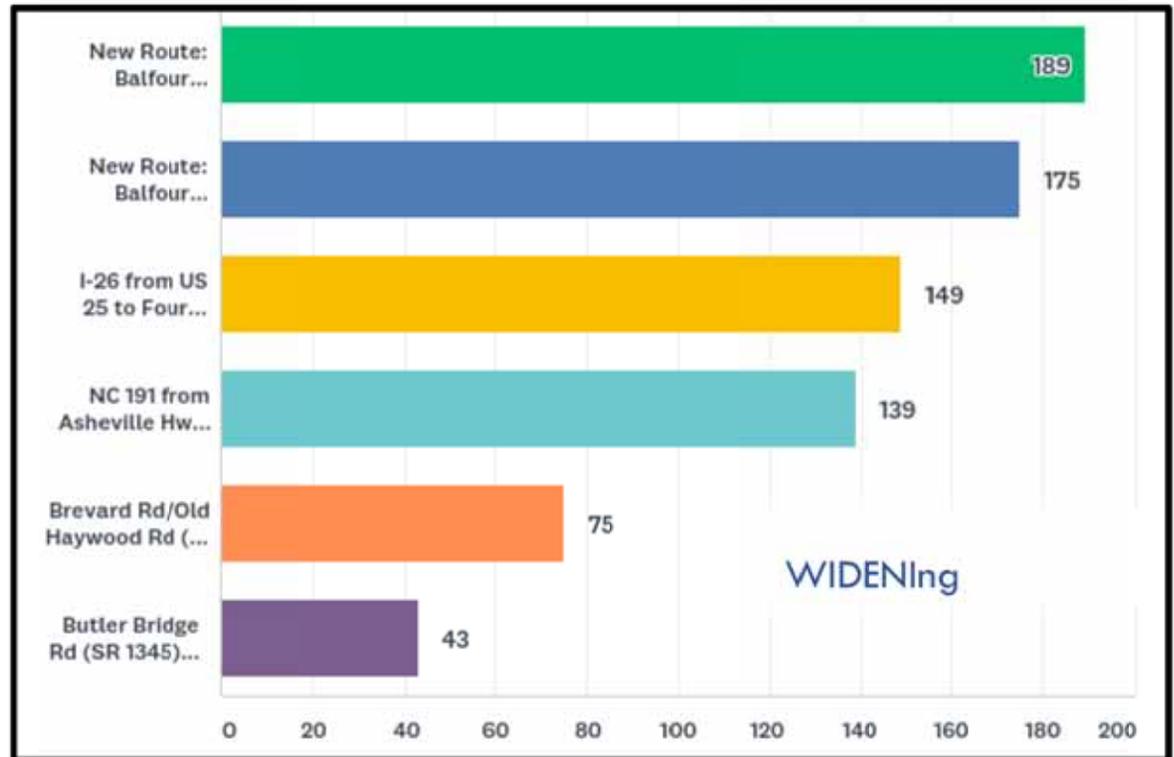
# Henderson Survey Responses By Zip Code

548 of 613 Respondents in 5 County Region

**Top 3 Zip Codes:**  
228791 (213)  
28792 (99)  
28739 (95)



"Short" survey results for henderson county presented here are categorized into Modernization and Widening. Number next to bar line denotes number of respondents.



"Deep Dive" results – Henderson

Project	County	Mode	Tier	Average Score	# Positive	% Positive	# Neutral	% Neutral	# Negative	% Negative	# of Responses
Oklawaha Greenway (Berkley Park to Brookside Camp Road)	Henderson	Bike/Ped	Division Needs	3.03	230	80.4%	31	10.8%	25	8.7%	286
French Broad River Bridge	Henderson	Bike/Ped	Division Needs	2.76	218	77.3%	34	12.1%	30	10.6%	282
Oklawaha Greenway (Westfeldt Park to Butler Bridge Road)	Henderson	Bike/Ped	Division Needs	2.75	211	75.9%	38	13.7%	29	10.4%	278
Oklawaha Greenway (Jackson Park to BRCC)	Henderson	Bike/Ped	Division Needs	2.75	208	72.7%	37	12.9%	41	14.3%	286
I-26	Henderson	Highway	Statewide Mobility	2.67	183	81.3%	7	3.1%	35	15.6%	225
Grove Street Sidewalks	Henderson	Bike/Ped	Division Needs	2.66	220	78.3%	33	11.7%	28	10.0%	281
NC 280 MUP (French Broad River to N Mills River Rd)	Henderson	Bike/Ped	Division Needs	2.35	208	73.5%	29	10.2%	46	16.3%	283
NC 280 MUP (N Mills River Rd to NC 191)	Henderson	Bike/Ped	Division Needs	2.34	215	72.9%	28	9.5%	52	17.6%	295
Flat Rock Greenway	Henderson	Bike/Ped	Division Needs	1.55	192	66.2%	26	9.0%	72	24.8%	290

Project	County	Mode	Tier	Average Score	# Positive	% Positive	# Neutral	% Neutral	# Negative	% Negative	# of Responses
Banner Farm Rd @ School House Rd	Henderson	Highway	Division Needs	1.41	124	64.2%	37	19.2%	32	16.6%	193
Fanning Bridge Modernization	Henderson, Buncombe	Highway	Division Needs	1.13	112	62.9%	27	15.2%	39	21.9%	178
Duncan Hill Road	Henderson	Highway	Division Needs	1.07	116	63.0%	18	9.8%	50	27.2%	184
Butler Bridge Road	Henderson	Highway	Division Needs	1.02	109	58.6%	36	19.4%	41	22.0%	186
NC 280	Henderson	Highway	Regional Impact	0.78	103	54.8%	33	17.6%	52	27.7%	188
NC 225	Henderson	Highway	Regional Impact	0.60	101	53.7%	34	18.1%	53	28.2%	188
Blythe Street	Henderson	Highway	Division Needs	0.57	104	55.9%	24	12.9%	58	31.2%	186
White Pine Drive	Henderson	Highway	Division Needs	0.52	89	48.6%	45	24.6%	49	26.8%	183
N Rugby Road	Henderson	Highway	Division Needs	0.51	116	57.1%	24	11.8%	63	31.0%	203
NC 191 (NC 280 to NC 146)	Henderson	Highway	Regional Impact	0.01	100	49.5%	19	9.4%	83	41.1%	202
NC 191 (Mountain Road to US 25B)	Henderson	Highway	Regional Impact	-1.45	78	33.9%	15	6.5%	137	59.6%	230
Balfour Pkwy (I-26 to US 64)	Henderson	Highway	Division Needs	-2.77	46	19.7%	12	5.1%	176	75.2%	234
Balfour Pkwy (NC 191 to US 25B)	Henderson	Highway	Division Needs	-2.87	45	18.8%	11	4.6%	184	76.7%	240



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/28/2018

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 10

City staff is ready to move forward with the construction of the new building and grounds facility. We have completed the review and revision of the contracts for the construction of the new building and grounds maintenance facility and received a Guaranteed Maximum Price (GMP) for the building. A breakdown of all the cost are listed below for your review. We are requesting that the City Council approve contracts with Cooper Construction for the construction of the facility/guaranteed maximum price (GMP) and with Tamara Peacock Company Architects for construction administration.

Design and Administration - \$120,947 (95% paid to date)

Guaranteed Maximum Price - \$1,735,085.00

Total - \$1,856,032

We recommend approval contingent upon the approval of the bank bids on September 25, 2018 and approve of financing by the Local Government Commission on October 2, 2018.

**Budget Impact:** \$ 1,856,032  Is this expenditure approved in the current fiscal year budget?  Yes  If no, describe how it will be funded.

Project will be financed over a 15 to 20 year period.

### Suggested Motion:

I move that City Council approve the contracts for the construction of the building and grounds maintenance facility with a GMP of \$1,735,085.00 and an AIA contract with Tamara Peacock Company Architects for construction administration.

### Attachments:

GMP Document

AIA Form 133- 2009 - Contract with Cooper Construction

AIA Form 201- 2007 - Contract with The Tamara Peacock Company Architects



# COOPER

CONSTRUCTION COMPANY, INC.



OFFICE 761 S. Allen Road, Flat Rock NC 28731  
MAIL PO Box 806, Hendersonville NC 28793-0806  
PHONE 828.692.7238 FAX 828.696.9978  
WEB [www.cooperconst.com](http://www.cooperconst.com)

AGRICULTURAL  
COMMERCIAL  
INDUSTRIAL  
INSTITUTIONAL  
MEDICAL  
PROFESSIONAL

A THIRD GENERATION  
FAMILY-OWNED  
GENERAL CONTRACTOR

August 28, 2018

John Connet  
City Manager  
City of Hendersonville, NC  
145 Fifth Avenue East  
Hendersonville, NC 28792

Re: City of Hendersonville: Building & Grounds Maintenance Facility –  
Guaranteed Maximum Price

John:

Cooper Construction Company, Inc. is pleased to submit our Guaranteed Maximum Price for the Building & Grounds Maintenance Facility.

We have included an itemized Summary, Alternate Summary, Allowance Summary, Unit Price Summary, Qualifications Summary, and Document Control Log. Cooper Construction Company, Inc. submits the following Guaranteed Maximum for the City of Hendersonville → Building and Grounds Maintenance Facility in the amount of \$1,735,085.00.

We look forward to working with the City of Hendersonville on this project. Feel free to contact us if you have any questions in regards to this proposal.

Sincerely yours,



Zachary Cooper  
Vice President

CF: File  
Thomas L. Cooper  
Mike Cooper  
Roy T. Ford III  
DeLaine DeBruhl  
Josh Shober



Cooper Construction Company, Inc.

Summary			
Date:	8/27/2018	Project Gross Sq. Ft:	12,200
Project Name:	City of Hendersonville → Building & Grounds Maintenance Facility	Schedule (Mo):	8

Estimate Summary		Guranteed Maximum Price		Bid Day Pricing		DD Budget Pricing	
		COST	COST / G.S.F.	COST	COST / G.S.F.	COST	COST / G.S.F.
No.	Description						
1	City of Hendersonville → Building & Grounds Maintenance Facility	\$ 1,735,085	\$ 142.22	\$ 1,827,963	\$ 149.83	\$ 2,116,198	\$ 173.46
	Total	\$ 1,735,085	\$ 142.22	\$ 1,827,963	\$ 149.83	\$ 2,116,198	\$ 173.46



**Guaranteed Maximum Price - Breakdown**

Date:	8/27/2018	Project Gross Sq. Ft:	12,200
		Project Net Sq. Ft:	12,200
Project Name:	City of Hendersonville → Building & Grounds Maintenance Facility	Schedule (Mo):	8

Estimate Summary		GMP		Bid Day Pricing		DD Budget Pricing		
		Cost	Cost / G.S.F.	Cost	Cost / G.S.F.	Cost	Cost / G.S.F.	
Spec. #	Description	SQ FT	12200	SQ FT	12200	SQ FT	14246	
01 30 00	General Conditions	\$ 176,000	\$ 14.43	\$ 176,000	\$ 14.43	\$ 176,000	\$ 12.35	
02 40 00	Demolition	\$ 15,250	\$ 1.25	\$ 15,250	\$ 1.25	\$ 21,500	\$ 1.51	
03 30 00	Cast In Place Concrete	\$ 140,223	\$ 11.49	\$ 160,223	\$ 13.13	\$ 242,787	\$ 17.04	
03 40 00	Precast Concrete Structure	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
04 00 00	Masonry	\$ 25,000	\$ 2.05	\$ 25,000	\$ 2.05	\$ 75,000	\$ 5.26	
05 00 00	Structural & Misc. Metals	\$ -	\$ -	\$ 8,000	\$ 0.66	\$ 96,500	\$ 6.77	
06 10 00	Framing & Rough Carpentry	\$ -	\$ -	\$ -	\$ -	\$ 10,000	\$ 0.70	
06 20 00	Millwork & Trim	\$ 7,098	\$ 0.58	\$ 7,098	\$ 0.58	\$ 5,500	\$ 0.39	
07 10 00	Waterproofing	\$ -	\$ -	\$ -	\$ -	\$ 4,000	\$ 0.28	
07 50 00	Roofing & Metal Wall Panels	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
07 81 00	Fireproofing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
08 10 00	Doors, Frames & Hardware	\$ 58,100	\$ 4.76	\$ 84,988	\$ 6.97	\$ 65,200	\$ 4.58	
08 40 00	Windows, Storefronts & Curtain Walls	\$ -	\$ -	\$ -	\$ -	\$ 28,000	\$ 1.97	
09 20 00	Drywall & Acoustical	\$ 65,000	\$ 5.33	\$ 65,000	\$ 5.33	\$ 69,200	\$ 4.86	
09 30 00	Hard Tile	\$ 4,942	\$ 0.41	\$ 4,942	\$ 0.41	\$ 5,500	\$ 0.39	
09 60 00	Carpet / Wood / Resilient Flooring	\$ 2,500	\$ 0.20	\$ 11,751	\$ 0.96	\$ 15,512	\$ 1.09	
09 90 00	Painting & Wall Finishes	\$ 16,950	\$ 1.39	\$ 16,950	\$ 1.39	\$ 21,000	\$ 1.47	
10 00 00	Misc. Specialties	\$ 17,410	\$ 1.43	\$ 17,410	\$ 1.43	\$ 44,500	\$ 3.12	
11 00 00	Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
12 00 00	Furnishings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
13 00 00	Special Construction	\$ 300,000	\$ 24.59	\$ 305,000	\$ 25.00	\$ 338,000	\$ 23.73	
14 00 00	Conveying Systems	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
21 13 00	Fire Protection Systems	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
22 00 00	Plumbing Systems	\$ 81,100	\$ 6.65	\$ 85,000	\$ 6.97	\$ 126,730	\$ 8.90	
23 30 00	HVAC Systems	\$ 63,740	\$ 5.22	\$ 66,796	\$ 5.48	\$ 84,229	\$ 5.91	
26 00 00	Electrical	\$ 154,000	\$ 12.62	\$ 154,000	\$ 12.62	\$ 215,000	\$ 15.09	
31 00 00	Sitework	\$ 421,784	\$ 34.57	\$ 413,500	\$ 33.89	\$ 245,200	\$ 17.21	
01 21 16	Construction Contingency	2%	\$ 23,236.46	\$ 1.90	\$ 24,254	\$ 1.99	\$ 28,340.38	\$ 1.99
01 21 16	Design Contingency	0%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
01 21 16	Escalation	0%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>Subtotal</b>	\$ 1,572,333	\$ 128.88	\$ 1,641,162	\$ 134.52	\$ 1,917,699	\$ 134.81	
01 20 00	Subcontractor Bonding	\$ 18,868	\$ 1.55	\$ 19,694	\$ 1.61	\$ 23,012	\$ 1.62	
	<b>Subtotal</b>	\$ 1,591,201	\$ 130.43	\$ 1,660,856	\$ 136.14	\$ 1,940,711	\$ 136.23	
01 20 00	Builders Risk & General Liability	\$ 17,503	\$ 1.43	\$ 18,269	\$ 1.50	\$ 21,348	\$ 1.50	
	<b>Subtotal</b>	\$ 1,608,705	\$ 131.86	\$ 1,679,125	\$ 137.63	\$ 1,962,059	\$ 137.73	
01 20 00	Performance & Payment Bond	\$ 12,870	\$ 1.05	\$ 13,433	\$ 1.10	\$ 15,696	\$ 1.10	
	<b>Subtotal</b>	\$ 1,621,574	\$ 132.92	\$ 1,692,558	\$ 138.73	\$ 1,977,756	\$ 138.83	
01 20 00	Fee	7.00%	\$ 113,510	\$ 9.30	\$ 135,405	\$ 11.10	\$ 138,443	\$ 9.72
	<b>Subtotal</b>	\$ 1,735,085	\$ 142.22	\$ 1,827,963	\$ 149.83	\$ 2,116,198	\$ 148.55	

Spec. No.	Description	Unit	Quantity	Unit Cost	Cost	Cost / G.S.F.	Cost	Cost / G.S.F.	Cost	Cost / G.S.F.
	<b>GENERAL CONDITIONS</b>									
	General Conditions (lump sum)	MO	8	\$ 22,000.00	\$ 176,000.00	\$ 14.43	\$ 176,000	\$ 14.43	\$ 176,000.00	\$ 12.35
<b>01 30 00</b>	<b>General Conditions</b>			<b>Total</b>	<b>\$ 176,000.00</b>	<b>\$ 14.43</b>	<b>\$ 176,000</b>	<b>\$ 14.43</b>	<b>\$ 176,000.00</b>	<b>\$ 12.35</b>
	<b>DEMOLITION / SITEWORK</b>									
	Demolition Subcontractor	LS	1	\$ 15,250.00	\$ 15,250.00	\$ 1.25	\$ 15,250	\$ 1.25	\$ 21,500.00	\$ 1.51
<b>02 40 00</b>	<b>Demolition</b>			<b>Total</b>	<b>\$ 15,250.00</b>	<b>\$ 1.25</b>	<b>\$ 15,250</b>	<b>\$ 1.25</b>	<b>\$ 21,500.00</b>	<b>\$ 1.51</b>
	<b>CAST IN PLACE CONCRETE</b>									
	Concrete	LS	1	\$ 160,223.00	\$ 160,223.00	\$ 13.13	\$ 160,223	\$ 13.13	\$ 210,000.00	\$ 14.74
	<i>Deduct Concrete from Under Shed (Asphalt included in Division 31 00 00)</i>	INCL	1	\$ (20,000.00)	\$ (20,000.00)	\$ (1.64)	\$ -	\$ -	\$ 32,786.89	\$ 2.30
<b>03 30 00</b>	<b>Cast In Place Concrete</b>			<b>Total</b>	<b>\$ 140,223.00</b>	<b>\$ 11.49</b>	<b>\$ 160,223</b>	<b>\$ 13.13</b>	<b>\$ 242,786.89</b>	<b>\$ 17.04</b>
	<b>MASONRY</b>									
	Masonry Cleaning (Included in Paint)				\$ -	\$ -	\$ -	\$ -		
	8" Exterior Split-Face Block Walls AFF	SF	1	\$ 25,000.00	\$ 25,000.00	\$ 2.05	\$ 25,000	\$ 2.05	\$ 75,000.00	\$ 5.26
<b>04 00 00</b>	<b>Masonry</b>			<b>Total</b>	<b>\$ 25,000.00</b>	<b>\$ 2.05</b>	<b>\$ 25,000</b>	<b>\$ 2.05</b>	<b>\$ 75,000.00</b>	<b>\$ 5.26</b>
	<b>STRUCTURAL &amp; MISC METALS</b>									
	Decorative Metal Panels	NIC	0	\$ -	\$ -	\$ -	\$ 8,000	\$ 0.66	\$ 96,500.00	\$ 6.77
<b>05 00 00</b>	<b>Structural &amp; Misc Metals</b>			<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 8,000</b>	<b>\$ 0.66</b>	<b>\$ 96,500.00</b>	<b>\$ 6.77</b>
	<b>FRAMING &amp; CARPENTRY</b>									
	Included in Drywall & Acoustical	INCL							\$ 10,000.00	\$ 0.70
<b>06 10 00</b>	<b>Framing &amp; Rough Carpentry</b>			<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 10,000.00</b>	<b>\$ 0.70</b>
	<b>MILLWORK &amp; TRIM</b>									
	Plastic Laminate Wall Cabinets	LS	1	\$ 7,098.00	\$ 7,098.00	\$ 0.58	\$ 7,098	\$ 0.58	\$ 5,500.00	\$ 0.39
	Plastic Laminate Base Cabinets w/ Plastic Laminate Tops	INC			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>06 20 00</b>	<b>Millwork &amp; Trim</b>			<b>Total</b>	<b>\$ 7,098.00</b>	<b>\$ 0.58</b>	<b>\$ 7,098</b>	<b>\$ 0.58</b>	<b>\$ 5,500.00</b>	<b>\$ 0.39</b>



Spec. No.	Description	Unit	Quantity	Unit Cost	Cost	Cost / G.S.F.	Cost	Cost / G.S.F.	Cost	Cost / G.S.F.
	<b>HARD TILE</b> Shower Stall & Wall Tile	LS	1	\$ 4,942.00	\$ 4,942.00	\$ 0.41	\$ 4,942	\$ 0.41	\$ 5,500.00	\$ 0.39
09 30 00	Hard Tile			<b>Total</b>	<b>\$ 4,942.00</b>	<b>\$ 0.41</b>	<b>\$ 4,942</b>	<b>\$ 0.41</b>	<b>\$ 5,500.00</b>	<b>\$ 0.39</b>
	<b>CARPET / WOOD / RESILIENT FLOORING</b>									
	LVT	NIC	1	\$ -	\$ -	\$ -	\$ 11,751	\$ 0.96	\$ 15,000.00	\$ 1.05
	Resilient Base	INCL	1	\$ 2,500.00	\$ 2,500.00	\$ 0.20	\$ -	\$ -	\$ 512.30	\$ 0.04
09 60 00	Carpet / Wood / Resilient Flooring			<b>Total</b>	<b>\$ 2,500.00</b>	<b>\$ 0.20</b>	<b>\$ 11,751</b>	<b>\$ 0.96</b>	<b>\$ 15,512.30</b>	<b>\$ 1.09</b>
	<b>PAINTING &amp; WALL FINISHES</b>									
	Painting Subcontractor - Interior (## SF)	LS	1	\$ 16,950.00	\$ 16,950.00	\$ 1.39	\$ 16,950	\$ 1.39	\$ 21,000.00	\$ 1.47
	Painting - GWB Ceilings (5,200 SF)	INCL								
	Painting - Door & Frames	INCL								
	Painting - Dry Fall/Open Stuct,(4,500 SF)	INCL								
	Painting - MEP's Exposed Ceiling	INCL								
09 90 00	Painting & Wall Finishes			<b>Total</b>	<b>\$ 16,950.00</b>	<b>\$ 1.39</b>	<b>\$ 16,950</b>	<b>\$ 1.39</b>	<b>\$ 21,000.00</b>	<b>\$ 1.47</b>
	<b>MISC. SPECIALTIES</b>									
	Toilet Compartments & Screens - Plastic Laminate by Global	INC	1	\$ 17,410.00	\$ 17,410.00	\$ 1.43	\$ 17,410	\$ 1.43	\$ 44,500.00	\$ 3.12
	Toilet Accessories	INC								
	Lockers by Perco	INC								
	Mud Room Benches by Penco	INC								
	Framed Mirror	INC								
	Fire Extinguishers & Cabinets	INC								
	Installation of all Items Above	INC								
10 00 00	Misc. Specialties			<b>Total</b>	<b>\$ 17,410.00</b>	<b>\$ 1.43</b>	<b>\$ 17,410</b>	<b>\$ 1.43</b>	<b>\$ 44,500.00</b>	<b>\$ 3.12</b>
	<b>EQUIPMENT</b>	NIC								
11 00 00	Equipment			<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
	<b>FURNISHINGS</b>	NIC								
12 00 00	Furnishings			<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
	<b>SPECIAL CONSTRUCTION</b>									
	PEMB	LS	1	\$ 300,000.00	\$ 300,000.00	\$ 24.59	\$ 305,000	\$ 25.00	\$ 338,000.00	\$ 23.73
13 00 00	Special Construction			<b>Total</b>	<b>\$ 300,000.00</b>	<b>\$ 24.59</b>	<b>\$ 305,000</b>	<b>\$ 25.00</b>	<b>\$ 338,000.00</b>	<b>\$ 23.73</b>

Spec. No.	Description	Unit	Quantity	Unit Cost	Cost	Cost / G.S.F.	Cost	Cost / G.S.F.	Cost	Cost / G.S.F.
	<b>CONVEYING SYSTEMS</b>	NIC								
14 00 00	Conveying Systems			Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>FIRE PROTECTION SYSTEMS</b>	NIC								
21 13 00	Fire Protection Systems			Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	<b>PLUMBING SYSTEMS</b>									
	Plumbing Subcontractor	LS	1	\$ 85,000.00	\$ 85,000.00	\$ 6.97	\$ 85,000	\$ 6.97	\$ 125,000.00	\$ 8.77
	<i>Deduct for PEX</i>	INCL	1	\$ (2,500.00)	\$ (2,500.00)	\$ (0.20)	\$ -	\$ -	\$ 512.30	\$ 0.04
	<i>Deduct for Striem 02-75 110 Gal</i>	INCL	1	\$ (3,500.00)	\$ (3,500.00)	\$ (0.29)	\$ -	\$ -	\$ 1,004.10	\$ 0.07
	<i>Add for Bottle Fill at Drinking Fountain</i>	INCL	1	\$ 600.00	\$ 600.00	\$ 0.05	\$ -	\$ -	\$ 29.51	\$ 0.00
	<i>Add Tankless Water Heater</i>	INCL	1	\$ 1,500.00	\$ 1,500.00	\$ 0.12	\$ -	\$ -	\$ 184.43	\$ 0.01
22 00 00	Plumbing Systems			Total	\$ 81,100.00	\$ 6.65	\$ 85,000	\$ 6.97	\$ 126,730.33	\$ 8.90
	<b>HVAC SYSTEMS</b>									
	HVAC Subcontractor	LS	1	\$ 66,796.00	\$ 66,796.00	\$ 5.48	\$ 66,796	\$ 5.48	\$ 83,000.00	\$ 5.83
	<i>Deduct one (1) infrared Heater where two are shown - Five (5) total to be included</i>	INCL	1	\$ (3,800.00)	\$ (3,800.00)	\$ (0.31)	\$ -	\$ -	\$ 1,183.61	\$ 0.08
	<i>Add one (1) wall mounted unit heater. (Similar to Pump Room)</i>	INCL	1	\$ 744.00	\$ 744.00	\$ 0.06	\$ -	\$ -	\$ 45.37	\$ 0.00
23 30 00	HVAC Systems			Total	\$ 63,740.00	\$ 5.22	\$ 66,796	\$ 5.48	\$ 84,228.98	\$ 5.91
	<b>ELECTRICAL</b>									
	Electrical	LS	1	\$ 154,000.00	\$ 154,000.00	\$ 12.62	\$ 154,000	\$ 12.62	\$ 215,000.00	\$ 15.09
26 00 00	Electrical			Total	\$ 154,000.00	\$ 12.62	\$ 154,000	\$ 12.62	\$ 215,000.00	\$ 15.09
	<b>SITWORK</b>									
	Sitework / Utilities / Stormwater / Fence	LS	1	\$ 413,500.00	\$ 413,500.00	\$ 33.89	\$ 413,500	\$ 33.89	\$ 245,200.00	\$ 17.21
	<i>Add Asphalt Under Shed - (Concrete Reduced in Division 03 00 00)</i>	INCL	1	\$ 8,284.00	\$ 8,284.00	\$ 0.68			\$ -	
31 00 00	Sitework			Total	\$ 421,784.00	\$ 34.57	\$ 413,500.00	\$ 33.89	\$ 245,200.00	\$ 17.21



**Alternates**

**Date:** 8/27/2018

**Project Name:** City of Hendersonville → Building and Grounds Maintenance Facility

Spec. No.	Description	Unit	Quantity	Unit Cost	Total Cost
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**Alternate # A-1 - DryBlock Additive to CMU**

04 00 00	Add DryBlock Additive to CMU	LS	1	\$ 1,200.00	\$ 1,200.00
				<b>Subtotal</b>	<b>\$ 1,200.00</b>
				Contingency:	\$ 24.00
				<b>Subtotal</b>	<b>\$ 1,224.00</b>
				Liability Insurances:	\$ 13.46
				<b>Subtotal</b>	<b>\$ 1,237.46</b>
				P&P Bond:	\$ 9.90
				<b>Subtotal</b>	<b>\$ 1,247.36</b>
				Fee:	\$ 87.32
				<b>Total</b>	<b>\$ 1,334.68</b>

**Alternate # A-2 - Integral Colored CMU**

04 00 00	Integral Colored CMU	LS	1	\$ 15,000.00	\$ 15,000.00
				<b>Subtotal</b>	<b>\$ 15,000.00</b>
				Contingency:	\$ 300.00
				<b>Subtotal</b>	<b>\$ 15,300.00</b>
				Liability Insurances:	\$ 168.30
				<b>Subtotal</b>	<b>\$ 15,468.30</b>
				P&P Bond:	\$ 123.75
				<b>Subtotal</b>	<b>\$ 15,592.05</b>
				Fee:	\$ 1,091.44
				<b>Total</b>	<b>\$ 16,683.49</b>



Unit Prices	
Date:	8/27/2018
Project Name:	City of Hendersonville → Building and Grounds Maintenance Facility

NO.	DESCRIPTION
1	Rock Excavation (Trench) - per CY
	\$ 175.00
2	Rock Excavation (Mass) - per CY
	\$ 90.00
3	Unsuitable Soils Excavation - per CY
	\$ 18.00
4	Replacement of Rock Excavation or Unsuitable Soils - per CY
	\$ 25.00



**Qualifications**

**Date:** 8/27/2018  
**Project Name:** City of Hendersonville → Building and Grounds Maintenance Facility

NO.	DESCRIPTION
1	Design consultants are contracted by the Owner (ex: architectural, civil, structural, bridge, MEP engineering, interior design, etc.).
2	Building permits costs, meter fees, impact fees, and tap fees not included.
3	No costs for running an underground line or supplying the meter for natural gas is included.
4	Pricing is based on Owner Contract executed by September 10, 2018 and construction schedule with start date no later than October 2nd, 2018. Subcontractor and vendor pricing based on current market pricing and no price escalation.
5	Threshold inspections and special inspections are not included. If required, it is assumed that the Owner will hire the engineer directly.
6	Schedule based on normal work hours between 7:30AM and 4:30PM on days including Monday through Saturday. After hours work on Sunday may be required, such as utility outages/tie-ins.
7	No liquidated damages are assumed based on the contract documents.
8	Sales tax is included in the base bid. A Monthly Sales Tax Listing Report, specifying the sales tax paid for materials related to the subcontracts during the billing period will be provided for the Owner's use.
9	Builders risk based on current GMP amounts and will be billed lump sum at project start. Rates are based on current schedule durations. Increases to schedule duration or GMP amount will increase Builders Risk. Deductibles for any weather related or named storm claims are not included and paid by Owner if occurs.
10	P&P bond based on current GMP amounts and will be billed lump sum at project start. Increases to GMP amount will increase bond.
11	General Liability insurance based on current GMP amounts and will be billed lump sum at project start. Increases to GMP amount will increase insurance.
12	Owner will coordinate and provide moving of personnel, furniture, equipment, etc. from all existing buildings, complete.
13	Service contracts for systems, maintenance, and/or monitoring is by Owner, such as telephone, TV, internet, fire alarm, security, access control, nurse call, resident monitoring, HVAC, and/or landscaping.
14	General Conditions are based on the 8 month construction duration provided during the RFQ process.
15	Construction Manager's fee is lump sum and based on 7.00% of original GMP amount. Change orders increasing GMP will include 7.00% fee and 2.5% overhead for Construction Manager. Subcontractor change orders will include no more than 10% fee, plus 5% office overhead.
16	Additional details and assumptions can be found in the descriptions for specific line items.
17	The following items are not included in the GMP and are currently included by the Owner, which include utility setup/consumption, impact fee, civil/environmental/bridge permits, and FF&E.
18	Site Lighting is by Utility Provider.
19	FF&E (furniture, fixtures, and equipment) by Owner, unless noted otherwise. Items by Owner include TV's, furniture, beds, etc.
20	All appliances are to be owner furnished and owner installed.
21	Div 2 - Installation & maintenance of landscaping will be by Owner.
22	Div 2 - Hazardous materials removal is not included, such as lead paint or asbestos. Owner/Designers to provide hazardous materials survey prior to demolition of existing buildings. The responsibility and cost of any hazardous material removal will be determined once the surveys are received.
23	Div 2 - Existing materials, equipment, etc. that remain prior to demolition at or inside the existing buildings are assumed to be property of demolition sub, if not removed or coordinated prior to mobilization.
24	Div 2 - Demolition does not include removal of any mold, mildew, or wood decay/damage, if found. Assumed none existing.
25	Div 8 - Exterior Door Hardware shall be Grade 1 Cylindrical Hardware, Interior Door Hardware shall be Grade 2 Cylindrical Hardware (Hager Brand) Specification Section 08 71 00 shall be removed from project.
26	Div 8 - Windows installed shall be Jeld-Wen Black Fixed Vinyl Windows.
27	Div 8 - Exterior Overhead Doors shall be 14 x 14 insulated sectional doors, interior overhead doors shall be 9 x 8 non-insulated section doors, Wash Bay Door shall be a 14 x 14 - coiling door.
28	Div 9 - All flooring has been removed - sealed concrete through-out.
29	Div 9 - All walls in shop areas to be plywood - 8'-0 AFF - vinyl backed insulation above.
30	Div 9 - Demising walls are sheathed on one side to structure above.
31	Div. 13 - PEMB shall be a Varco Pruden product. Maintenance Structure to have a Standing Seam Galvalume Roof with VP skylights, wall panels shall be panel-rib or reverse panel-rib single color. Trim, Gutters, downspouts can be an optional accent color. (Colors to be selected from Manufactured Standard Color Chart) Parking Shed Structure shall have a Galvalume Panel-Rib Roof. Colors to match colors selected from Maintenance Structure. Specification section 13 12 00 shall be removed from project - Structural Reaction have been supplied to Structural Engineer during the Design Phase of the Project.
32	Refer to Guaranteed Maximum Price spread sheet for additional MEP scope Qualifications.
33	Div 31 - Septic tank removal and well capping is not included, as none are expected.
34	Div 31 - All areas shown to be concrete paving on Civil plans have been changed to Asphalt (including area under open parking shed)



DISCIPLINE	ITEM / DRWG. #	DOCUMENT CONTROL LOG	DATE
<b>CIVILS</b>			
	C000	Cover Sheet	6/15/2018
	C100	Existing Conditions & Demo	6/15/2018
	C200	Preliminary/Final Site Plan	6/15/2018
	C300	Grading and Erosion Control Plan	6/15/2018
	C301	Storm Drainage Plan	6/15/2018
	C302	Grading and Erosion Control Details	6/15/2018
	C303	Grading and Erosion Control Details	6/15/2018
	C500	Water System Plan and Profile	6/15/2018
	C501	Water System Details	6/15/2018
	C502	Water System Details	6/15/2018
	C502	Water System Details	6/15/2018
	C600	Sanitary Sewer Service Plan	6/15/2018
	C601	Sanitary Sewer Service Details	6/15/2018
	C700	Paving & Spot Elevations Plan	6/15/2018
	C701	Site Details	6/15/2018
<b>ARCHITECTURAL</b>			
	A001	COVER SHEET	7/2/2018
	A002	SHEET INDEX AND GENERAL NOTES	7/2/2018
	A003	ABBREVIATIONS, SYMBOLS AND LEGENDS	7/2/2018
	A004	PARTITION TYPES	7/2/2018
	A005	CODE SUMMARY	7/2/2018
	A006	LIFE SAFETY PLAN	7/2/2018
	L001	LANDSCAPING BUFFER	7/2/2018
	A101	FLOOR PLANS	7/2/2018
	A101.1	KEYED PLAN	7/2/2018
	A301	ROOF PLAN	7/2/2018
	A401	EXTERIOR ELEVATIONS	7/2/2018
	A402	ELEVATIONS - SHED	7/2/2018
	A501	BUILDING SECTIONS	7/2/2018
	A502	WALL SECTIONS	7/2/2018
	A801	INTERIOR ELEVATIONS	7/2/2018
	A901	DOOR SCHEDULE, DOOR AND FRAME TYPES	7/2/2018
	A902	FINISH SCHEDULE	7/2/2018



<b>DISCIPLINE</b>	<b>ITEM / DRWG. #</b>	<b>DOCUMENT CONTROL LOG</b>	<b>DATE</b>
<b>STRUCTURAL</b>			
	S001	GENERAL NOTES AND TYPICAL DETAILS	6/29/2018
	S101	FOUNDATION PLAN	6/29/2018
	S102	MEZZANINE FRAMING PLAN	6/29/2018
	S201	FOUNDATION AND FRAMING DETAILS	6/29/2018
<b>MECHANICAL</b>			
	M101	1ST FLOOR HVAC	6/18/2018
	M201	HVAC DETAILS & LEGENDS	6/18/2018
	M301	HVAC SPECIFICATIONS	6/18/2018
<b>ELECTRICAL</b>			
	E101	1ST FLOOR LIGHTING	6/18/2018
	E102	1ST FLOOR POWER	6/18/2018
	E103	FLOOR PLANS FIRE ALARM	6/18/2018
	E104	FLOOR PLANS SECURITY	6/18/2018
	E201	ELECTRICAL DETAILS & LEGENDS	6/18/2018
	E202	ELECTRICAL DETAILS & LEGENDS	6/18/2018
	E301	ELECTRICAL SPECIFICATIONS	6/18/2018
<b>PLUMBING</b>			
	P101	1ST FLOOR PLUMBING DWV	6/18/2018
	P102	1ST FLOOR PLUMBING SUPPLY	6/18/2018
	P103	1ST FLOOR PLUMBING FUEL GAS	6/18/2018
	P201	PLUMBING DETAILS & LEGENDS	6/18/2018
	P301	PLUMBING SPECIFICATIONS	6/18/2018



DISCIPLINE	SPECIFICATIONS	DOCUMENT CONTROL LOG	DATE
<b>GENERAL REQUIREMENTS</b>			
	01 20 00	Price & Payment Procedures	7/7/2018
	01 30 00	Administrative Requirements	7/7/2018
	01 50 00	Temporary Facilities & Control	7/7/2018
	01 66 30	Product Delivery, Storage etc	7/7/2018
	01 70 00	Execution & Closeout Requirements	7/7/2018
<b>SITework</b>			
	02 22 22	Building Demolition	7/7/2018
	02 28 00	Soil Treatment	7/7/2018
	02 20 00	Earth Work	7/7/2018
	02 50 00	Roads & Walks	7/7/2018
	02 84 80	Parking Bumpers	7/7/2018
<b>CONCRETE</b>			
	03 00 00	Concrete	7/7/2018
	03 20 00	Concrete Reinforcements	7/7/2018
<b>MASONRY</b>			
	04 22 00	Concrete Masonry Units	7/7/2018
<b>METALS</b>			
	05 40 00	Cold Formed Metal Framing	7/7/2018
<b>WOOD &amp; PLASTIC</b>			
	06 10 00	Rough Carpentry	7/7/2018
	06 22 00	Millwork	7/7/2018
<b>THERMAL &amp; MOISTURE PROTECTION</b>			
	07 10 00	Dampproofing & Waterproofing	7/7/2018
	07 21 00	Building Insulation	7/7/2018
	07 90 00	Caulking & Weather Stripping	7/7/2018
<b>DOORS &amp; WINDOWS</b>			
	08 10 00	Steel Doors & Frames	7/7/2018
	<del>08 33 00</del>	<del>Overhead Coiling Doors</del>	7/7/2018
	<del>08 71 00</del>	<del>Door Hardware</del>	7/7/2018
<b>FINISHES</b>			
	09 25 00	Gypsum Board	7/7/2018
	09 30 00	Tile	7/7/2018
	09 51 00	Acoustical Ceilings	7/7/2018
	<del>09 65 00</del>	<del>Resilient Flooring</del>	7/7/2018
	09 90 00	Painting	7/7/2018
<b>SPECIALTIES</b>			
	10 15 50	Toilet Compartments	7/7/2018
	10 50 00	Metal Lockers	7/7/2018
	10 53 00	Protective Covers	7/7/2018
	10 81 00	Toilet Accessories	7/7/2018
<b>SPECIAL CONSTRUCTION</b>			
	<del>13 12 00</del>	<del>Pre-Engineered Buildings</del>	7/7/2018
<b>MECHANICAL / ELECTRICAL / PLUMBING</b>			
		REFER TO PLANS FOR SPECIFICATIONS	7/7/2018
<b>EXTERIOR IMPROVEMENTS</b>			
	32 31 00	Chain Link Cantilever Slide Gates	7/7/2018

# DRAFT AIA® Document A133™ – 2009

**Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

«City of Hendersonville  
City Hall – Second Floor »  
«145 Fifth Avenue East »  
«Hendersonville, NC 28792 »

and the Construction Manager:  
(Name, legal status and address)

«Cooper Construction Company »  
«761 South Allen Road »  
«Flat Rock, NC 28731 »

for the following Project:  
(Name and address or location)

«New Public Works Building »  
«1369 North Main Street  
Hendersonville, NC 28792 »

The Architect:  
(Name, legal status and address)

«The Tamara Peacock Company Architects » « Tamara Peacock, R.A., President  
104 First Avenue East Suite A »  
«Hendersonville, NC 28792 »

The Owner's Designated Representative:  
(Name, address and other information)

«Tom Wooten, Public Works Director »  
«Operations Center »  
«305 Williams Street »  
«Hendersonville, NC 28792 »

The Construction Manager's Designated Representative:  
(Name, address and other information)

«Zach Cooper »  
«Cooper Construction Company »  
«761 South Allen Road »

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

« Flat Rock, NC 28731 »

The Architect's Designated Representative:  
(Name, address and other information)

« Brian Price »  
« The Tamara Peacock Company Architects »  
« 104 East First Street »  
« Hendersonville, NC 28792 »  
« »  
« »

The Owner and Construction Manager agree as follows,

FLORIDA

**TABLE OF ARTICLES**

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**

**ARTICLE 1 GENERAL PROVISIONS**

**§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's written acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

**§ 1.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 1.3 General Conditions**

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended (hereafter A201-2007) shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall at a time and date agreed upon by all parties during progress meetings provide to the Owner a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall at a time & date agreed upon by all parties during previous progress meetings schedule and conduct meetings at a time & date agreed upon by all parties during previous progress meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also, as issues are discovered, provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified by the Owner the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall when an accelerated or fast-track schedule is requested by owner and architect provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare at a time & date agreed upon by all parties during progress meetings preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall at a time & date agreed upon by all parties during progress meetings provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided by the Construction Manager for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

**§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall, during the pre-construction phase, develop bidders' interest in the Project per NC Statute NCGS 143.128.

**§ 2.1.7** The Construction Manager shall prepare, during the construction phase, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

**§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and on an anticipated 10 month schedule – subject to negotiation during the GMP process. Additional time must be agreed upon by the Owner in writing.
- .5 A date by which the Owner must accept the Guaranteed Maximum Price; and
- .6 The compensation amount for purposes of Articles 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.1.5, and the monthly and lump sum General Conditions costs for purposes of Article 6.1.1 of this agreement.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.4.1 Construction Contingency - A Construction Contingency shall be established and included in the GMP and shall be for the CM's use at their discretion to execute and cover errors, omissions and performance related concerns that fall solely under the responsibility and control of CM. The CM's contingency will not be used for the following: Owner driven upgrades or changes in the scope of the work; Design consultant driven upgrades or changes in the work; Design consultant errors/omissions; Unsuitable soil removal and replacement; overtime and General Conditions cost due to any items listed above. Contingency shall not cover acts of negligence on the part of the Construction Manager.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the terms and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon by the Owner's issuance of a Notice to Proceed.

### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts bid and awarded pursuant to North Carolina law, and specifically N.C. General Statute § 143-128.1 or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the

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Commented [BP1]: Acceptable to TPC

Commented [CJ2R1]: Acceptable to City of Hendersonville

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Commented [CJ3]: We cannot agree to this provision.

Commented [JS4R3]: Will need to negotiate. Please provide a proposed provision for contingency. Contingencies of this type are being implemented on county jobs currently under contract.

Commented [CJ5R3]: Acceptable

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Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are agreed upon, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« The Construction Manager shall be compensated for a total Preconstruction Fee of \$ 30,400. As stipulated in the Pre-Construction Agreement dated March 28, 2018. »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « five » ( 5 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

#### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « forty five » ( «45» ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

Prime interest rate as established for such date in the Wall Street Journal.

#### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:  
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« Seven Percent (7%) of the total GMP »

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

«8% Fee + 2.5% Overhead & Profit as qualified in the Guaranteed Maximum Price Proposal. »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Limitation, if any, on a Subcontractor's overhead & profit for increases in the cost of it's portion of the work:

« 10% Overhead + 5.0% Profits »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed «ninety-five» percent ( «95% » %) of the standard rate paid at the place of the Project.

#### § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.  
(Insert specific provisions if the Construction Manager is to participate in any savings.)

« The unused portion of Construction Manager's Contingency shall be split 50/50 at the conclusion of the construction phase.

« conclusion of construction phase. »

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

#### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

### ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

#### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean all amounts paid by the Owner to the Construction Manager for construction and post-construction phase basic services provided by the Construction Manager and payment to all separate Subcontractors, suppliers, and equipment lessors for all work, material and equipment supplied to the project. Such Cost shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. General Conditions shall be charged to the project at a monthly rate which will be determined in the Guaranteed Maximum Price Amendment and the scope of these General Conditions are specifically defined below. The final construction schedule agreed to at the time the Guaranteed Maximum Price Amendment is established will state the total dollar amount and number of months for the construction phase of the project for which General Conditions will be paid. In the event that the project exceeds the amount of time allotted for completion due to unforeseen circumstances the Construction Manager will submit a Change Order to the Owner to cover the additional General Condition costs incurred.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

#### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and when stationed at the Construction Manager's office as indicated and defined in the Construction Manager's General Conditions presented with the GMP.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval written approval in its discretion.

#### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

#### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.4** The owner will contract and pay Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior written approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** It is understood that the City is not responsible for payment of legal fees unless mandated by a court ruling.

**§ 6.6.9** Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

**§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from the contingency, insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

**§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

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- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~«last »~~ day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the ~~«specified in 4.2.2 »~~. If an Application for Payment is received by the Architect after application date fixed above, payment shall be made by the Owner not later than ~~«forty-five »~~ ( ~~«45 »~~ ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been invoiced by the Construction Manager on account of that portion of the Work for which the Construction Manager has completed by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Construction Manager's Fee, less retainage calculated as the maximum allowable retainage pursuant to N.C. Statute 143-134.1(b1). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage calculated as the maximum allowable retainage pursuant to N.C. Statute 143-134.1(b1) from that portion of the Work that the Construction Manager self-performs;
5. Subtract the aggregate of previous payments made by the Owner;

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- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

.8 Retainage Reduction - Retainage shall be in accordance with N.C. State statute 143-134(B1)(2.)

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

#### § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

§ 7.2

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall

reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

#### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim or other dispute between the Owner and Construction Manager shall be subject to dispute resolution pursuant to the provisions of N.C. Gen. Stat. 143-128.1(c) and 1 N.C.A.C 30H.0400 et seq. If and only if such dispute resolution process is exhausted with resolution any claim

f) Dispute resolution. - A public entity shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11), or shall adopt another dispute resolution process, which shall include mediation, to be used as an alternative to the dispute resolution process adopted by the State Building Commission. This dispute resolution process will be available to all the parties involved in the public entity's construction project including the public entity, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors and shall be available for any issues arising out of the contract or construction process. The public entity may set a reasonable threshold, not to exceed fifteen thousand dollars (\$15,000), concerning the amount in controversy that must be at issue before a party may require other parties to participate in the dispute resolution process. The public entity may require that the costs of the process be divided between the parties to the dispute with at least one-third of the cost to be paid by the public entity, if the public entity is a party to the dispute. The public entity may require in its contracts that a party participate in mediation concerning a dispute as a precondition to initiating litigation concerning the dispute. Between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Other: *(Specify)* Step 1 is a mandatory meeting, Step 2 is mediation, Step 3 is litigation.

#### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

#### ARTICLE 10 TERMINATION OR SUSPENSION

##### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay

to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

#### § 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5 Other provisions:**

« »

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- 1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- 2 AIA Document A201-2007, General Conditions of the Contract for Construction
- 3 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

« Construction Manager at Risk Fee Proposal »  
Pre-Construction Fee Proposal

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER (Signature)**

« »

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER (Signature)**

« »

\_\_\_\_\_  
*(Printed name and title)*

# DRAFT AIA® Document A201™ - 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

«New Public Works Building »  
«1369 North Main Street »  
«Hendersonville, NC 28792 »

### THE OWNER:

(Name, legal status and address)

«City of Hendersonville »  
«City Hall - Second Floor »  
«145 Fifth Avenue East »  
«Hendersonville, NC 28792 »

### THE ARCHITECT:

(Name, legal status and address)

«The Tamara Peacock Company Architects » « Tamara Peacock, R.A., President »  
«104 First Avenue East, Suite A »  
«Hendersonville, NC 28792 »

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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Construction Manager (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract, includes the Guaranteed Maximum Price Amendment. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Construction Manager's bid or proposal, or portions of Addenda relating to bidding requirements. Invitations to bid, instructions to Bidders and any bids shall become part of the Contract except as otherwise specifically agreed.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Construction Manager and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Construction Manager. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 As used in this document, the term "Contractor" shall in all instances be replaced with "Construction Manager".

**§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Construction Manager shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control ~~the Contractor~~ the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 - In the event of discrepancies or disagreements between Contract Documents, the order of precedence shall be as follows:

1. Agreement between Owner and Construction Manager
2. Modifications defined in Section J.J.1
3. Addenda
4. Supplementary Conditions
5. General Conditions
6. Specifications
7. Drawings
8. As between schedules and information given on the drawings, the schedules shall govern.
9. As between schedules, information given on the drawings, and scaled measurements, the measurements shall govern.
10. As between large scale drawings and small scale drawings, the larger scale shall govern.

§ 1.2.4.1 This list is to show which documents supersede others. It is understood that due-diligence will be taken to confirm the designer's intent, yet a defined hierarchy of documents needs to be established to protect all parties.

§ 1.2.5 In the event of discrepancies, a Request for Interpretation (RFI) shall be sent to Architect to confirm the designer's intent. Refer to 1.2.4 for precedence of documents. This list shall determine if changes created by the RFI response shall require a change in work directive.

**§ 1.4 INTERPRETATION**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Construction Manager, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

Commented [CJ1]: We need clarification.

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## § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 It shall be distinctly understood that no mechanic, Contractor, Subcontractor, material or equipment supplier, and/or supplier of labor services, shall ever in any manner have, claim, or acquire any lien upon the buildings, equipment, or furnishings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of its improvements are to be erected, built or situated, such property belonging to a body corporate and politic of the State of North Carolina.

§ 2.1.3 The Owner shall require the Construction Manager, the Subcontractors, the Architect and the Architect's consultants to meet periodically at mutually-agreed-upon intervals, but at least every 30 days, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants in the performance of the Work.

§ 2.1.4 The Owner may require that the Construction Manager use and/or respond to certain Owner furnished forms or inquiries regarding the status of the Work during the course of the Project. From time to time, there may be future revisions, changes, additions, or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Construction Manager.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Except for permits and fees that are the responsibility of the Construction Manager under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Construction Manager shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.3 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 2.2.4 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Construction Manager one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Construction Manager fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity.

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#### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Construction Manager the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Construction Manager are both subject to prior approval of the Architect. If payments then or thereafter due the Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner.

§ 2.5 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

### ARTICLE 3 CONSTRUCTION MANAGER

#### § 3.1 GENERAL

§ 3.1.1 The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Construction Manager shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Construction Manager shall designate in writing a representative who shall have express authority to bind the Construction Manager with respect to all matters under this Contract. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

§ 3.1.2 The Construction Manager shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Construction Manager.

#### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONSTRUCTION MANAGER

§ 3.2.1 The Construction Manager represents and warrants by execution of the Agreement that he has carefully examined the Project Manual and Addenda, the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of machinery and equipment and other facilities needed for the performance of the Work, the character, quality, quantity, and availability of labor and Subcontractors required for the Work, the character, quality and quantity of professional services required for the Work, the character, quality, quantity and availability of materials, machinery, equipment and furnishings required for the Work, and all other matters and things which may in any way affect the Work or its performance. Should the Construction Manager find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Construction Manager shall at once notify the Architect and Owner in writing, and the Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of Work.

§ 3.2.2 Because the Contract Documents are complementary, the Construction Manager shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Construction Manager. The Construction Manager shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. It is recognized that the Construction Manager's review is made in the Construction Manager's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 Neither the Owner nor the Construction Manager is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.2.4 If the Construction Manager believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Construction Manager's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Construction Manager shall make Claims as provided in Article 15. If the Construction Manager fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Construction Manager shall pay such costs and damages to the Owner as would have been avoided if the Construction Manager had performed such obligations. If the Construction Manager performs those obligations, the Construction Manager shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Construction Manager shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Construction Manager determines that such means, methods, techniques, sequences or procedures may not be safe, the Construction Manager shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect and Owner. If the Construction Manager is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Construction Manager, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager or any of its Subcontractors.

§ 3.3.3 The Construction Manager shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Construction Manager may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Construction Manager shall enforce strict discipline and good order among the Construction Manager's employees and other persons carrying out the Work. The Construction Manager shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 Subcontractors will not be permitted to establish their own normal working hours (such as 10 hours per day, four days per week) except with the written consent of the Construction Manager and the Architect.

### § 3.5 WARRANTY

The Construction Manager warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents explicitly require or permit otherwise. The Construction Manager further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Construction Manager's warranty shall extend for a period of one year after substantial completion of the work. The Construction Manager's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Construction Manager or subcontractors or others working for the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1 The Construction Manager shall also take all action necessary to obtain and transfer to Owner on the date of Substantial Completion all equipment warranties from manufacturers and/or distributors related to the work, as well as all warranties from any subcontractors and suppliers working for or on behalf of the Construction Manager and performing the work.

### § 3.6 TAXES

The Construction Manager shall pay sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 The Construction Manager shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.2 If the Construction Manager performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.3 **Concealed or Unknown Conditions.** If the Construction Manager encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Construction Manager shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Construction Manager in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.4 If, in the course of the Work, the Construction Manager encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Construction Manager shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Construction Manager shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.8 ALLOWANCES**

**§ 3.8.1** The Construction Manager shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Construction Manager shall not be required to employ persons or entities to whom the Construction Manager has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Construction Manager of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Construction Manager's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Construction Manager's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

**§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Construction Manager, and communications given to the superintendent shall be as binding as if given to the Construction Manager.

**§ 3.9.2** The Construction Manager, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Construction Manager in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Construction Manager shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Construction Manager shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.10 CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Construction Manager, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Construction Manager's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Construction Manager shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Construction Manager's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Construction Manager fails to submit a submittal schedule, the Construction Manager shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Construction Manager shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Construction Manager shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar

required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

§ 3.12.5 The Construction Manager shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so in a timely manner and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Construction Manager shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals and in accordance with the informational submittals upon which the Architect is not expected to take responsive action, except that the Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Construction Manager has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager needs to provide such services in order to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences and procedures. The Construction Manager shall not be required to provide professional services in violation of applicable law. If

professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Construction Manager by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Construction Manager all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

The Construction Manager shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Construction Manager shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Construction Manager shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Construction Manager shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Construction Manager shall not unreasonably withhold from the Owner or a separate contractor the Construction Manager's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Construction Manager shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Construction Manager shall remove waste materials, rubbish, the Construction Manager's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Construction Manager fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Construction Manager.

### § 3.16 ACCESS TO WORK

The Construction Manager shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Construction Manager shall pay all royalties and license fees. The Construction Manager shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Construction Manager has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Construction Manager shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Construction Manager shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, not including attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Construction Manager, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Construction Manager or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### ARTICLE 4 ARCHITECT

#### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Construction Manager has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

#### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Construction Manager's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Construction Manager, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Construction Manager shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Construction Manager. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Construction Manager's Applications for Payment, the Architect will review and certify the amounts due the Construction Manager and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager as required by the Contract Documents. The Architect's review of the Construction Manager's submittals shall not relieve the Construction Manager of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Construction Manager pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Construction Manager, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within five business days unless otherwise agreed. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Construction Manager to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Construction Manager, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Construction Manager in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Construction Manager shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Construction Manager, the Construction Manager shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Construction Manager has submitted the name within 10 business days unless otherwise agreed.

§ 5.2.4 The Construction Manager shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Construction Manager, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by the Contract Documents, has against the Owner. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and

conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Construction Manager to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Construction Manager's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

#### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

##### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Construction Manager claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Construction Manager who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Construction Manager, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Construction Manager shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Construction Manager under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

##### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Construction Manager shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate ~~the Contractor~~ the Construction Manager's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Construction Manager's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Construction Manager shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Construction Manager so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Construction Manager's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Construction Manager shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Construction Manager's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Construction Manager for costs the Construction Manager incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Construction Manager shall promptly remedy damage the Construction Manager wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Construction Manager in Section 3.14.

#### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Construction Manager, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

### ARTICLE 7 CHANGES IN THE WORK

#### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Construction Manager; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

#### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Construction Manager and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Construction Manager, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Construction Manager shall promptly proceed with the change in the Work involved and advise the Architect of the Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Construction Manager indicates the Construction Manager's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Construction Manager does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Construction Manager shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Construction Manager or others;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Construction Manager to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Construction Manager may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Construction Manager agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Construction Manager.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work shall commence upon (b) the Owner's issuance of a Notice to Proceed, and all required construction permits.

§ 8.1.3 The date of Substantial Completion is the date which a Final Certificate of Occupancy is obtained for all the work.

§ 8.1.3.1 A Temporary Certificate of Occupancy shall be acceptable in the event the projected date of Substantial Completion is a direct result of changes created by the Owner or Architect. The duration of the Temporary Certificate of Occupancy shall be equal to the duration of time required for the completion of the work affected by the changes created by the Owner or the Architect.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Construction Manager shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Construction Manager and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Construction Manager is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Construction Manager's control; or by delay authorized by the Owner pending mediation ~~and arbitration~~; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to ~~the Contractor~~ the Construction Manager for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Construction Manager shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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Commented [CJ5R4]: Acceptable to City

**§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** ~~The monthly Application for Payment, prepared in accordance with the Schedule of Values, shall be submitted by the Contractor to the Construction Manager so it will be received by the Architect not later than the last day of the month. The Architect will submit Applications for Payment that are approved to the Owner by the fifth (5) of the following month, and the Owner will make payment to the Construction Manager no later than 45 days after the Architect receives the Application for Payment. The Applications for Payment for operations completed shall be in accordance with the Schedule of Values.~~

~~Each copy of the the Construction Manager's monthly Application for Payment shall bear the following certification over the the Construction Manager's signature:~~

~~I hereby certify that the labor and material listed on this statement have been used in the construction of this work and that all material included in this statement and not yet incorporated into the construction is stored on the site or off site in accordance with the terms of the Contract Documents and that the material is protected and insured as specified and that all such labor and material have been paid for in full. Payments will be made on the basis of ninety-five percent (95%) of approved monthly applications. When the Owner has received the Architect's final Certificate for Payment and the Owner, the Architect and all regulatory agencies have formally accepted all of the work, final payment will be made within thirty (30) days thereafter.~~

~~When work under the Contract is fifty percent (50%) complete and if satisfactory progress is being made, and subject to approval of the Architect and the Construction Manager's Surety, the Owner may make remaining monthly payments in full. "Satisfactory progress" under this section, includes but is not limited to the duty of the Construction Manager to fully correct all Work that has been identified in writing as "nonconforming" by the Architect, Owner or Engineer. Such corrective Work must be accepted by the Architect, Owner or Engineer. The full Contract retainage may be reinstated if the manner and progress of the Work does not remain satisfactory to the Architect and Owner and to the extent necessary (not to exceed 5% at any one time) to enable the Owner to retain 2.5% total retainage through final completion. In addition to the provisions of this section, the Owner retains the right to withhold payment for satisfactory job progress, defective construction not remedied, disputed work, or third-party claims filed against the owner or reasonable evidence that a third-party claim will be filed.~~

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Construction Manager intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Construction Manager with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Construction Manager warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Construction Manager further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Construction Manager's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Construction Manager, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within five business days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**Commented [BP6]:** This has been modified to coordinate with A133 7.1.3

**Commented [CJ7R6]:** Acceptable to City

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that ~~to the best of the Architect's knowledge, information and belief,~~ the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Construction Manager is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) made examination to ascertain how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum. Notwithstanding the forgoing, the Architect shall take whatever measures are sufficient to ensure that payment is warranted.

**Commented [BP8]:** The removal of this clause creates an insurance problem for TPC. We need the clause to remain.

**Commented [CJ9R8]:** Acceptable to City

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Construction Manager and Owner as provided in Section 9.4.1. If the Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Construction Manager is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Construction Manager;
- .3 failure of the Construction Manager to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**Commented [BP10]:** This is acceptable to TPC.

§ 9.5.2 When the above reasons for withholding certification are removed, the Architect will issue certification for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Construction Manager and to any Subcontractor or material or equipment suppliers to whom the Construction Manager failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Construction Manager shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of the Subcontractor's portion of the Work. The Construction Manager shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Construction Manager and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Construction Manager that the Construction Manager has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Construction Manager for subcontracted Work. If the Construction Manager fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Construction Manager's payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Construction Manager provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Construction Manager for Work properly performed by Subcontractors and suppliers shall be held by the Construction Manager for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Construction Manager for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Construction Manager, shall create any fiduciary liability or tort liability on the part of the Construction Manager for breach of trust or shall entitle any person or entity to an award of punitive damages against the Construction Manager for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Construction Manager, within five business days after receipt of the Construction Manager's Application for Payment, or if the Owner does not pay the Construction Manager within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Construction Manager may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Construction Manager's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and shall be determined by receipt of a Final Certificate of Occupancy, approved by the Architect, for the work.

§ 9.8.2 When the Construction Manager considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Construction Manager shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Construction Manager's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Construction Manager's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Construction Manager shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish

responsibilities of the Owner and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Construction Manager shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Construction Manager considers a portion substantially complete, the Construction Manager shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Construction Manager or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Construction Manager's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Construction Manager and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Construction Manager's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Construction Manager submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting final completion, and the Architect so

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confirms, the Owner shall, upon application by the Construction Manager and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by ~~the Contractor~~ the Construction Manager to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.
- .4 Acceptance of the work and the making of final payment does not constitute a waiver of any claims by the owner.

§ 9.10.5 Acceptance of final payment by the Construction Manager, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Construction Manager shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and ~~carry on~~ such activities under supervision of properly qualified personnel.

§ 10.2.5 The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Construction Manager, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Construction Manager is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations under Section 3.18.

§ 10.2.6 The Construction Manager shall designate a responsible member of the Construction Manager's organization at the site whose duty shall be the prevention of accidents. This person shall be the Construction

Manager's superintendent unless otherwise designated by the Construction Manager in writing to the Owner and Architect.

§ 10.2.7 The Construction Manager shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 HAZARDOUS MATERIALS**

§ 10.3.1 The Construction Manager is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Construction Manager encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Construction Manager's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Construction Manager. In the event that hazardous material are found to be present, the contract time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Construction Manager's reasonable additional costs of shut-down, delay and start-up, by change order or in the absence of agreement to a change order, at the direction of the Architect up to an amount of twenty thousand dollars. Costs attributable to the Construction Managers own acts or omissions that contribute to the presence of the materials are not reasonable.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, not including attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Construction Manager brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Construction Manager's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Construction Manager shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Construction Manager brings to the site or negligently handles, or (2) where the Construction Manager fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Construction Manager, the Construction Manager is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Construction Manager for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Construction Manager on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONSTRUCTION MANAGER'S LIABILITY INSURANCE

§ 11.1.1 The Construction Manager shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Construction Manager from claims set forth below which may arise out of or result from the Construction Manager's operations and completed operations under the Contract and for which the Construction Manager may be legally liable, whether such operations be by the Construction Manager or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Construction Manager's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Construction Manager's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Construction Manager with reasonable promptness.

§ 11.1.4 The Construction Manager shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's completed operations.

#### § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Construction Manager, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Construction Manager in writing prior to commencement of the Work. The Construction Manager may then effect insurance that will protect the interests of the Construction Manager, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Construction Manager is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Construction Manager in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Construction Manager shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Subcontractors and Sub-subcontractors in the Work, and the Owner and Construction Manager shall be named insureds.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Construction Manager for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Construction Manager requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Construction Manager by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those

insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Construction Manager a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Construction Manager.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Construction Manager waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Construction Manager, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Construction Manager shall pay Subcontractors their just shares of insurance proceeds received by the Construction Manager, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Construction Manager as the method of binding dispute resolution in the Agreement.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Construction Manager to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Construction Manager shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Construction Manager's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect with the prior written consent of the Owner may request to see such Work and it shall be uncovered by the Construction Manager. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Construction

Manager's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Construction Manager shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Construction Manager's expense.

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Construction Manager's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Construction Manager and give the Construction Manager an opportunity to make the correction, the Owner waives the rights to require correction by the Construction Manager and to make a claim for breach of warranty. If the Construction Manager fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Construction Manager pursuant to this Section 12.2.

§ 12.2.3 The Construction Manager shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Construction Manager nor accepted by the Owner.

§ 12.2.4 The Construction Manager shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Construction Manager's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Construction Manager has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Construction Manager to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct the Work.

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located. Exclusive venue for any action brought in connection with the Contract or its breach shall be in the courts for Henderson County North Carolina.

**§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate such assignment.

**§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

**§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 13.4.2** No action or failure to act by the Owner, Architect or Construction Manager shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

**§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Construction Manager shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Construction Manager shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Construction Manager.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Construction Manager to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Construction Manager shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Construction Manager's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager and promptly delivered to the Architect.

**§ 13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

The owner shall pay prime interest as published for such date in the Wall Street Journal.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONSTRUCTION MANAGER

§ 14.1.1 The Construction Manager may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Construction Manager or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager, for any of the following reasons:

- 1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- 3 Because the Architect has not issued a Certificate for Payment and has not notified the Construction Manager of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- 4 The Owner has failed to furnish to the Construction Manager promptly, upon the Construction Manager's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Construction Manager may terminate the Contract if, through no act or fault of the Construction Manager or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Construction Manager, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Construction Manager may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Construction Manager or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Construction Manager because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Construction Manager may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Construction Manager

- 1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Construction Manager and the Subcontractors;
- 3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- 4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Construction Manager and the Construction Manager's surety, if any, seven days' written notice, terminate employment of the Construction Manager and may, subject to any prior rights of the surety:

- 1 Exclude the Construction Manager from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager;
- 2 Accept assignment of subcontracts pursuant to Section 5.4; and
- 3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Construction Manager shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Construction Manager. If such costs and damages exceed the unpaid balance, the Construction Manager shall pay the difference to the Owner. The amount to be paid to the Construction Manager or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Construction Manager in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- 1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Construction Manager is responsible; or
- 2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall

- 1 cease operations as directed by the Owner in the notice;
- 2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- 3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Construction Manager arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Construction Manager must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Construction Manager shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Construction Manager wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Construction Manager wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Construction Manager's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Construction Manager and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- 1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- 2 damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Construction Manager and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole reasonable discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Construction Manager, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Construction Manager's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Henderson County North Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/29/2018

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Discussion/Staff Direction

### Summary of Information/Request:

**Item #** 11

Over the last several years, staff has received requests for additional parking at the Whitmire Center. In previous capital improvement and budget meetings, staff has discussed our plan to convert Tom's Park into additional parking for the Whitmire Center. We have funds budgeted for this project in the current fiscal year and are preparing to move forward with design of the project. However, staff wanted to ensure the City Council still supports the conversion of this green space to parking for Whitmire prior to moving forward.

**Budget Impact:** \$ TBD Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

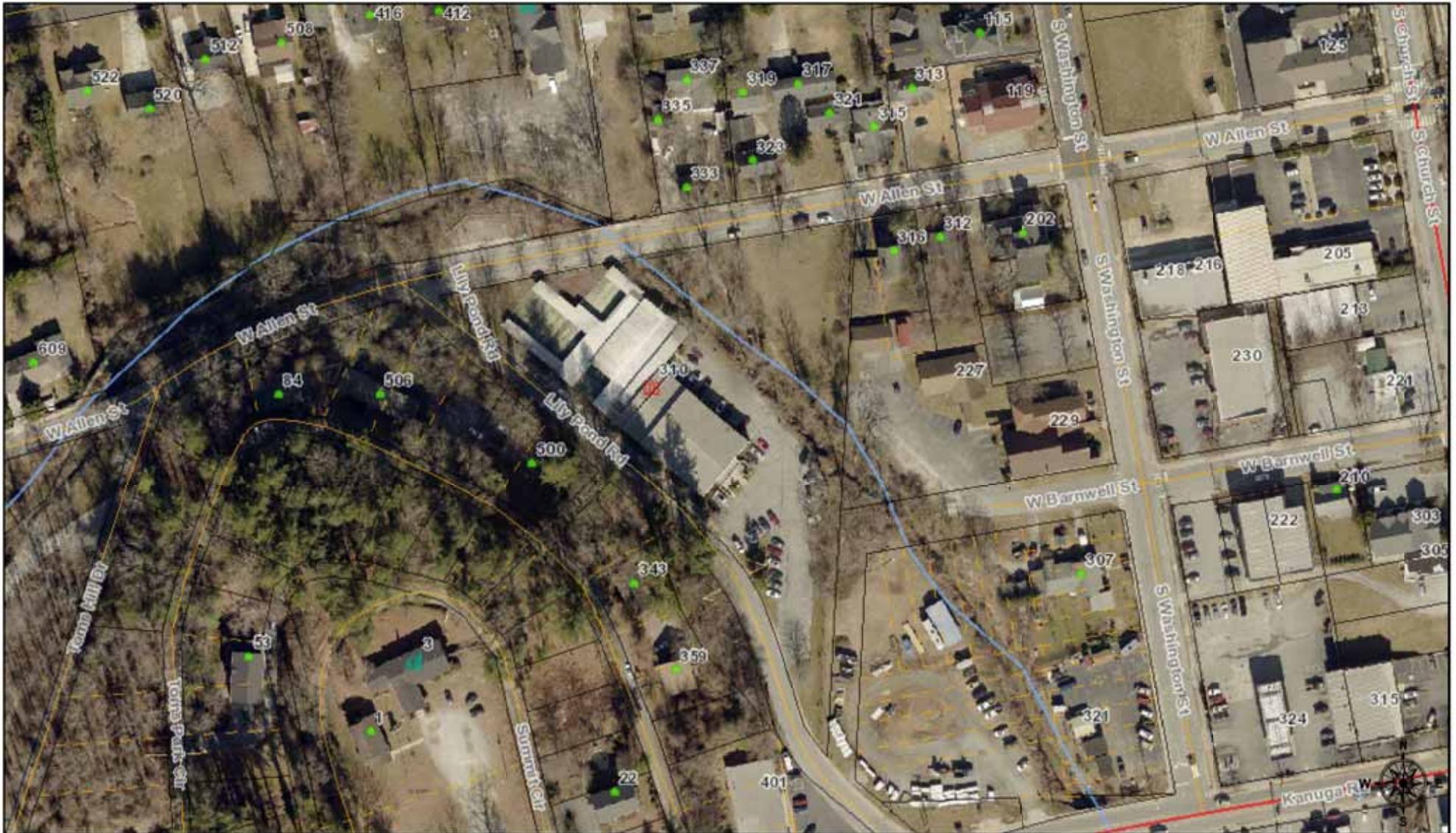
### Suggested Motion:

NA

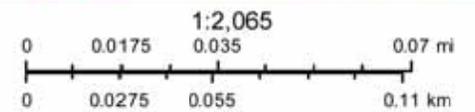
### Attachments:

Aerial Map

# GoMaps



August 29, 2018



Henderson County IT/GIS  
Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Adam Steurer

**Department:** Utilities

**Date Submitted:** 8/23/2018

**Presenter:** Lee Smith

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item #** 12

The City of Hendersonville requires engineering services necessary for the design and construction of various future water, sewer, and stormwater projects. In accordance with North Carolina General Statutes, the Utilities and Engineering Department recently requested qualifications, received qualification statements, and determined the three most qualified firms to provide these services. The selected firms are:

McKim & Creed, Inc.  
Stantec Consulting Services Inc.  
WithersRavenel, Inc.

City staff are currently in the process of entering into Agreements with each of the selected firms to provide the City with on-call services on a time and materials basis over a two year period with options to extend up to an additional three years on a yearly basis.

**Budget Impact:** \$ 0 Is this expenditure approved in the current fiscal year budget? *N/A* If no, describe how it will be funded.

Funding will be set aside from each respective project's budget.

**Suggested Motion:** *To disapprove any item, you may allow it to fail for lack of a motion.*

I move to approve selection of the three most qualified firms for on call professional engineering services and to authorize the City Manager to execute Agreements with the three selected firms for said work; as presented and recommended by staff.

### Attachments:

Evaluation Form  
Evaluation Summary

## PROFESSIONAL ON-CALL ENGINEERING QUALIFICATION STATEMENT EVALUATION

Name of Firm: \_\_\_\_\_

Name of Reviewer: \_\_\_\_\_

**Summary:**

- Location of principal office where work will be performed
- Full contact information (name, address, phone/email, contact person)
- General Statement of firm's history/financial stability
- Year firm has been in business in current capacity
- Insurance information
- Firms NC engineering license number

**Related Experience:**

- Minimum of 5 projects completed within last 3 years
- Included project name, location
- Project Owner (contact info)
- Projected and actual start/completion dates
- Description of project
- List of key personnel involved and their roles (on proposed team)

**Project Staff w/ Organizational Chart:**

- Roles & responsibilities
- Resumes
- Organizational chart

Evaluation Criteria	Possible Points	Points Given
Reputation, quality, experience of the firm (similar services to municipalities, previous work in Hendersonville, etc.), project references	35	
Project Personnel Experience (experience/qualifications, recent experience with water/sewer/stormwater projects, org. structure clear communication and defined roles)	40	
Quality Control (technical review process, accurate and through, on-time submittals)	10	
Approach – innovative/effective. Specifically, for smaller projects (<\$250K)	10	
Proximity to Hendersonville(<1hr = 5pts, 1-3hrs = 3pts, >3hrs = 1pt)	5	
<b>POINT TOTAL</b>		

<b>City of Hendersonville</b>		
<b>On-Call Engineering Services Evaluation Summary</b>		
<b>Rank</b>	<b>Score</b>	<b>Firm</b>
1	97	WithersRavenel
2	96	Stantec
3	95	McKim & Creed
4	92	Black & Veatch
5	91	Bell Engineering
5	91	McGill Associates
6	90	Vaughn & Melton
7	88	Mattern & Craig
8	87	Hulsey McCormick & Wallace
8	87	The Wooten Company
9	83	Critek Engineering Group



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Adam Murr

**Department:** Admin

**Date Submitted:** 08/27/2018

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 09/06/2018

**Nature of Item:** Presentation Only

### Summary of Information/Request:

**Item #** 14a

In accordance with State Statute 159-13 (b) (3) it is required that all expenditures resulting from a contingency appropriation budget adjustment be reported to the governing board at its next regular meeting and recorded in the minutes.

The following contingency appropriations were made:

- 1) Fund 10 | \$1,394 | Property Insurance
- 2) Fund 10 | \$8,960 | Fire Dept. Study
- 3) Fund 60 | \$4,033 | Property Insurance
- 4) Fund 60 | \$3,600 | Specialized Computer Equipment

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

NA

**Attachments:**

NA



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** Tammie Drake

**Department:** Admin

**Date Submitted:** 08.28.18

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 09.06.18

**Nature of Item:** Presentation Only

### Summary of Information/Request:

**Item #** 15

Historic Preservation Commission: Ms. Laura Flores has resigned from the HPC. We have an application on file from Derek Cote who is building a home in Druid Hills and owns property in the City.

Report on Vacancies:

Board of Adjustment: vacant alternate position

Business Advisory Committee: 1 vacancy

Environmental Sustainability Board: 3 vacant positions for City residents, 1 vacant position for outside-City rep. We have no applications on file at this time.

Walk of Fame Steering Committee: 1 vacant position due to the resignation of Tom Orr. The City appoints 3 members to this Committee. We have no applications on file at this time.

**Budget Impact:** \$ \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move City Council to appoint Derek Cote to an unexpired position on the HPC. This term will expire December 2019.

### Attachments:

Board membership lists



## CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

**Submitted By:** John Connet

**Department:** Admin

**Date Submitted:** 8/28/2018

**Presenter:** John Connet

**Date of Council Meeting to consider this item:** 9/6/2018

**Nature of Item:** Council Action

### Summary of Information/Request:

**Item # 17**

I would like to hold a Closed Session in accordance NCGS 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 the price and other material terms of a contract or proposed contract for the acquisition of real property.

**Budget Impact:** \$ TBD \_\_\_\_\_ Is this expenditure approved in the current fiscal year budget? <sup>N/A</sup> If no, describe how it will be funded.

### Suggested Motion:

I move that the City Council enter Closed Session in accordance with NCGS 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 the price and other material terms of a contract or proposed contract for the acquisition of real property.

### Attachments:

City Council Report (City Council only)