A G E N D A

CITY OF HENDERSONVILLE CITY COUNCIL

DECEMBER 3, 2015 - REGULAR MEETING

CITY HALL COUNCIL CHAMBERS

5:45 p.m.

1. **Call to Order**

2. **Invocation and Pledge of Allegiance**

3. **Public Comment Time:** *Up to 15 minutes reserved for comments from the public for items not listed on the agenda.*

4. **Consideration of Agenda**

. . . . . .

ORGANIZATIONAL MEETING OF THE COUNCIL

5. **Administration of the Oath of Office and Presentation of Certificate of Election to Council Member Steve Caraker by the Honorable NC District 29b Superior Court Judge Mark E. Powell**

6. **Administration of the Oath of Office and Presentation of Certificate of Election to Council Member Ron Stephens by the Honorable NC District 29b Superior Court Judge Mark E. Powell**

7. **Remarks by Mayor Barbara Volk and City Council Members Steve Caraker, Ron Stephens and Others**

8. **Election of Mayor Pro Tempore**

. . . . . .

9. **Special Recognition – Board of Elections**
   Presenter: Mayor Barbara G. Volk

10. **Consideration of Consent Agenda** *(Note: All items denoted with an asterisk (*) are considered routine, non controversial in nature and will be considered and disposed of through a singular motion and vote.)*

    A. Consideration of Minutes of November 5, 2015 Regular Meeting

    B. Consideration of Approval of 2016 Proposed Schedule of Regular Meeting Dates

    C. Consideration of Election Results – Abstract of Votes

D. Consideration of Ordinance Amending Code of Ordinances Section 10-42 Respecting the Keeping of Swine

E. Consideration of a Proposal from Hazen and Sawyer for the Completion of a Water System Master Plan

F. Consideration of Budget Amendment for the Howard Gap Road NCDOT Project

G. Consideration of Amendments to the Special Event Ordinance

11. Presentation of Audit for Fiscal Year 2014-15
Presenter: Terry Andersen

12. Presentation of Annual Report for Mills River Partnership
Presenter: Maria Wise

13. Consideration of Amendments to the Fee Schedule to Change Late Fees on Past Due Utility Bills and Consideration of Waiving the Fees for December 2015
Presenter: Tammy Holland

14. Presentation on Special Appropriations
Presenter: Brian Pahle

15. Comments from Mayor and City Council Members

16. Comments from Staff

A. Report on Contingencies

B. Scheduling of City Council Planning Retreat

C. Reminder of Christmas Parade, Saturday, December 5, 2015, 10:30 a.m.

D. Reminder of Employee/Volunteer Christmas Lunch – December 16, 11:30 a.m., Whitmire Activity Building

E. Reminder of Required Ethics Training for Newly-Elected Officials

17. Consideration of Appointments to Boards and Commissions
Presenter: City Clerk Tammie Drake

A. Announcement of Vacancies and Upcoming Appointments

B. Update on Bicycle Plan Steering Committee

18. New Business

19. City Manager Request for Closed Session

20. Adjournment

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 11/24/2015

Presenter: Mayor Volk

Date of Council Meeting to consider this item: 12/03/2015

Nature of Item: Presentation Only

Summary of Information/Request: **Item #** 09

We have invited Henderson County Board of Elections Director Beverly Cunningham to the City Council reception and meeting to show our appreciation for the job the Board of Election staff does with the municipal elections. We will ask Mayor Volk to present a Certificate of Appreciation at the meeting to Ms. Cunningham on behalf of the City of Hendersonville.

Budget Impact: $ NA 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.*

NA

Attachments:

None

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CITY OF HENDERSONVILLE

2016 REGULARLY SCHEDULED MONTHLY MEETINGS

All meetings are open to the public. Notice of special meetings is posted in accordance with North Carolina General Statutes.

ABC BOARD	BOARD OF ADJUSTMENT	BUSINESS ADVISORY COMMITTEE	CITY COUNCIL	ENVIRONMENTAL SUSTAINABILITY BOARD	HISTORIC PRESERVATION COMMISSION	DOWNTOWN ADVISORY COMMITTEE	PLANNING BOARD	SEVENTH AVENUE ADVISORY COMMITTEE	SPECIAL EVENTS COMMITTEE	TREE BOARD
Third Tuesday 10:00 a.m. ABC Office 205 S. Church St.	Second Tuesday 1:30 p.m. Operations Center*	Fourth Monday of odd-numbered months 11:30 a.m. at the Operations Center*	First Thursday 5:45 P.M. City Hall unless otherwise posted **	Third Thursday 4:00 p.m. Operations Center* Conference Room	Third Wednesday 5:00 p.m. Operations Center* The Design Review Committee meets the first Wednesday of each month at 5:00 p.m. as needed.	Third Wednesday, 9:00 a.m., Operations Center* **Design Subcommittee**: first Tuesday, 9:00 a.m. at City Hall. **Economic Restructuring** Subcommittee meets the first Wednesday at 9:30 a.m. at City Hall. **Promotion Subcommittee** meets on the first Thursday 9:00 a.m. at City Hall.	Second Monday 4:00 p.m. Operations Center* Policy & Text Committee meets the fourth Monday at 4:00 p.m. in the Planning Department at City Hall as needed.**	Second Monday 5:30 p.m. at the Historic Train Depot, Maple Street	Third Thursday 10:00 a.m. Operations Center*	First Tuesday, 3:00 p.m. Operations Center*
January 19	January 12	January 25	January 7	January 21	January 20	January 20	January 11	January 11	January 21	January 5
February 16	February 9		February 4	February 18	February 17	February 17	February 8	February 8	February 18	February 2
March 15	March 8	March 28	March 3	March 17	March 16	March 16	March 14	March 14	March 17	March 1
April 19	April 12		April 7	April 21	April 20	April 20	April 11	April 11	April 21	April 5
May 17	May 10	May 23	May 5	May 19	May 18	May 18	May 9	May 9	May 19	May 3
June 21	June 14		June 2	June 16	June 15	June 15	June 13	June 13	June 16	June 1
July 19	July 12	July 25	July 7	July 21	July 20	July 20	July 11	July 11	July 21	July 5
August 16	August 9		August 4	August 18	August 17	August 17	August 8	August 8	August 18	August 2
September 20	September 13	September 26	September 1	September 15	September 21	September 21	September 12	September 12	September 15	September 6
October 18	October 11		October 6	October 20	October 19	October 19	October 10	October 10	October 20	October 4
November 15	November 8	November 28	November 3	November 17	November 16	November 16	November 14	November 14	November 17	November 1
December 20	December 13		December 1	December 15	December 21	December 21	December 12	December 12	December 15	December 6

***Operations Center, Assembly Room, 305 Williams, Street, Hendersonville, NC**
**** City Hall, 145 Fifth Avenue East, Hendersonville, NC**
***Denotes a change from the regular meeting schedule.

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 11.24.15

Presenter:

Date of Council Meeting to consider this item: 12.03.15

Nature of Item: Council Action

Summary of Information/Request: **Item #** 10c

Attached you will find the Abstract of Votes provided by the Board of Elections.

Budget Impact: $_____ 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 move Council's acceptance of the Abstract of Votes for 2015 provided by the Board of Elections.

Attachments:

Abstract of Votes

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2015 GENERAL ELECTION
11/03/2015
ABSTRACT OF VOTES
FOR
HENDERSON COUNTY, NORTH CAROLINA

INSTRUCTIONS
The county board shall prepare abstracts of all the ballot items in triplicate originals. The county board shall retain one of the triplicate originals, and shall distribute one each to the city or town clerk for the municipality and the State Board of Elections. The State Board of Elections shall forward the original abstract it receives to the Secretary of State. (GS § 163-182.6)

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

The County Board of Elections for said county, having opened, canvassed, and judicially determined the original returns of the election in the precincts in this county, held as above stated, do hereby certify that the above is a true abstract thereof, and contains the number of legal ballots cast in each precinct for each office or referendum named, the name of each person or choice voted for, their party affiliation (where applicable), and the number of votes cast for each person or choice for the item named.

This is the 10th day of November, 2015.

Robert L. Hettman
Chairman

Deborah Dante
Secretary

Tom Wilson
Member

This day personally appeared before me, Robert L. Hettman, Chairman of the County Board of Elections, who being duly sworn, says the abstract of votes herein contained is true and correct, according to the returns made to said Board.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal this the 10th day of November, 2015.

Beverly W. Cunningham
Official Signature of Notary Public

Beverly W. Cunningham
Printed/Typed Name of Notary Public

My Commission Expires: 4-16-19

BEVERLY W. CUNNINGHAM NOTARY PUBLIC HENDERSON COUNTY, N.C.

(Seal)

November 03, 2015 General Election Results by Contest

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Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
VILLAGE OF FLAT ROCK MAYOR	Bob Spitzen		38	31	7	0	0
	Bob Staton		727	530	195	2	0
	Write-In (Miscellaneous)		2	2	0	0	0
VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 1	Nick Weedman		698	506	190	2	0
	Write-In (Miscellaneous)		5	4	1	0	0
VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 2	Ginger Brown		678	490	186	2	0
	Write-In (Miscellaneous)		5	4	1	0	0
VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 3	John Dockendorf		668	485	181	2	0
	Write-In (Miscellaneous)		4	3	1	0	0
TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		67	65	2	0	0
	Write-In (Miscellaneous)		2	2	0	0	0
TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		69	67	2	0	0
	Write-In (Miscellaneous)		2	2	0	0	0
CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		485	403	78	4	0
	Rebecca Schwartz		308	254	51	3	0
	Ron Stephens		428	343	84	1	0
	Write-In (Miscellaneous)		6	6	0	0	0
TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		159	146	13	0	0
	Write-In (Miscellaneous)		5	5	0	0	0
TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		157	144	13	0	0
	Robert Vickery		154	141	13	0	0
	Write-In (Miscellaneous)		8	8	0	0	0
TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		67	62	5	0	0
	Roger Snyder		64	60	4	0	0
	Write-In (Miscellaneous)		7	5	2	0	0
CITY OF SALUDA CITY COMMISSIONER	Karen Bultman		0	0	0	0	0
	Leon Morgan		0	0	0	0	0
	Stanley Walker		2	2	0	0	0
	Lynn Cass (Write-In)		2	2	0	0	0
	Write-In (Miscellaneous)		0	0	0	0	0

November 03, 2015 General Election Results by Precinct

Precinct	Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
TOTAL	VILLAGE OF FLAT ROCK MAYOR	Bob Spitzen		38	31	7	0	0
		Bob Staton		727	530	195	2	0
		Write-In (Miscellaneous)		2	2	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 1	Nick Weedman		698	506	190	2	0
		Write-In (Miscellaneous)		5	4	1	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 2	Ginger Brown		678	490	186	2	0
		Write-In (Miscellaneous)		5	4	1	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 3	John Dockendorf		668	485	181	2	0
		Write-In (Miscellaneous)		4	3	1	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		67	65	2	0	0
		Write-In (Miscellaneous)		2	2	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		69	67	2	0	0
		Write-In (Miscellaneous)		2	2	0	0	0
	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		485	403	78	4	0
		Rebecca Schwartz		308	254	51	3	0
		Ron Stephens		428	343	84	1	0
		Write-In (Miscellaneous)		6	6	0	0	0
	TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		159	146	13	0	0
		Write-In (Miscellaneous)		5	5	0	0	0
	TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		157	144	13	0	0
		Robert Vickery		154	141	13	0	0
		Write-In (Miscellaneous)		8	8	0	0	0
	TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		67	62	5	0	0
		Roger Snyder		64	60	4	0	0
		Write-In (Miscellaneous)		7	5	2	0	0
	CITY OF SALUDA CITY COMMISSIONER	Karen Bultman		0	0	0	0	0
		Leon Morgan		0	0	0	0	0
		Stanley Walker		2	2	0	0	0
		Lynn Cass (Write-In)		2	2	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
AR	VILLAGE OF FLAT ROCK MAYOR	Bob Spitzen		2	2	0	0	0
		Bob Staton		28	26	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 1	Nick Weedman		28	26	2	0	0

November 03, 2015 General Election Results by Precinct

Precinct	Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 2	Ginger Brown		28	26	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 3	John Dockendorf		27	25	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		13	12	1	0	0
		Rebecca Schwartz		5	4	1	0	0
		Ron Stephens		9	8	1	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
CC	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		13	10	3	0	0
		Rebecca Schwartz		19	16	3	0	0
		Ron Stephens		13	11	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
CV	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		111	110	1	0	0
		Rebecca Schwartz		43	43	0	0	0
		Ron Stephens		102	101	1	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
EV	TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		1	1	0	0	0
		Roger Snyder		1	1	0	0	0
		Write-In (Miscellaneous)		1	0	1	0	0
FL	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		60	60	0	0	0
		Write-In (Miscellaneous)		1	1	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		62	62	0	0	0
		Write-In (Miscellaneous)		1	1	0	0	0
FR	VILLAGE OF FLAT ROCK MAYOR	Bob Spitzen		36	29	7	0	0
		Bob Staton		694	504	190	0	0
		Write-In (Miscellaneous)		2	2	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 1	Nick Weedman		666	480	186	0	0
		Write-In (Miscellaneous)		5	4	1	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 2	Ginger Brown		646	464	182	0	0
		Write-In (Miscellaneous)		5	4	1	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 3	John Dockendorf		637	460	177	0	0
		Write-In (Miscellaneous)		4	3	1	0	0
HC	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		6	4	2	0	0

November 03, 2015 General Election Results by Precinct

Precinct	Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
HC	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		6	4	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
HV-1	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		158	119	39	0	0
		Rebecca Schwartz		93	70	23	0	0
		Ron Stephens		147	104	43	0	0
		Write-In (Miscellaneous)		6	6	0	0	0
HV-2	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		66	55	11	0	0
		Rebecca Schwartz		52	44	8	0	0
		Ron Stephens		51	38	13	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
HV-3	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		106	93	13	0	0
		Rebecca Schwartz		85	77	8	0	0
		Ron Stephens		91	76	15	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
LJ	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		5	3	2	0	0
		Rebecca Schwartz		0	0	0	0	0
		Ron Stephens		6	4	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
LP	TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		156	143	13	0	0
		Write-In (Miscellaneous)		5	5	0	0	0
	TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		154	141	13	0	0
		Robert Vickery		151	138	13	0	0
		Write-In (Miscellaneous)		8	8	0	0	0
MG	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		1	0	1	0	0
		Rebecca Schwartz		2	0	2	0	0
		Ron Stephens		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
NB	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		1	1	0	0	0
		Rebecca Schwartz		0	0	0	0	0
		Ron Stephens		1	1	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
NE	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		0	0	0	0	0
		Rebecca Schwartz		0	0	0	0	0

November 03, 2015 General Election Results by Precinct

Precinct	Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
NE	CITY OF HENDERSONVILLE CITY COUNCIL	Ron Stephens		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
NM	TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		45	41	4	0	0
		Roger Snyder		41	37	4	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
NW	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		0	0	0	0	0
		Rebecca Schwartz		0	0	0	0	0
		Ron Stephens		1	0	1	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
PR	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		1	1	0	0	0
		Write-In (Miscellaneous)		1	1	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		1	1	0	0	0
		Write-In (Miscellaneous)		1	1	0	0	0
PV	TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		3	3	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		3	3	0	0	0
		Robert Vickery		3	3	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
RR	CITY OF SALUDA CITY COMMISSIONER	Karen Bultman		0	0	0	0	0
		Leon Morgan		0	0	0	0	0
		Stanley Walker		2	2	0	0	0
		Lynn Cass (Write-In)		2	2	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
SE	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		1	0	1	0	0
		Rebecca Schwartz		0	0	0	0	0
		Ron Stephens		1	0	1	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
SM	TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		21	20	1	0	0
		Roger Snyder		22	22	0	0	0
		Write-In (Miscellaneous)		6	5	1	0	0
SW	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		2	0	2	0	0
		Rebecca Schwartz		3	0	3	0	0
		Ron Stephens		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0

November 03, 2015 General Election Results by Precinct

Precinct	Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
SW	TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		0	0	0	0	0
		Robert Vickery		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
ABSENTEE BY MAIL	VILLAGE OF FLAT ROCK MAYOR	Bob Spitzen		0	0	0	0	0
		Bob Staton		2	0	0	2	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 1	Nick Weedman		2	0	0	2	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 2	Ginger Brown		2	0	0	2	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 3	John Dockendorf		2	0	0	2	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		4	0	0	4	0
		Rebecca Schwartz		3	0	0	3	0
		Ron Stephens		1	0	0	1	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		0	0	0	0	0
		Robert Vickery		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		0	0	0	0	0
		Roger Snyder		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	CITY OF SALUDA CITY COMMISSIONER	Karen Bultman		0	0	0	0	0
		Leon Morgan		0	0	0	0	0
		Stanley Walker		0	0	0	0	0
		Lynn Cass (Write-In)		0	0	0	0	0

November 03, 2015 General Election Results by Precinct

Precinct	Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
ABSENTEE BY MAIL	CITY OF SALUDA CITY COMMISSIONER	Write-In (Miscellaneous)		0	0	0	0	0
ONESTOP	VILLAGE OF FLAT ROCK MAYOR	Bob Spitzen		0	0	0	0	0
		Bob Staton		3	0	3	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 1	Nick Weedman		2	0	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 2	Ginger Brown		2	0	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 3	John Dockendorf		2	0	2	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		4	0	4	0	0
		Rebecca Schwartz		3	0	3	0	0
		Ron Stephens		5	0	5	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		0	0	0	0	0
		Robert Vickery		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		0	0	0	0	0
		Roger Snyder		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	CITY OF SALUDA CITY COMMISSIONER	Karen Bultman		0	0	0	0	0
		Leon Morgan		0	0	0	0	0
		Stanley Walker		0	0	0	0	0
		Lynn Cass (Write-In)		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
PROVISIONAL	VILLAGE OF FLAT ROCK MAYOR	Bob Spitzen		0	0	0	0	0
		Bob Staton		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0

November 03, 2015 General Election Results by Precinct

Precinct	Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
PROVISIONAL	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 1	Nick Weedman		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 2	Ginger Brown		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	VILLAGE OF FLAT ROCK VILLAGE COUNCIL DISTRICT 3	John Dockendorf		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 2	Hugh Clark		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF FLETCHER TOWN COUNCIL DISTRICT 3	Bob Davy		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	CITY OF HENDERSONVILLE CITY COUNCIL	Steve Caraker		0	0	0	0	0
		Rebecca Schwartz		0	0	0	0	0
		Ron Stephens		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK MAYOR	J. Carey O'Cain		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF LAUREL PARK TOWN COUNCIL	George W. Banta		0	0	0	0	0
		Robert Vickery		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	TOWN OF MILLS RIVER TOWN COUNCIL AT-LARGE	Wayne S. Carland		0	0	0	0	0
		Roger Snyder		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0
	CITY OF SALUDA CITY COMMISSIONER	Karen Bultman		0	0	0	0	0
		Leon Morgan		0	0	0	0	0
		Stanley Walker		0	0	0	0	0
		Lynn Cass (Write-In)		0	0	0	0	0
		Write-In (Miscellaneous)		0	0	0	0	0

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	STATISTICS		0010_FLAT ROCK MAYOR					0002_FLAT ROCK COUNCIL DIST 1				0003_FLAT ROCK COUNCIL DIST 2				0004_FLAT ROCK COUNCIL DIST			
	REGISTERED	VOTERS - TOTAL	BALLOTS	CAST - TOTAL	Bob Spitzen	Bob Stato n	WRITE-IN	OVER VOTES	UNDER VOTES	Nick Weedman	WRITE-IN	OVER VOTES	UNDER VOTES	Ginger Brown	WRITE-IN	OVER VOTES	UNDER VOTES	John Dockendorf	WRITE-IN	OVER VOTES	UNDER VOTES
AR AR ARMORY - HENDERSO		263		14																	
AR AR ARMORY - FLAT ROC		145		30	2	28	0	0	0	28	0	0	2	28	0	0	2	27	0	0	3
CC CC CLEAR CREEK		936		24																	
CV HV-2 CAROLINA VILLAG		490		143																	
EV EV ETOWAH VALLEY		198		2																	
FL FL FLETCHER		3872		66																	
FR FR FLAT ROCK		2945		732	36	694	2	0	0	666	5	0	61	646	5	0	81	637	4	0	91
HC HC HOOPERS CREEK		880		6																	
HV-1 HV-1 HENDERSONVILL		2350		220																	
HV-2 HV-2 HENDERSONVILL		2533		92																	
HV-3 HV-3 HENDERSONVILL		2585		155																	
LJ LJ LONG JOHN MOUNTAI		109		6																	
LP LP LAUREL PARK		1777		162																	
MG MG MOORES GROVE		130		2																	
NB NB NORTH BLUE RIDGE		68		1																	
NE NE NORTHEAST		67		0																	
NM NM NORTH MILLS RIVER		2323		47																	
NW NW NORTHWEST		17		1																	
PR PR PARK RIDGE		135		2																	
PV PV PISGAH VIEW		98		3																	
RR RR RAVEN ROCK		7		2																	
SE SE SOUTHEAST		62		1																	
SM SM SOUTH MILLS RIVER		2469		28																	
SW SW SOUTHWEST - LP		6		0																	
SW SW SOUTHWEST - HENDE		79		3																	
ABSENTEE MAIL		0		6	0	2	0	0	0	2	0	0	0	2	0	0	0	2	0	0	0
PROVISIONAL		0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CURBSIDE		0		9	0	3	0	0	0	2	0	0	1	2	0	0	1	2	0	0	1
TOTALS		24544		1757	38	727	2	0	0	698	5	0	64	678	5	0	84	668	4	0	95

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	0005_FLETCHER COUNCIL DIST 2				0006_FLETCHER COUNCIL DIST 3				0001_HENDERSONVILLE COUNCIL						0007_LAUREL PARK MAYOR			
	Hugh Clark	WRITE-IN	OVER VOTES	UNDER VOTES	Bob Davy	WRITE-IN	OVER VOTES	UNDER VOTES	Steve Carraker	Rebecca Schwartz	Ron Stephens	WRITE-IN	OVER VOTES	UNDER VOTES	J. Carey O'Cain	WRITE-IN	OVER VOTES	UNDER VOTES
AR AR ARMORY - HENDERSO									13	5	9	**0**	0	1				
CC CC CLEAR CREEK									13	19	13	**0**	0	3				
CV HV-2 CAROLINA VILLAG									111	43	102	**0**	0	30				
FL FL FLETCHER	60	1	0	5	62	1	0	3										
HC HC HOOPERS CREEK	6	0	0	0	6	0	0	0										
HV-1 HV-1 HENDERSONVILL									158	93	147	**6**	0	36				
HV-2 HV-2 HENDERSONVILL									66	52	51	**0**	0	15				
HV-3 HV-3 HENDERSONVILL									106	85	91	**0**	0	28				
LJ LJ LONG JOHN MOUNTAI									5	0	6	**0**	0	1				
LP LP LAUREL PARK															156	5	0	1
MG MG MOORES GROVE									1	2	0	**0**	0	1				
NB NB NORTH BLUE RIDGE									1	0	1	**0**	0	0				
NE NE NORTHEAST									0	0	0	**0**	0	0				
NW NW NORTHWEST									0	0	1	**0**	0	1				
PR PR PARK RIDGE	1	1	0	0	1	1	0	0										
PV PV PISGAH VIEW															3	0	0	0
SE SE SOUTHEAST									1	0	1	**0**	0	0				
SW SW SOUTHWEST - LP															0	0	0	0
SW SW SOUTHWEST - HENDE									2	3	0	**0**	0	1				
ABSENTEE MAIL	0	0	0	0	0	0	0	0	4	3	1	**0**	0	0	0	0	0	0
PROVISIONAL	0	0	0	0	0	0	0	0	0	0	0	**0**	0	0	0	0	0	0
CURBSIDE	0	0	0	0	0	0	0	0	4	3	5	**0**	0	0	0	0	0	0
TOTALS	67	2	0	5	69	2	0	3	485	308	428	**6**	0	117	159	5	0	1

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	0008_LAUREL PARK COUNCIL					0009_MILLS RIVER COUNCIL AT-LG					0011_SALUDA COMMISSIONER					
	George W. Banta	Robert Vickery	WRITE-IN	OVER VOTES	UNDER VOTES	Wayne	S. Carland	Roger Snyder	WRITE-IN	OVER VOTES	UNDER VOTES	Karen Bultman	Leon Morgan	Stanley Walker	WRITE-IN	OVER VOTES	UNDER VOTES
EV EV ETOWAH VALLEY							1	1	1	0	1						
LP LP LAUREL PARK	154	151	8	0	11												
NM NM NORTH MILLS RIVER							45	41	0	0	8						
PV PV PISGAH VIEW	3	3	0	0	0												
RR RR RAVEN ROCK												0	0	2	2	0	0
SM SM SOUTH MILLS RIVER							21	22	6	0	7						
SW SW SOUTHWEST - LP	0	0	0	0	0												
ABSENTEE MAIL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PROVISIONAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CURBSIDE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS	157	154	8	0	11	67	64	7	0	16	0	0	2	2	0	0	

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Sam Fritschner

Department: Legal

Date Submitted: 23 November 2015

Presenter: Sam Fritschner

Date of Council Meeting to consider this item: 3 December 2015

Nature of Item: Council Action

Summary of Information/Request: **Item #** 10d

At its November meeting the City Council indicated an interest in amending the City Code to permit the personal keeping of certain pigs within the City.

The attached proposed ordinance would amend section 10-42, which currently prohibits the keeping of swine within the City, to permit the keeping of miniature pigs.

The 100-lb. weight limit is one suggested by staff but the actual number will of course be determined by the City Council. Miniature pigs according to our research may weigh up to 150 pounds when fully grown.

Staff has done a certain amount of research on miniature pigs and will be available to answer questions.

Budget Impact: $ 0 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 move Council to adopt the ordinance amending Code Section 10-42 respecting the keeping of swine.

Attachments:

Proposed ordinance

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Ordinance #15-____

AN ORDINANCE AMENDING SECTION 10-42 OF THE CODE OF ORDINANCES REGARDING THE KEEPING OF SWINE WITHIN THE CITY

WHEREAS, the City Council has previously determined that swine shall not be kept within the City, and

WHEREAS, the City Council has subsequently determined that the keeping of certain smaller swine is not likely to injure the public health, safety and welfare,

NOW, THEREFORE, be it ordained by the City Council of the City of Hendersonville:

SECTION 1. Section 10-42 of the Hendersonville Code of Ordinances is hereby amended to read in its entirety as follows:

Section 10-42. Swine

It shall be unlawful for any person to keep any hogs or other swine within the city <u>with the exception of miniature pigs weighing not more than 100 pounds kept as household pets. Only one such miniature pig shall be kept in any household. Such pigs shall be kept in a restrained area and shall not be permitted to run at large. Any outside area occupied by a miniature pig shall be regularly sanitized and kept free from waste. No such area shall be allowed to become muddy or unsanitary</u>.

SECTION 2. SEVERABILITY. If any provision of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the remaining provisions of this ordinance.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this fifth day of November 2015.

_____

Barbara Volk, Mayor

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brent Detwiler

Department: Engineering

Date Submitted: 11/24/15

Presenter: Brent Detwiler

Date of Council Meeting to consider this item: 12/3/15

Nature of Item: Council Action

Summary of Information/Request: **Item #** 05e

Hazen and Sawyer recently completed a hydraulic model of the City's water distribution system. This model is useful in determining available flows and pressures throughout the system. The next step in the process is using this model, planning and growth data to complete a water system master plan. The master plan will be used to size future line extensions in order to supply water to growth areas, eliminate existing deficiencies in the system and to plan for capital improvements.

City staff has asked Hazen and Sawyer to provide a proposal to complete this project as a continuation of their water modeling contract. The proposal is attached and we welcome any questions that you may have.

Budget Impact: $ 101,200.00 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

This project will be funded by shifting funds from the Repair and Maintenance of Line Account into Professional Services. A line item budget adjustment will be forthcoming.

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

I hereby move to approve the proposal from Hazen and Sawyer for completion of a Water System Master Plan and to authorize the City Manager to execute a contract for said work; as presented and recommended by staff.

Attachments:

Hazen and Sawyer Proposal for Water System Master Plan

Return to Agenda

Hazen and Sawyer
629 Green Valley Road, Suite 200, Greensboro, NC 27408

October 27, 2015

Mr. Brent Detwiler, PE
City Engineer
City of Hendersonville
305 Williams Street
Hendersonville, NC 28782

Re: Proposal for Water System Master Plan

Dear Mr. Detwiler:

Hazen and Sawyer is pleased to submit this revised proposal for developing a water system master plan. This project will build on our previous modeling work and help the city plan capital improvements.

Background Information

Hendersonville's water system supplies approximately 62,000 people. The distribution system includes about 640 miles of main ranging from 2-inch pipes to 24-inch transmission mains. Some parts of the system were installed prior to 1950; consequently, a significant number of water mains are unlined cast iron pipes. Average day demand is approximately 7 mgd.

A 12 mgd water treatment plant about 8 miles northwest of the city supplies the system from the Mills River and two other sources in the Pisgah National Forest. The city upgraded the 1963 plant in 2010 and plans to replace the high service pumps in the near future. Pumped water flows to the central part of the distribution system through two transmission mains, a 16-inch pipe installed in the 1920s and a 24-inch pipe installed in the 1960s.

The main pressure zone includes the 10 mg Ewart Hill Reservoirs that overflow at 2335 feet above sea level. The main zone also includes the 1 mg Fletcher Tank which overflows at 2303 feet.

A boosted pressure zone in the eastern part of the system includes a 1.5 mg tank with an overflow elevation of 2476 feet. The Eastside Pump Station boosts water into this zone from the main zone.

The distribution system includes many small boosted pressure zones serving high ground elevations. Fifteen of these boosted zones include small storage tanks, some of which are hydro-pneumatic.

The city selected Hazen and Sawyer to build a hydraulic model of the distribution system. The model includes all water mains in the city's GIS, as well as the Laurel Park area. Model demands are linked to customer billing records. Calibration included checking the model using field tests and SCADA records.

The proposed master plan project will use the new model to plan capital improvements that will eliminate existing deficiencies and supply growth areas. We propose the following scope for review by city staff.

Hazen

October 27, 2015

Scope of Work

1. **Meet with city staff.** This task will include an initial meeting to review the scope and request needed information, three progress meetings/webcasts at 50%, 75% and 90% project milestones, and a final presentation/meeting to City Council.

2. **Field tests.** We propose a field test to resolve a model calibration discrepancy on the discharge side of Eastside Pump Station. The test will consist of flow and pressure measurements using test equipment provided by Hazen and Sawyer.

3. **Evaluate water age**. This task will map water age for existing system operation. The model will predict water age based on a 30-day simulation of existing average daily demand using current pump controls and operating procedures. The map will highlight areas where water age is excessive. DBP sampling sites will be plotted on the map in order to estimate water age at each site.

   Hazen and Sawyer will make recommendations to improve operations and reduce water age in problem areas, especially those near DBP sampling sites. Possible recommendations include automatic flushing, bleeding water at zone boundaries, increasing tank turnover, improving circulation, and changing operating methods.

   This task also will include planning uni-directional flushing (UDF) for approximately 50 miles of water main in water quality problems areas. This method of flushing uses a separate software module to plan valve operations that induce high velocities in water mains for thorough scouring.

4. **Identify existing deficiencies.** The calibrated model will simulate peak hour demand for existing maximum day conditions to identify low pressure areas. Areas with deficient fire flows will be identified by comparing the fire flow map from previous projects with zoning maps and information provided by the City and outside fire departments about needed flows for major fire hazards. Pump and storage deficiencies will be identified by comparing existing pump and tank capacity in each pressure zone to existing maximum day demands and requirements for equalizing and fire storage. Recommendations will be developed for eliminating existing deficiencies.

5. **Estimate future demands.** This task will include projecting water demands to the year 2035. Hazen and Sawyer will work with utility staff and the Hendersonville and Henderson County planning departments to delineate the extent of the future service area. Using population projections for traffic analysis zones (TAZs) developed by the French Broad River Metropolitan Planning Organization, we will estimate the future population of the water system service area. Per capita demands will be estimated using past production and census records, as well as billing data from previous modeling projects. Using this information, we will tabulate future water demands in 5-year increments to 2035, for the system as a whole and in each pressure zone.

   Demand projections will include average day, maximum day, maximum day plus fire, and peak hour demands for the system as a whole. Average day projections will reflect population growth for TAZs within the service area and per capita usage trends with allowances for commercial demand and non-revenue water. We will work with city staff to develop allowances for future industrial development.

Maximum day projections will consider recent peaking factors and irrigation trends. Peak hour projections will be based on diurnal patterns developed in previous modeling projects.

We will present preliminary projections to city staff to obtain their input and prepare a technical memo summarizing water demands before modeling future conditions.

6. **Evaluate pump and tank capacity.** This task will include evaluating future pump and storage capacity in each pressure zone. We will evaluate the pumps supplying each pressure zone by comparing existing firm pump capacity with projected maximum day demands. The storage evaluation will compare existing tank capacities to future requirements for equalizing diurnal demands, sustaining fire flows and meeting state guidelines for emergency storage.

7. **Test improvements to eliminate deficiencies.** Hydraulic modeling will simulate future demand conditions. Predicted pressures without improvements will be compared with design criteria agreed upon with city staff. After identifying deficiencies, the model will test improvement alternatives and identify cost-effective methods of supplying future demands, meeting design criteria and maintaining water quality. Zone boundaries will be expanded and adjusted as needed to provide satisfactory pressures throughout the service area. Proposed improvements will take full advantage of the existing system to minimize costs. Preliminary improvement recommendations will be presented to city staff for review.

8. **Develop CIP.** The city's existing capital improvements plan will be reviewed and adjusted based on the modeling results and discussions with city staff. Proposed improvements will be reviewed for constructability and coordinated with paving schedules and other planning information made available by city staff. Descriptions of CIP projects will include demand triggers and links to other projects where appropriate. A color-coded map will summarize each phase of the proposed program of construction. The updated CIP will include detailed project sheets for the first phase of improvements and planning level cost estimates for long range improvements. Cost estimates will include construction, land acquisition, contingencies, engineering, legal and administrative costs. Recommendations will be summarized by pressure zone.

9. **Prepare final report**. At the conclusion of the project, Hazen and Sawyer will prepare a report that summarizes the field tests and documents existing deficiencies. The report will tabulate past, present and future demands and summarize the findings from computer simulations. Proposed pumps, tanks and pipelines will be explained and justified. A draft version of the report will summarize the recommended CIP in tables and maps. Hazen will respond to review comments by city staff and prepare five paper copies of the final report, as well as an electronic version in pdf format.

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Hazen

October 27, 2015

Proposed Fee

We propose billing at the following rates, which will remain in effect through June 30, 2016:

$ 90.00 per hour for Assistant Engineers
$135.00 per hour for Field Coordinators
$145.00 per hour for Principal Engineers
$165.00 per hour for Associates
$225.00 per hour for Senior Associates
$ 50.00 per hour for engineering interns and technical editors

After July 1, 2016, hourly rates will be adjusted to reflect increases in labor costs, which will not exceed three percent. Expenses will be billed at cost, including travel expenses at mileage rates approved by the IRS, currently $0.575 per mile. The total fee will not exceed ONE HUNDRED ONE THOUSAND TWO HUNDRED DOLLARS ($101,200.00) without further authorization.

The fee is based on the following estimates per task:

$13,500 for meetings and presentations
$ 4,200 for conducting field tests
$12,300 for evaluating water age and planning UDF
$ 7,200 for identifying existing deficiencies and recommending improvements
$16,800 for estimating future demands
$ 3,700 for evaluating pump and tank capacity
$14,900 for testing improvements to eliminate deficiencies
$11,200 for developing the CIP
$17,400 for preparing the final report

Schedule

We can schedule this project to begin in the fourth quarter of 2015 and estimate completion by December 31, 2016.

Please call if you have any questions about our proposal. We look forward to working with you.

Very Truly Yours,
HAZEN AND SAWYER, P.C.

Jeffrey R. Cruickshank
Senior Associate

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

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Submitted By: Lee Smith
Department: Water/Sewer
Date Submitted: 11/24/2015
Presenter: Lee Smith
Date of Council Meeting to consider this item: December 3, 2015
Nature of Item: Council Action

Summary of Information/Request: **Item #** 10f

Requesting approval for attached invoice received from the NCDOT for payment in the amount of $213,760.50 associated with Utility Agreement executed on November 2, 2012 upon receiving city council approval to do so on Thursday, November 1, 2012. Staff is hereby recommending payment of this invoice and would request that funding be provided from the water and sewer fund cash reserve account.

Budget Impact: $ 214,000.00 Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

This expenditure was approved by City Council on Thursday, November 1, 2012 during their regularly scheduled meeting.

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

I move to authorize the city manager to approve the transfer of funds from the water and sewer fund cash reserve account to an account deemed appropriate by the finance department required to pay the NCDOT invoice in the amount of $213,760.50 and further, to authorize the utilities director to submit payment for the invoice in the same amount to the NCDOT associated with the utility agreement for NCDOT Project R-5207-A (Howard Gap Rd. Bridge Improvements) which included water main improvements along the portion of Howard Gap Road affected by this project.

Attachments:

NCDOT Invoice associated with NCDOT Project R-5207A
Correspondence between City staff and NCDOT
Utility Agreement for Project R-5207A
Agenda Item Request for November 1, 2012 City Council Meeting

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STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

NICHOLAS J. TENNYSON
SECRETARY

Invoice

Bill To:

CITY OF HENDERSONVILLE
305 WILLIAMS STREET
HENDERSONVILLE NC 28792

Order Information

Customer Number:	70892
Invoice Number:	90553807
Purchase Order #:	004755-001_5798_0001
Purchase Order Date:	12/17/2012
Sales Order Number:	500221
Payment Terms:	Net due 60 days
Billing Date:	08/31/2015
Due Date:	10/30/2015

Remit To:
North Carolina Department of Transportation
Fiscal Section - Accounts Receivable Unit
1514 Mail Service Center
Raleigh, North Carolina 27699-1514

Contact Person: Earl Jones
Phone: 919-707-4212
Fax: 919-715-8718
Internet: eljones@ncdot.gov

Invoice Details

Item	Description	Quantity	Unit Price	Amount
0010	Municipal Participation Reimbursement . UTILITY AGREEMENT EXECUTED 12/17/12 WITH THE CITY OF HENDERSONVILLE CONSISTING OF IMPROVEMENTS ALONG HOWARD GAP ROAD (SR1006) FROM US64 TO BRIDGE NO. 20. SPECIFICALLY, ADJUSTMENT AND RELOCATION OF WATER LINES ALONG PROJECT R-5207A IN HENDERSON COUNTY. . AGREEMENT COSTS TOTAL $213,760.50 PER ATTACHED 8/6/15 E-MAIL AND ITEMIZATION OF BILLABLE MUNICIPAL PARTICIPATION COSTS RECEIVED FROM WANDA AUSTIN, DIVISION CONTRACT OFFICER FOR NCDOT DIVISION 14.	1 EA	213,760.50	213,760.50
	Total Amount Due			$ 213,760.50

RECEIVED
SEP - 3 2015
City of Hendersonville, NC
Water & Sewer Department

Please return the attached copy of this invoice to ensure proper credit for your payment. Remittances should be made payable to N.C. Department of Transportation.

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Jones, Earl L

From: Austin, Wanda H
Sent: Thursday, August 06, 2015 2:19 PM
To: Jones, Earl L
Subject: FW: another spreadsheet
Attachments: 20150805084421483.pdf

R-5207A is ready to invoice.

From: Leeds, David
Sent: Wednesday, August 05, 2015 9:08 AM
To: Austin, Wanda H
Cc: Powell, Aaron C; Cannon, Steven L
Subject: RE: another spreadsheet

Wanda,

Attached are the quantities for the utilities on the Howard Gap Road project C203138 R-5207A. The utility work has been completed so these are the final quantities for that work. The items to be paid by the City are highlighted. Please let me know if you need anything else. Thanks

David Leeds
Assistant Resident Engineer
NCDOT – Mills River Construction
Office: 828-891-5367
Cell: 828-450-4278

From: Austin, Wanda H
Sent: Friday, July 31, 2015 4:25 PM
To: Leeds, David
Cc: Cannon, Steven L; Powell, Aaron C
Subject: RE: another spreadsheet

If the water line was constructed by our contractor then we need to bill the city. That is the reason for needing the quantities, so we will know what to invoice.

From: Leeds, David
Sent: Friday, July 31, 2015 1:59 PM
To: Austin, Wanda H
Cc: Cannon, Steven L; Powell, Aaron C
Subject: RE: another spreadsheet

I'm only showing the supplemental agreement items for the Howard Gap R-5207A water line as non participating in HiCAMS. I was under the impression that all the water line for that project was being paid by the City. Please clarify this for me. Thanks

David Leeds
Assistant Resident Engineer
NCDOT – Mills River Construction
Office: 828-891-5367

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Cell: 828-450-4278

From: Cannon, Steven L
Sent: Thursday, July 30, 2015 9:05 PM
To: Leeds, David
Subject: FW: another spreadsheet

David,

Green highlighted copy attached.

Sincerely,
Steve Cannon, PE
NCDOT
District Engineer

4142 Haywood Rd
Mills River, NC 28759
Ph (828) 891-7911
Fax (828) 891-5026

From: Cannon, Steven L
Sent: Thursday, July 30, 2015 9:01 PM
To: Austin, Wanda H; Leeds, David
Subject: RE: another spreadsheet

Wanda,

I've attached a revised copy of the spreadsheet for District I. I cannot determine which project the one with no WBS is in regards to. Can you provide the copy of the agreement for this one?

David, please let us know the status of the two highlighted in green. If complete we will need to provide Wanda with a line item costs. I've attached the agreement for the Upward Rd sidewalk.

Sincerely,
Steve Cannon, PE
NCDOT
District Engineer

4142 Haywood Rd
Mills River, NC 28759
Ph (828) 891-7911
Fax (828) 891-5026

Return to Agenda

From: Austin, Wanda H
Sent: Wednesday, July 29, 2015 3:08 PM
To: Grindstaff, Wesley T; Woodard, Jonathan L; Cannon, Steven L
Subject: another spreadsheet

I promise this is the last spreadsheet for July. Please look at the projects and let me know if the utility or sidewalk construction is completed. If completed I will need a line item cost to bill the municipality. Thank you.

Wanda H. Austin, PE CPM
253 Webster Road
Sylva, NC 28779
(828) 586-2141 office

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North Carolina Department of Transportation
Contract Monthly Estimate
07/09/2015

Contract: C203138 WBS: 45393.3.2 Federal Aid: Div: 14 Counties: Henderson

Estimate: 26 From: 06/08/2015 Thru: 07/07/2015 Res Eng: Aaron Powell, PE

Contractor: NHM CONSTRUCTORS, LLC
P.O. Box 6385
ASHEVILLE NC 28816

Contract Description: TIP# R-5207A GRADING, DRAINAGE, PAVING, SIGNALS, AND STRUCTURE. SR-1006 (HOWARD GAP RD) FROM US-64 TO BRIDGE #20.

Bonding Company: Philadelphia Indemnity Insurance Company

Length: 3.009

Date Bids Opened:	05/21/2013	Contract Calendar Days:	1048	Remarks:
Date of Availability:	07/01/2013	Revised Calendar Days:		
Completion Date:	05/13/2016	Curr Calendar Days Used:	30	
Revised Completion Date:		Previous Cal Days Used:	707	
Date Project Accepted:		Cal Days Used to Date:	737	
Contract Amount:	$7,831,079.81	Percent Complete:	97.46	
Supplemental Amount:	$110,537.40	% Complete By Progress Chart:	89.00	
		% Overrun/Underrun to Date:	4.31	

	Participating	Non-Participating	Total
Contract Line Items:	$7,995,805.40	$13,223.00	$8,009,028.40
Material Prepayments:	$0.00	$0.00	$0.00
Fuel Adjustments:	($47,700.82)	$0.00	($47,700.82)
Total Estimate:	$7,948,104.58	$13,223.00	$7,961,327.58
Less Retainage:	$0.00	$0.00	$0.00
Less Assessed Liq Damages:	$0.00	$0.00	$0.00
Less Previous Payments:	$7,429,382.26	$13,223.00	$7,442,605.26
Amount of Estimate:	$518,722.32	$0.00	$518,722.32
		Payable to Contractor:	$518,722.32

I hereby certify that, to the best of my knowledge,
this estimate is correct, due and unpaid:

_____ State Construction Engineer

North Carolina Department of Transportation
Contract Monthly Estimate
07/09/2015

Contract: C203138 WBS: 45393.3.2 Estimate: 26 From: 06/08/2015 Thru: 07/07/2015

Line	N P	Contract Adj	Description	Unit of Measure	Plan Quantity	Unit Price	Current Quantity	Previous Quantity	Total Quantity	Total Amount
105			FLASHING ARROW BOARD	EA	2.000	$4.972.0000	1.000	1.000	2.000	$9,944.00
106			PORTABLE CHANGE MSG SIGN	EA	2.000	$17,930.0000	0.000	2.000	2.000	$35,860.00
107			DRUMS	EA	872.000	$52.8000	0.000	872.000	872.000	$46,041.60
108			CONES	EA	60.000	$22.6000	0.000	60.000	60.000	$1,356.00
109			BARRICADES (TYPE III)	LF	160.000	$25.4000	0.000	64.000	64.000	$1,625.60
110			FLAGGER	HR	10,800.000	$21.5000	769.000	7,872.500	8,641.500	$185,792.25
111			TMA	EA	2.000	$4,400.0000	1.000	1.000	2.000	$8,800.00
113			TEMP RAISED PVMT MRKS	EA	400.000	$6.6000	0.000	22.000	22.000	$145.20
120			PAINT PVMT MARKINGS 4"	LF	68,008.000	$0.2000	461.000	118,224.000	118,685.000	$23,737.00
121			PAINT PVMT MARKINGS 8"	LF	371.000	$0.4000	0.000	401.600	401.600	$160.64
122			PAINT PVT MKG LINES 24"	LF	263.000	$1.6000	0.000	268.000	268.000	$428.80
123			PAINT PVT MKG SYMBOL	EA	24.000	$42.0000	0.000	25.000	25.000	$1,050.00
124			LINE REMOVAL 4" WIDE	LF	2,400.000	$1.1000	0.000	2,531.000	2,531.000	$2,784.10
127			6" WATER LINE	LF	100.000	$60.9000	0.000	90.000	90.000	$5,481.00
128			12" WATER LINE	LF	938.000	$75.6000	0.000	946.000	946.000	$71,517.60
129			16" WATER LINE	LF	178.000	$210.1000	0.000	151.000	151.000	$31,725.10
130			8" VALVE	EA	3.000	$1,470.6000	0.000	1.000	1.000	$1,470.60
131			12" VALVE	EA	3.000	$2,731.0000	0.000	2.000	2.000	$5,462.00
132			16" VALVE	EA	3.000	$8,403.2000	0.000	3.000	3.000	$25,209.60
133			RELOCATE WATER METER	EA	7.000	$525.2000	0.000	8.000	8.000	$4,201.60
134			RELOCATE FIRE HYDRANT	EA	3.000	$2,626.0000	0.000	4.000	4.000	$10,504.00
135			4" FORCE MAIN SEWER	LF	415.000	$47.3000	0.000	420.000	420.000	$19,866.00
142			TEMPORARY SILT FENCE	LF	21,710.000	$2.8000	0.000	10,952.100	10,952.100	$30,665.88
143			EROS CONTRL STONE CL A	TON	1,800.000	$38.5000	-13.280	792.940	779.660	$30,016.91
144			EROS CONTRL STONE CL B	TON	3,150.000	$43.1000	0.000	246.740	246.740	$10,634.49
145			SEDIMENT CONTROL STONE	TON	1,010.000	$34.8000	0.000	470.220	470.220	$16,363.66
146			TEMPORARY MULCHING	ACR	18.000	$630.2000	1.259	16.663	17.922	$11,294.44
147			SEED FOR TEMP SEEDING	LB	450.000	$3.2000	0.000	808.550	808.550	$2,587.36
148			FERT FOR TEMP SEEDING	TON	1.750	$1,260.5000	0.000	3.267	3.267	$4,118.05
* 149			TEMPORARY SLOPE DRAINS	LF	200.000	$8.3000	0.000	684.000	684.000	$5,677.20
* 150			SAFETY FENCE	LF	900.000	$3.1000	0.000	3,206.000	3,206.000	$9,938.60
151			SILT EXCAVATION	CY	4,510.000	$8.6000	3.400	1,449.020	1,452.420	$12,490.81

* indicates a minor line item which has overrun by more than 100%
** indicates a major line item which has overrun by more than 15%

North Carolina Department of Transportation
Contract Monthly Estimate
07/09/2015

Contract: C203138 WBS: 45393.3.2 Estimate: 26 From: 06/08/2015 Thru: 07/07/2015

Line	N P	Contract Adj	Description	Unit of Measure	Plan Quantity	Unit Price	Current Quantity	Previous Quantity	Total Quantity	Total Amount
188			PILE EXCAVATION IN SOIL	LF	69.000	$460.0000	0.000	48.190	48.190	$22,167.40
189			PILE EXCAVATION NOT IN SOIL	LF	71.000	$460.0000	0.000	71.580	71.580	$32,926.80
190			UNCL STR EXCAV STA ***** [(51+40.50-L-)]	LS	1.000	$4,100.0000	0.000	1.000	1.000	$4,100.00
191			UNCL STR EXCAV STA ***** [(71+24.00-L-)]	LS	1.000	$4,800.0000	0.000	1.000	1.000	$4,800.00
192			CLASS A CONCRETE (BRIDGE)	CY	112.000	$1,000.0000	0.000	111.400	111.400	$111,400.00
193			BRG APPR SLAB ********** [(51+40.50-L-)]	LS	1.000	$41,500.0000	0.000	1.000	1.000	$41,500.00
194			BRG APPR SLAB ********** [(71+24.00-L-)]	LS	1.000	$41,500.0000	0.000	1.000	1.000	$41,500.00
195			REINF STEEL (BRIDGE)	LB	16,656.000	$1.0000	0.000	16,656.000	16,656.000	$16,656.00
196			HP12X53 PILES	LF	980.000	$45.0000	0.000	891.770	891.770	$40,129.65
197			PP18X0.50 GALV STL PILE	LF	880.000	$88.0000	0.000	857.930	857.930	$75,497.84
198			STEEL PILE POINTS	EA	44.000	$170.0000	0.000	37.000	37.000	$6,290.00
199			TWO BAR METAL RAIL	LF	288.100	$142.0000	0.000	287.440	287.440	$40,816.48
200			1'-***"X*****"CONC PARAPET [(1'-2 X 2'-9")]	LF	210.600	$105.0000	0.000	210.600	210.600	$22,113.00
201			1'-***"X*****"CONC PARAPET [(1'-2" X 2'-10 1/2")]	LF	110.000	$135.0000	0.000	110.000	110.000	$14,850.00
202			RIP RAP II (2'-0")	TON	468.000	$40.0000	0.000	341.870	341.870	$13,674.80
203			GEOTEXTILE FOR DRAINAGE	SY	520.000	$5.5000	0.000	544.180	544.180	$2,992.99
204			ELASTOMERIC BEARINGS	LS	1.000	$12,500.0000	0.000	1.000	1.000	$12,500.00
205			3'-0"X 1'-9"PRESTR SLABS	LF	2,080.000	$140.0000	0.000	2,080.000	2,080.000	$291,200.00
206		SA1	Frame w/ Cover, Std. 840.54	EA	1.000	$385.0000	0.000	1.000	1.000	$385.00
207		SA2	Trenchless Installation of 30" Pipe	LF	80.000	$130.0000	0.000	70.000	70.000	$9,100.00
208		SA3	Undercut Excavation	CY	1,475.000	$14.5000	0.000	2,678.590	2,678.590	$38,839.56
* 209		SA3	Geotextile for Soil Stabilization	SY	1,990.000	$4.0000	0.000	9,082.090	9,082.090	$36,328.36
210		SA4	16" Water Line Stop	EA	1.000	$16,000.0000	0.000	1.000	1.000	$16,000.00
211		SA5	Guardrail WTR Transition Section	EA	2.000	$235.0000	0.000	2.000	2.000	$470.00
212		SA6	18" CS Pipe Elbows, 0.064" Thick	EA	1.000	$885.0000	0.000	1.000	1.000	$885.00
* 213		SA6	4" Corrugated Plastic Outlet Pipe	LF	100.000	$10.0000	0.000	445.000	445.000	$4,450.00
214		SA7	24" Corrugated Steel Pipe Elbow	EA	1.000	$825.0000	0.000	1.000	1.000	$825.00
215	1	SA7	12" Tie-In to Existing Water Line	EA	2.000	$3,104.0000	0.000	2.000	2.000	$6,208.00
216	1	SA7	16" X 12" Tapping Valve & Sleeve	LS	1.000	$5,962.7500	0.000	1.000	1.000	$5,962.75
217	1	SA7	Labor for Installation of 16" X 12" Tapping Valve & Sleev	LS	1.000	$1,052.2500	0.000	1.000	1.000	$1,052.25
218		SA8	2" Risers with Weatherheads & Elec. Service Wire	EA	3.000	$785.0000	0.000	3.000	3.000	$2,355.00
219		SA9	Guardrail Anchor Unit, Type 350 TL-2	EA	1.000	$1,850.0000	0.000	2.000	2.000	$3,700.00

* indicates a minor line item which has overrun by more than 100%
** indicates a major line item which has overrun by more than 15%

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Fuller, Alvin

From: Austin, Wanda H <whaustin@ncdot.gov>
Sent: Friday, October 02, 2015 11:53 AM
To: Fuller, Alvin; Leeds, David; Powell, Aaron C; Jones, Earl L
Cc: Detwiler, Brent; Smith, Lee; Williams, Paul; Sexton, Tim
Subject: RE: Howard Gap Road Widening Project - Invoice #90553807

Mr. Fuller,

The line stop may have been used as a tool; however, the fact remains it was used for the sole purpose of relocating the existing water line. Under the agreement, the City of Hendersonville is responsible for all costs.

From: Fuller, Alvin [mailto:afuller@hvlnc.gov]
Sent: Friday, October 02, 2015 8:21 AM
To: Austin, Wanda H; Leeds, David; Powell, Aaron C; Jones, Earl L
Cc: Detwiler, Brent; Smith, Lee; Williams, Paul; Sexton, Tim
Subject: RE: Howard Gap Road Widening Project - Invoice #90553807

Ms. Austin,

Thank you for your timely response. I respectfully disagree with your assessment of this situation. According to COH staff, the line stop was suggested as possible solution to the problem of interrupting the service of approximately 300 water customers as stated below. It **was not** a request of the city of Hendersonville. The line stop is not an operable fixture and was only used as a tool used to relocate the existing water line, hence the meeting request solicited by your office prior to its installation. The city of Hendersonville gained no new infrastructure because of its use.

I would like to schedule a meeting with you and members of your staff to discuss this issue. Please email me a few times and dates that would be convenient for you to meet with us. I look forward to meeting you.

Sincerely,

Alvin Fuller Jr., PE
Utilities Engineer
305 Williams St.
Hendersonville, NC 28972
(828) 233-2307 (office)
(828) 243-4430 (mobile)
afuller@hvlnc.gov

Hendersonville Water Sewer

From: Austin, Wanda H [mailto:whaustin@ncdot.gov]
Sent: Wednesday, September 30, 2015 12:47 PM
To: Fuller, Alvin <afuller@hvlnc.gov>; Leeds, David <pdleeds@ncdot.gov>; Powell, Aaron C <apowell@ncdot.gov>; Jones, Earl L <eljones@ncdot.gov>

Return to Agenda

Fuller, Alvin

From: Fuller, Alvin
Sent: Friday, October 02, 2015 8:21 AM
To: 'Austin, Wanda H'; Leeds, David; Powell, Aaron C; Jones, Earl L
Cc: Detwiler, Brent; Smith, Lee; Williams, Paul; Sexton, Tim
Subject: RE: Howard Gap Road Widening Project - Invoice #90553807

Ms. Austin,

Thank you for your timely response. I respectfully disagree with your assessment of this situation. According to COH staff, the line stop was suggested as possible solution to the problem of interrupting the service of approximately 300 water customers as stated below. It **was not** a request of the city of Hendersonville. The line stop is not an operable fixture and was only used as a tool used to relocate the existing water line, hence the meeting request solicited by your office prior to its installation. The city of Hendersonville gained no new infrastructure because of its use.

I would like to schedule a meeting with you and members of your staff to discuss this issue. Please email me a few times and dates that would be convenient for you to meet with us. I look forward to meeting you.

Sincerely,

Alvin Fuller Jr., PE
Utilities Engineer
305 Williams St.
Hendersonville, NC 28972
(828) 233-2307 (office)
(828) 243-4430 (mobile)
afuller@hvlnc.gov

Hendersonville Water Sewer

From: Austin, Wanda H [mailto:whaustin@ncdot.gov]
Sent: Wednesday, September 30, 2015 12:47 PM
To: Fuller, Alvin <afuller@hvlnc.gov>; Leeds, David <pdleeds@ncdot.gov>; Powell, Aaron C <apowell@ncdot.gov>; Jones, Earl L <eljones@ncdot.gov>
Cc: Detwiler, Brent <bdetwiler@hvlnc.gov>; Smith, Lee <lsmith@hvlnc.gov>; Williams, Paul <pwilliams@hvlnc.gov>; Sexton, Tim <tsexton@hvlnc.gov>
Subject: RE: Howard Gap Road Widening Project - Invoice #90553807

Good afternoon. I have reviewed the agreement #3539 for the costs of the water line under the Howard Gap Road Widening; NCDOT contract C203138. The agreement is attached for your reference. According to item 2D, any cost incurred due to additional utility work requested by the Municipality after the award of the contract shall be the sole responsibility of the Municipality. The issue falls within this guidelines; therefore, would be the responsibility of Hendersonville.

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From: Fuller, Alvin [mailto:afuller@hvlnc.gov]
Sent: Friday, September 25, 2015 3:31 PM
To: Austin, Wanda H; Leeds, David; Powell, Aaron C; Jones, Earl L
Cc: Detwiler, Brent; Smith, Lee; Williams, Paul; Sexton, Tim
Subject: Howard Gap Road Widening Project - Invoice #90553807

Ms. Austin,

My name is Alvin Fuller, City of Hendersonville – Utilities Engineer. I am contacting you regarding the **Howard Gap Road Widening project, Invoice #90553807.** According to staff, in order to relocated an existing 16-inch water line along US 64 East, a decision was made during an on-site meeting, held on September 4, 2013, to install a 16-inch Hydrostop in lue of interrupting water service to approximately 300 customers, including a local Walmart store. Please find the attached email from Mr. David Leeds. Apparently there has been a misunderstanding in terms of who is financially responsible for this valve. It is the understanding of City of Hendersonville Water and Sewer staff, that the City assumed no financial responsibility for this valve; however, it has been included in the above referenced invoice.

During a meeting yesterday to discuss this issue, Mr. Aaron Powell suggested that we contact Earle Jones to correct the invoice. Paul Williams and I called Mr. Jones this afternoon and were informed that he could not make any changes to this invoice without direction from you and/or Mr. Leeds. Please contact me at your earliest convenience so that we may resolve this matter. Thank you advance for your cooperation with this matter. I look forward to hearing from you.

Sincerely,

Alvin Fuller Jr., PE
Utilities Engineer
305 Williams St.
Hendersonville, NC 28972
(828) 233-2307 (office)
(828) 243-4430 (mobile)
afuller@hvlnc.gov

Hendersonville Water Sewer

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STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

January 4, 2013

Mr. Lee Smith
Utilities Director
City of Hendersonville
Operations Center
305 Williams St.
Hendersonville, NC 28793

Dear Mr. Smith:

SUBJECT: City of Hendersonville – Henderson County
Utility Agreement
Project: 45393.3.2 (R-5207A)
Executed: December 17, 2012

Attached is one (1) fully executed copy of the Utility Agreement for the contractor to adjust and relocate certain municipally-owned water lines.

Thank you for your assistance in the execution of this agreement. If you have any questions, please do not hesitate to email Mr. Gary McLamb, Sr. Utility Agent at gmclamb@ncdot.gov or call (919)707-7174.

Sincerely,

J. Robert Memory
State Utility Agent

JRM:gm
Enclosure
cc: Mr. J.B. Setzer, PE, Division Engineer (w/ copy of agreement and exhibits)
Mr. Aaron Powell, PE, Resident Engineer (w/ copy of agreement and exhibits)
Mr. Gary McLamb Utility Agent
Ms. Sheila Elliott, Contract Officer

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
UTILITIES UNIT
1555 MAIL SERVICE CENTER
RALEIGH NC 27699-1555

TELEPHONE: 919-250-4128
FAX: 919-250-4151

WEBSITE: WWW.NCDOT.ORG/DOH

LOCATION:
CENTURY CENTER COMPLEX
BUILDING B
1020 BIRCH RIDGE DRIVE
RALEIGH NC 27610

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NORTH CAROLINA

HENDERSON COUNTY

UTILITY AGREEMENT

DATE: 8/10/2012

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

Project: R-5207A

AND

WBS Elements: 45393.3.2

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";

W I T N E S S E T H:

WHEREAS, the Department has prepared and adopted plans to make certain street and highway improvements under Project R-5207A, in Henderson County, said plans consists of improvements along Howard Gap Rd. (SR1006) from US 64 to Bridge No.20; 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 R-5207A Henderson County, for the contractor to adjust and relocate water lines. Said work shall be accomplished in accordance with project special provisions attached hereto as Exhibit "A", cost estimate attached hereto as Exhibit "B" and the plan sheets attached hereto as Exhibit "C".

2. The Municipality shall be responsible for water lines cost as shown on the attached Exhibit "C". The estimated cost to the Municipality is $190,000.00 as shown on the attached Exhibit "B". 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 utility work, the Department shall submit an itemized invoice to the Municipality for cost 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 a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105.241.21.

D. 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.

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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).

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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:

BY: Tammie K. Drake

TITLE: City Clerk

CITY OF HENDERSONVILLE

BY: [signature]

TITLE: Utilities Director

DATE: 11/2/12

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 unanimous vote of the local governing body of the City of Hendersonville as attested to by the signature of Clerk of said governing body on 11.01.12 (Date)

(SEAL)

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

James W. Rudisill
(FINANCE OFFICER)

Federal Tax Identification Number

56-6001242

Remittance Address:

City of Hendersonville
305 Williams St.
Hendersonville, NC 28792

DEPARTMENT OF TRANSPORTATION

BY: [signature]
(CHIEF ENGINEER)

DATE: 12/17/12

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 12-6-12 (Date)

Return to Agenda

NORTH CAROLINA PROFESSIONAL SEAL 35018 ENGINEER JIMMY L. TERRY, JR. 8/3/12

EXHIBIT A

Project: TIP R-5207A
County: Henderson
August 3, 2012

PROJECT SPECIAL PROVISIONS
Utility Construction

All proposed utility construction shall meet the applicable requirements of the NC Department of Transportation's "Standard Specifications for Roads and Structures" dated January 2012.

Division 15 of the Standard Specifications is revised as follows:

Page 15-1, Insert New Paragraph After Paragraph 2 of Section 1500-2

The water and sewer lines along this project belong to the City of Hendersonville. Below is listed the utility owner with contact information along this project. Any work on these lines must be coordinated through the Engineer and the utility owner before commencement of any work.

City of Hendersonville – Mr. Dennis Frady – (828) 697-3073

Page 15-2, Revise Last Sentence of Paragraph 3 of Section 1500-7

Provide the Utility Owner and Engineer with 2 copies of surveyed As-Builts of both the water and sewer systems constructed.

Page 15-3, Insert New Paragraph After Paragraph 1 of Section 1500-9

Contractor shall notify the City of Hendersonville 7 business days in advance of performing any tie-in work. Contractor shall notify all affected customers 24 hours in advance of service interruptions. Contractor shall notify all affected critical facilities (i.e. hospitals, schools, medical facilities, etc.) 72 hours or more in advance of service interruption.

Page 15-2, Revise The Second Sentence in Paragraph 2 of Section 1500-9

The maximum interruption time for the City of Hendersonville water service is four (4) hours. Any additional time needed shall be approved by the City and the Engineer prior to beginning work.

Project: TIP R-5207A
County: Henderson
August 3, 2012

Division 10 of the Standard Specifications is revised as follows:

Page 10-57, Replace Paragraph 1 of Subsection A of Section 1034-4

All ductile iron pipe shall be Class 350 unless otherwise specified and shall be lined with cement mortar not less than 1/16 inch thick conforming to ANSI Specification A21.4.

Page 10-58, Replace Paragraph 1 of Section 1036-5

All ductile iron pipe shall be Class 350 unless otherwise specified and shall be lined with cement mortar not less than 1/16 inch thick conforming to ANSI Specification A21.4.

Compensation:

No direct payment will be made for utility construction work required by the preceding provisions, which are general requirements applying to utility construction, and all of the requirements stated will be considered incidental work, paid for at the contract unit prices of the various utility items included in the contract.

Return to Agenda

EXHIBIT B

R-5207A
CITY OF HENDERSONVILLE
WBS: 45393.3.2

ITEMIZED PROPOSAL						
LINE	SECTION	ITEM DESCRIPTION	QUANTITY	UNIT	PRICE	AMOUNT
	300	FOUNDATION CONDITIONING MATERIAL, MINOR STRUCTURES	120	TON		$0.00
	1505	CLASS B CONCRETE FOR ENCASING UTILITY LINES	1	CY		$0.00
	1510	6" WATER LINE	100	LF		$0.00
	1510	12" WATER LINE	938	LF		$0.00
	1510	16" WATER LINE	178	LF		$0.00
	1515	RELOCATE WATER METER	7	EA		$0.00
	1515	RELOCATE FIRE HYDRANT	3	EA		$0.00
	1515	8" VALVE	3	EA		$0.00
	1515	12" VALVE	3	EA		$0.00
	1515	16" VALVE	3	EA		$0.00
	1530	ABANDON 6" UTILITY PIPE	100	LF		$0.00
	1530	ABANDON 12" UTILITY PIPE	913	LF		$0.00
	1530	ABANDON 16" UTILITY PIPE	160	LF		$0.00
	1540	36" ENCASEMENT PIPE	84	LF		$0.00

TOTAL: $190,000.00

n to Agenda

T.I.P. NO.	SHEET NO.
R-5207A	UC-1

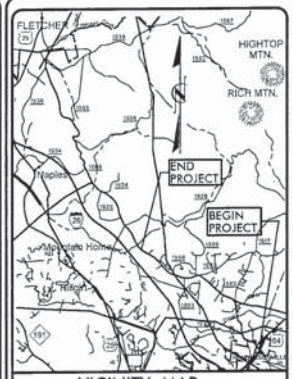
STATE OF NORTH CAROLINA
DIVISION OF HIGHWAYS

UTILITY CONSTRUCTION PLANS
HENDERSON COUNTY

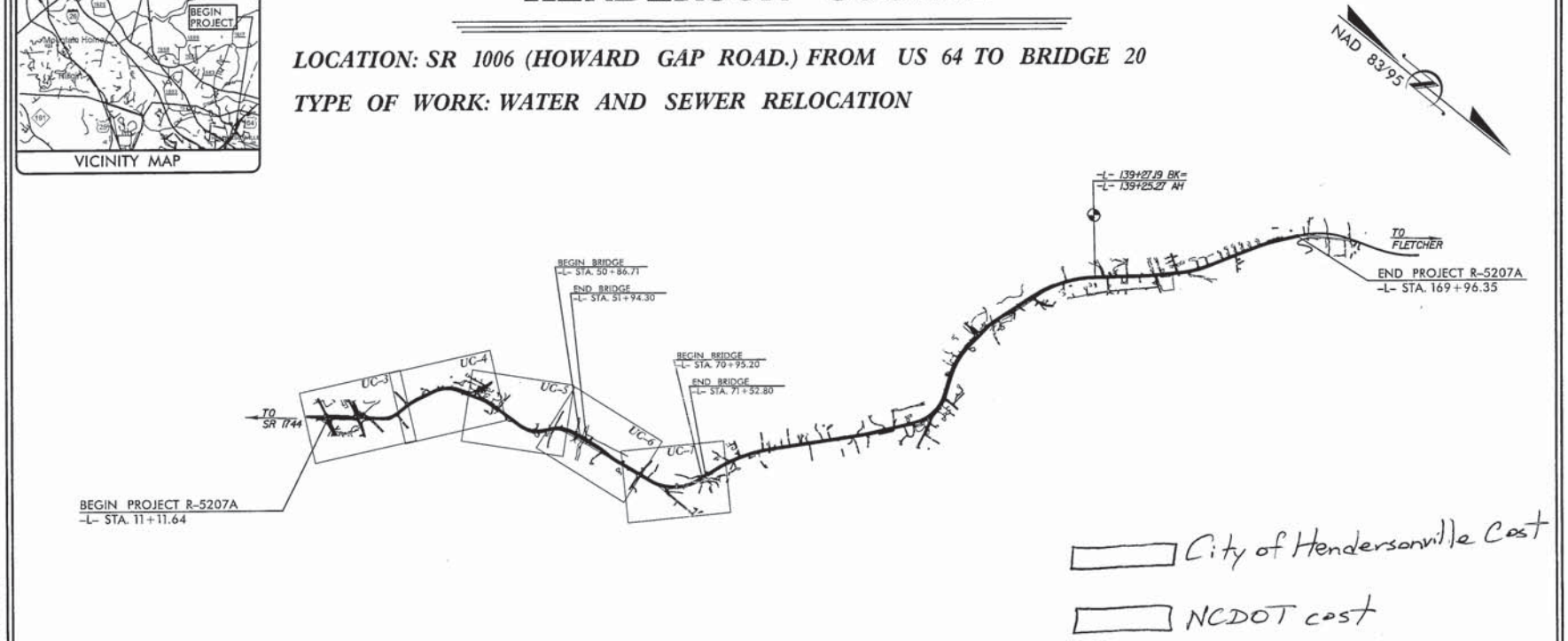
EXHIBIT C

LOCATION: SR 1006 (HOWARD GAP ROAD.) FROM US 64 TO BRIDGE 20

TYPE OF WORK: WATER AND SEWER RELOCATION



VICINITY MAP



GRAPHIC SCALES

50 25 0 50 100
PLANS

50 25 0 50 100
PROFILE (HORIZONTAL)

10 5 0 10 20
PROFILE (VERTICAL)

INDEX OF SHEETS

SHEET NO.	*DESCRIPTION*
UC-1	*TITLE SHEET*
UC-2	*SYMBOLOGY SHEET*
UC-3 THRU UC-7	*UTILITY CONSTRUCTION PLAN SHEETS*
UC-8	*PROFILE SHEETS*

WATER AND SEWER OWNER ON PROJECT

(1) WATER AND SANITARY SEWER - CITY OF HENDERSONVILLE

SEAL

NORTH CAROLINA PROFESSIONAL SEAL 35018 ENGINEER JIMMY L. TERRY
8/8/12

PLANS PREPARED BY:	*PLANS PREPARED FOR:*
TGS ENGINEERS *TGS ENGINEERS* *SUITE 141* *975 WALNUT STREET* *CARY, NC 27511* *PH (919) 319-8850*	*NCDOT DIVISION 14* *NCDOT Contact:* *RALPH CANNADY* *DIVISION CONTRACT OFFICER*
2012 STANDARD SPECIFICATIONS	JIMMY L. TERRY, PE *PROJECT ENGINEER* ANDREW COCHRANE, EI *DESIGN ENGINEER*

TIP PROJECT: R-5207A

CONTRACT: C203138

8/8/2012
$$$$$$$$SYSTIME$$$$$
$$$$$$$$$$$$$$$$DGN$$$$$$$$$$$$$$$$$$
$$$$$USERNAME$$$$

n to Agenda

PROJECT REFERENCE NO.	SHEET NO.
R-5207A	UC-2

STATE OF NORTH CAROLINA
DIVISION OF HIGHWAYS

UTILITIES PLAN SHEET SYMBOLS

PROPOSED WATER SYMBOLS

- Water Line (Sized as Shown)
- 11¼ Degree Bend
- 22½ Degree Bend
- 45 Degree Bend
- 90 Degree Bend
- Plug
- Tee
- Cross
- Reducer
- Gate Valve — GV
- Butterfly Valve — BV
- Tapping Valve — TSV
- Line Stop — LS
- Line Stop with Bypass — LS/BP
- Blow Off — BO
- Fire Hydrant — FH
- Relocate Fire Hydrant — RFH
- Remove Fire Hydrant — REM FH
- Water Meter — WM
- Relocate Water Meter — RWM
- Remove Water Meter — REM WM
- Water Pump Station — PUMP
- RPZ Backflow Preventer — RPZ
- DCV Backflow Preventer — DCV
- Relocate RPZ Backflow Preventer — RPZ
- Relocate DCV Backflow Preventer — DCV

PROPOSED SEWER SYMBOLS

- Gravity Sewer Line (Sized as Shown)
- Force Main Sewer Line (Sized as Shown)
- Manhole (Sized per Note)
- Sewer Pump Station — PUMP

PROPOSED MISCELLANOUS UTILITIES SYMBOLS

- Power Pole
- Telephone Pole
- Joint Use Pole
- Telephone Pedestal — TP
- Utility Line by Others (Type as Shown)
- Trenchless Installation
- Encasement by Open Cut
- Encasement
- Thrust Block
- Air Release Valve — AR
- Utility Vault — UV
- Concrete Pier — CP
- Steel Pier — SP
- Plan Note — NOTE
- Pay Item Note — PAY ITEM

EXISTING UTILITIES SYMBOLS

- Power Pole
- Telephone Pole
- Joint Use Pole
- Utility Pole
- Utility Pole with Base
- H-Frame Pole
- Power Transmission Line Tower
- Water Manhole
- Power Manhole
- Telephone Manhole
- Sanitary Sewer Manhole
- Hand Hole for Cable
- Power Transformer
- Telephone Pedestal
- CATV Pedestal
- Gas Valve
- Gas Meter
- Located Miscellaneous Utility Object
- Abandoned According to Utility Records — AATUR
- End of Information — E.O.I.
- *Underground Power Line
- *Underground Telephone Cable
- *Underground Telephone Conduit
- *Underground Fiber Optics Telephone Cable
- *Underground TV Cable
- *Underground Fiber Optics TV Cable
- *Underground Gas Pipeline
- Aboveground Gas Pipeline — A/G Gas
- *Underground Water Line
- Aboveground Water Line — A/G Water
- *Underground Gravity Sanitary Sewer Line
- Aboveground Gravity Sanitary Sewer Line — A/G Sanitary Sewer
- *Underground SS Forced Main Line
- Underground Unknown Utility Line
- SUE Test Hole
- Water Meter
- Water Valve
- Fire Hydrant
- Sanitary Sewer Cleanout

*For Existing Utilities

- Utility Line Drawn from Record (Type as Shown)
- Designated Utility Line (Type as Shown)

5/14/99

REV: 2/1/2012

Return to Agenda

PROJECT REFERENCE NO.	SHEET NO.
R-5207A	UC-3

DESIGNED BY: AHC
DRAWN BY: AHC
CHECKED BY: JLT
APPROVED BY:
REVISED:

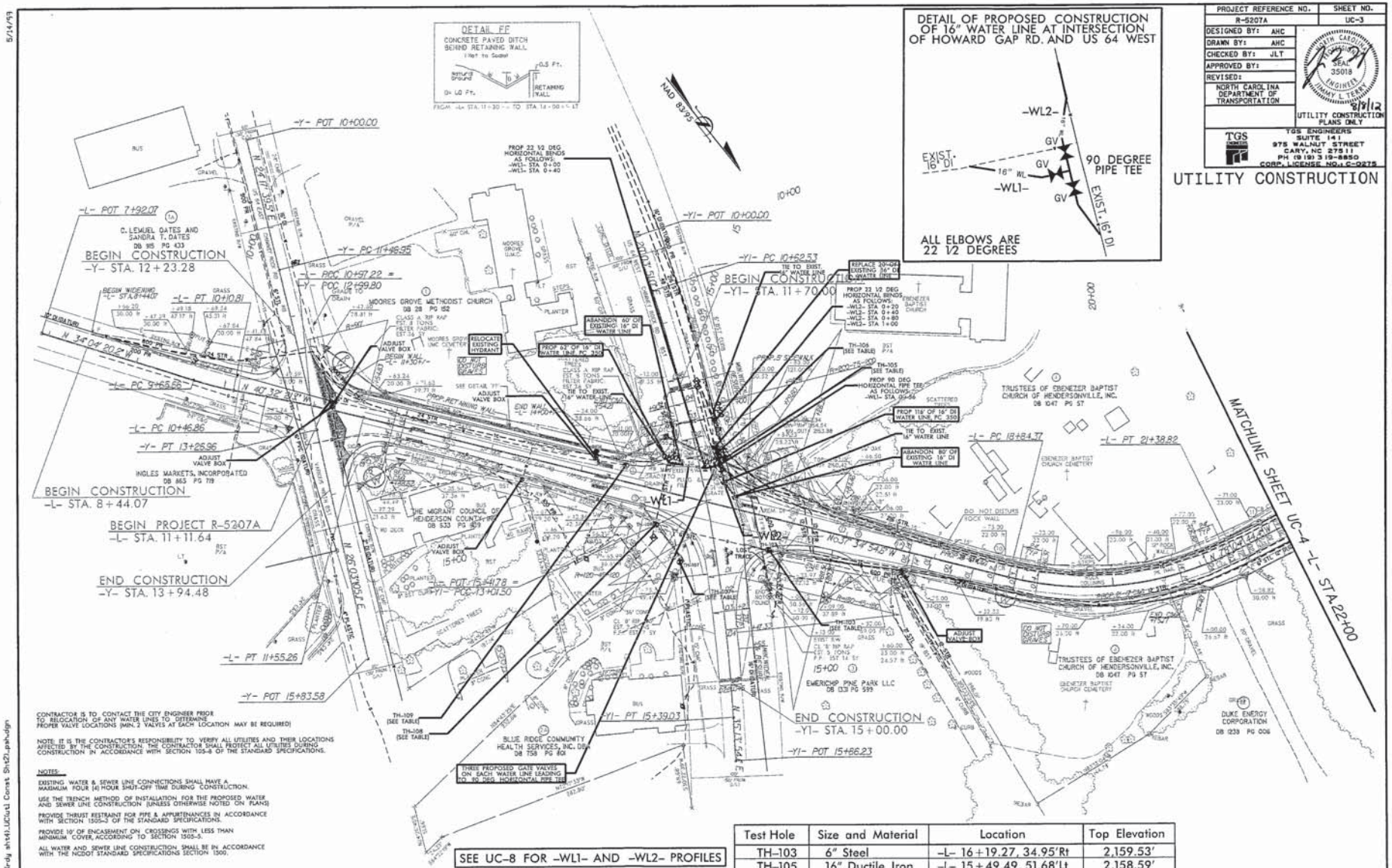
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

NORTH CAROLINA SEAL 35018 ENGINEER JIMMY L. TERRY 8/8/12

UTILITY CONSTRUCTION PLANS ONLY

TGS ENGINEERS
SUITE 141
975 WALNUT STREET
CARY, NC 27511
PH (919) 319-8850
CORP. LICENSE NO. C-0275

UTILITY CONSTRUCTION



Test Hole	Size and Material	Location	Top Elevation
TH-103	6" Steel	-L- 16+19.27, 34.95'Rt	2,159.53'
TH-105	16" Ductile Iron	-L- 15+49.49, 51.68'Lt	2,158.59'
TH-106	16" Ductile Iron	-L- 15+40.89, 56.34'Lt	2,158.40'
TH-107	1" Plastic	-L- 15+29.14, 70.98'Rt	2,156.25'
TH-108	6" Steel	-L- 14+93.45, 37.54'Rt	2,156.83'
TH-109	16" Ductile Iron	-L- 14+46.01, 17.59'Lt	2,159.43'

5/14/99

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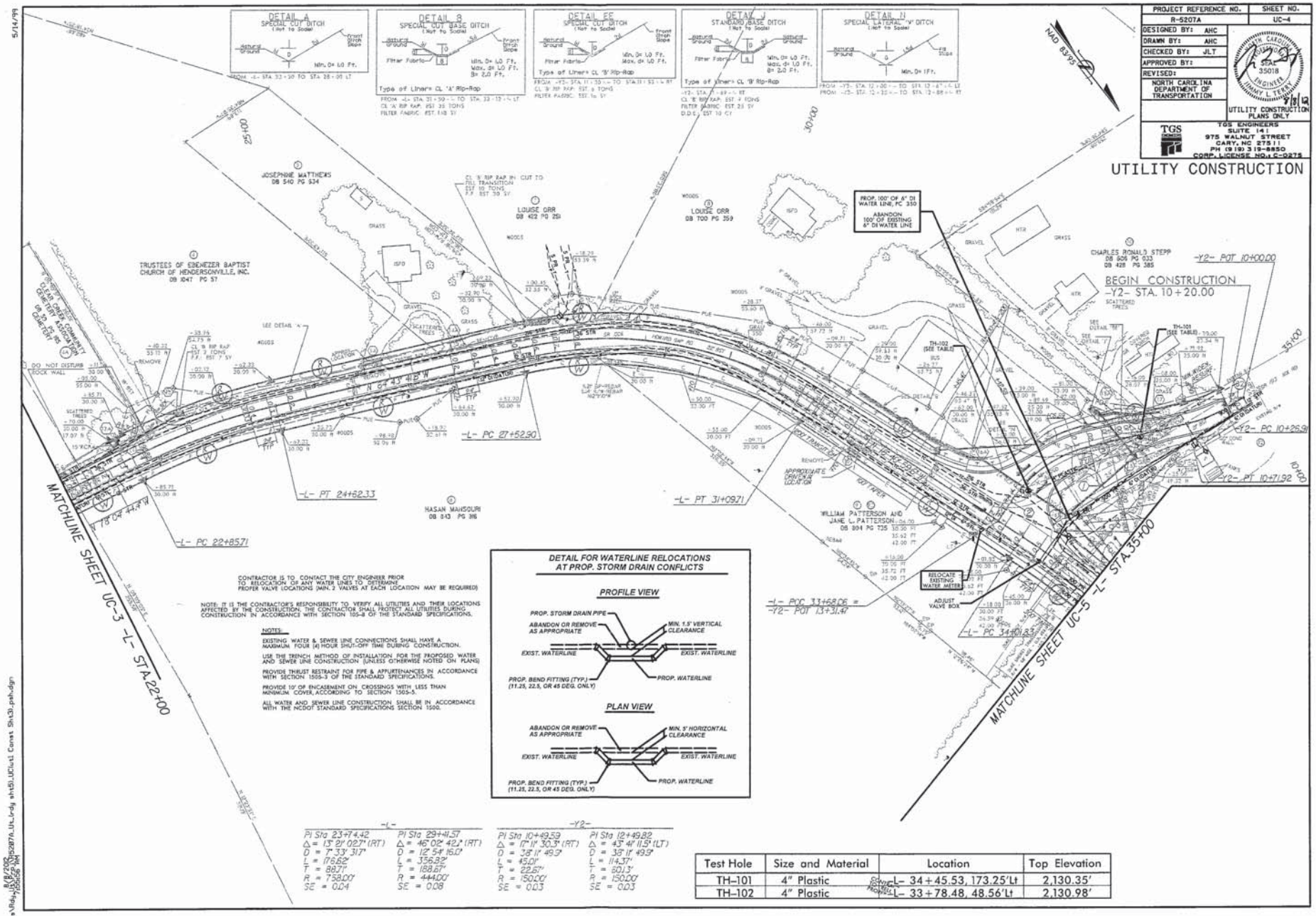

Test Hole	Size and Material	Location	Top Elevation
TH-101	4" Plastic	-L- 34+45.53, 173.25'Lt	2,130.35'
TH-102	4" Plastic	-L- 33+78.48, 48.56'Lt	2,130.98'

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Return to Agenda

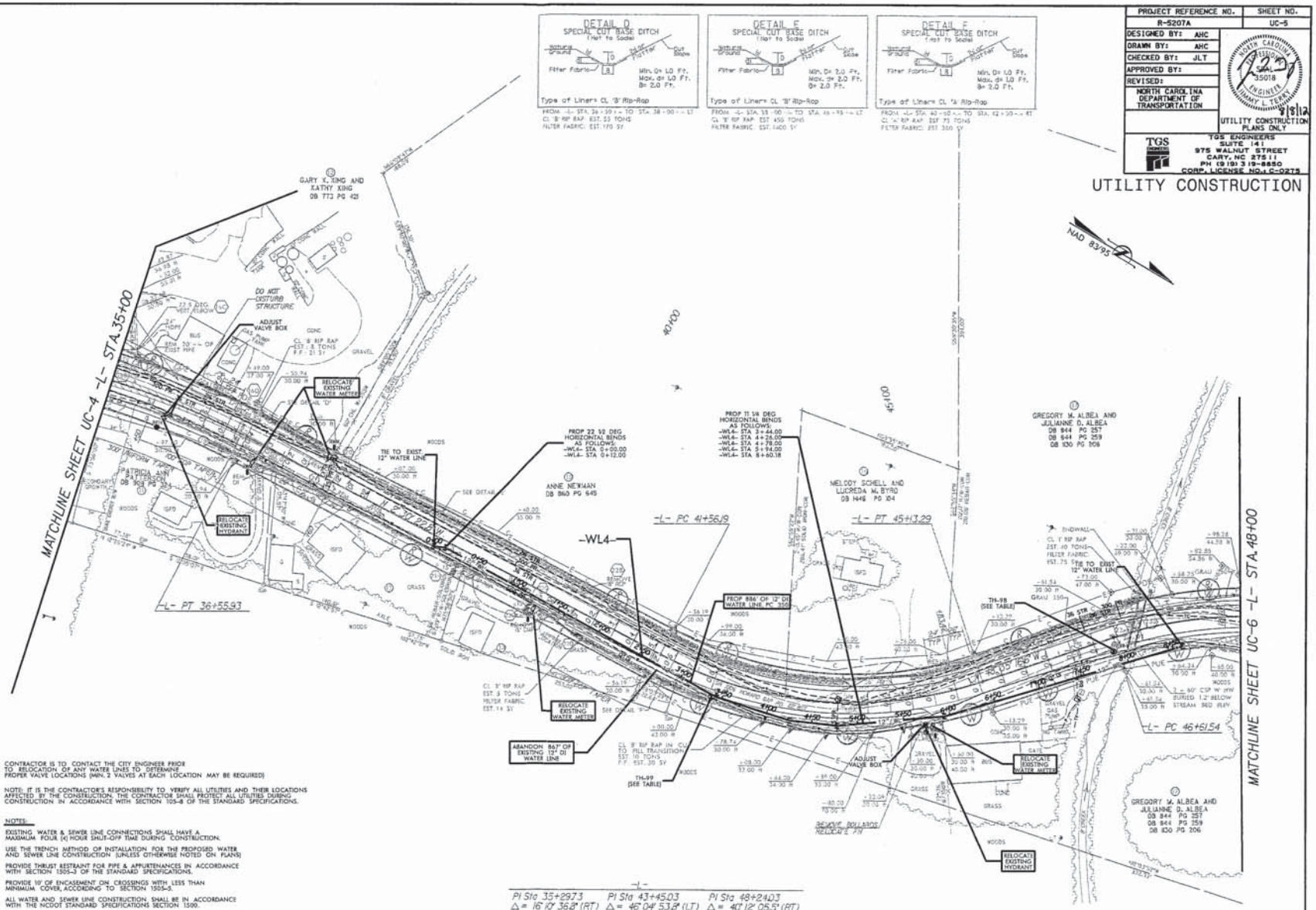
PROJECT REFERENCE NO.	SHEET NO.
R-5207A	UC-5
DESIGNED BY: AHC	
DRAWN BY: AHC	
CHECKED BY: JLT	
APPROVED BY:	
REVISED:	
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION	

NORTH CAROLINA PROFESSIONAL SEAL 35018 ENGINEER JIMMY L. TERRY 5/8/12

UTILITY CONSTRUCTION PLANS ONLY

TGS ENGINEERS
SUITE 141
975 WALNUT STREET
CARY, NC 27511
PH (919) 319-8850
CORP. LICENSE NO. C-0279

UTILITY CONSTRUCTION



CONTRACTOR IS TO CONTACT THE CITY ENGINEER PRIOR TO RELOCATION OF ANY WATER LINES TO DETERMINE PROPER VALVE LOCATIONS (MIN. 2 VALVES AT EACH LOCATION MAY BE REQUIRED)

NOTE: IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY ALL UTILITIES AND THEIR LOCATIONS AFFECTED BY THE CONSTRUCTION. THE CONTRACTOR SHALL PROTECT ALL UTILITIES DURING CONSTRUCTION IN ACCORDANCE WITH SECTION 105-8 OF THE STANDARD SPECIFICATIONS.

NOTES:

EXISTING WATER & SEWER LINE CONNECTIONS SHALL HAVE A MAXIMUM FOUR (4) HOUR SHUT-OFF TIME DURING CONSTRUCTION.

USE THE TRENCH METHOD OF INSTALLATION FOR THE PROPOSED WATER AND SEWER LINE CONSTRUCTION (UNLESS OTHERWISE NOTED ON PLANS)

PROVIDE THRUST RESTRAINT FOR PIPE & APPURTENANCES IN ACCORDANCE WITH SECTION 1505-3 OF THE STANDARD SPECIFICATIONS.

PROVIDE 18" OF ENCASEMENT ON CROSSINGS WITH LESS THAN MINIMUM COVER, ACCORDING TO SECTION 1505-5.

ALL WATER AND SEWER LINE CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE NCDOT STANDARD SPECIFICATIONS SECTION 1500.

(1)	PATRICIA ANN PATTERSON	DB 908 PG 324
(2)	VILORED BARE, WIDOW	DB 423 PG 149
(3)	MARGARET P. MULFORD	DB 332 PG 357

SEE UC-8 FOR -WL4- PROFILES

-L-

PI Sta 35+29.73	PI Sta 43+45.03	PI Sta 48+24.03
Δ = 16° 10' 36.8" (RT)	Δ = 46° 04' 53.8" (LT)	Δ = 40° 12' 05.5" (RT)
D = 6° 21' 58.3"	D = 12° 54' 16.0"	D = 12° 54' 16.0"
L = 254.11'	L = 357.10'	L = 311.53'
T = 127.90'	T = 188.84'	T = 162.49'
R = 900.00'	R = 444.00'	R = 444.00'
SE = 0.06	SE = 0.08	SE = 0.04

Test Hole	Size and Material	Location	Top Elevation
TH-98	12" Ductile Iron	-L- 46+57.07, 14.14'Rt	2,077.07'
TH-99	12" Ductile Iron	-L- 42+22.84, 19.55'Rt	2,095.82'

5/14/09

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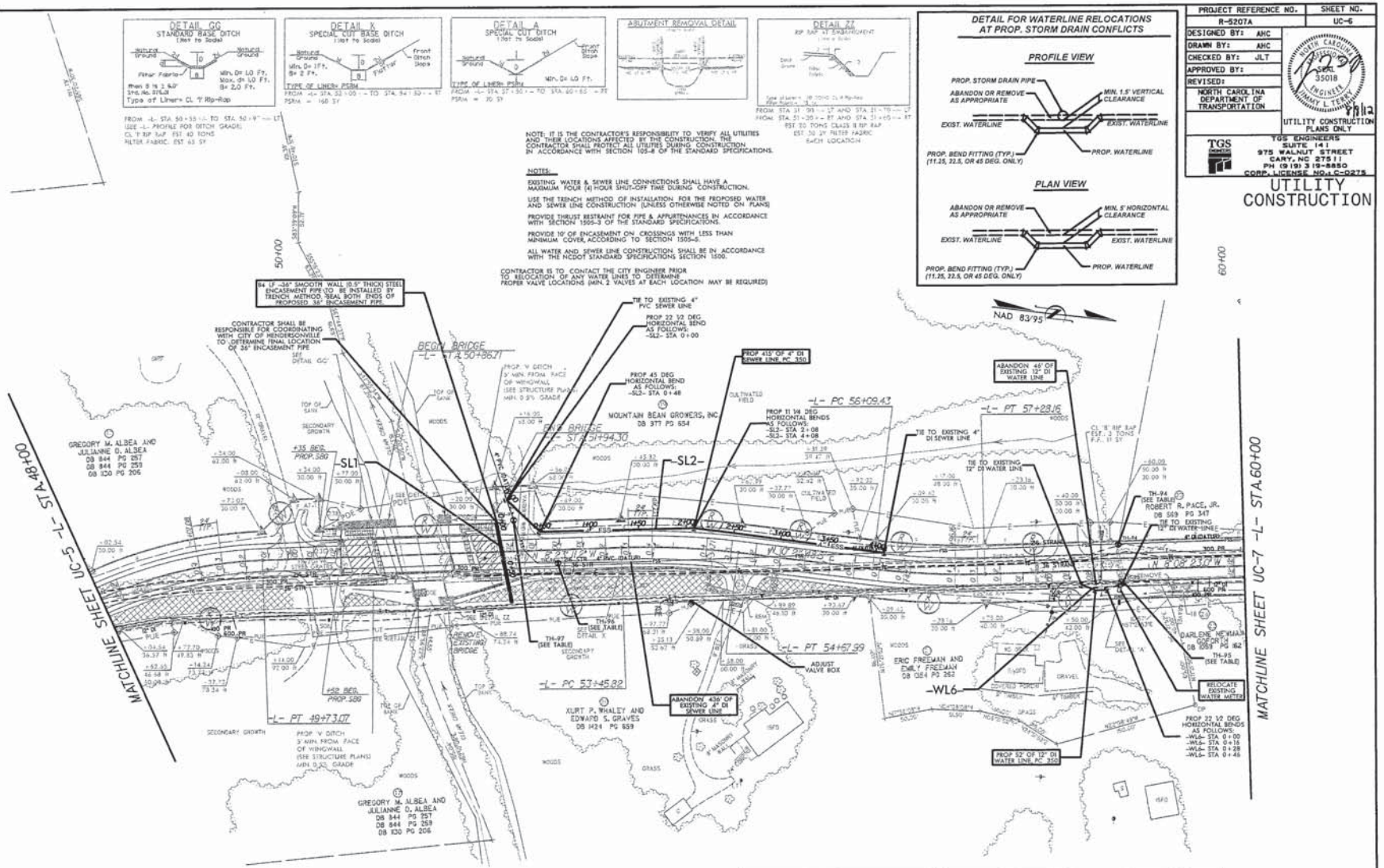

SEE UC-8 FOR -WL6- PROFILE | SEE UC-8 FOR -SL1- AND -SL2- PROFILES

Test Hole	Size and Material	Location	Top Elevation
TH-94	4" Ductile Iron	-L- 58+68.07, 26.61'Lt	2,085.39'
TH-95	12" Ductile Iron	-L- 58+70.63, 12.42'Rt	2,088.48'
TH-96	4" PVC	-L- 52+79.57, 13.86'Rt	2,079.11'
TH-97	4" PVC	-L- 52+34.99, 32.56'Lt	2,076.69'

-L-

PI Sta 43+24.03	PI Sta 54+07.03	PI Sta 56+68.91
Δ = 40° 12' 05.5" (RT)	Δ = 8° 44' 59.7" (RT)	Δ = 8° 30' 11.5" (LT)
D = 12° 54' 16.0"	D = 7° 09' 43.7"	D = 7° 09' 43.7"
L = 311.53'	L = 122.17'	L = 118.73'
T = 162.49'	T = 61.20'	T = 59.47'
R = 444.00'	R = 800.00'	R = 800.00'
SE = 0.04	SE = 0.04	SE = 0.04

PROJECT REFERENCE NO.	SHEET NO.
R-5207A	UC-6

DESIGNED BY: AHC
DRAWN BY: AHC
CHECKED BY: JLT
APPROVED BY:
REVISED:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

NORTH CAROLINA PROFESSIONAL SEAL 35018 ENGINEER JIMMY L. TERRY 8/8/02

UTILITY CONSTRUCTION PLANS ONLY

TGS ENGINEERS
SUITE 141
975 WALNUT STREET
CARY, NC 27511
PH (919) 319-8850
CORP. LICENSE NO. C-0275

UTILITY CONSTRUCTION

5/14/99

8/8/2002
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Return to Agenda

PROJECT REFERENCE NO.	SHEET NO.
R-5207A	UC-7

DESIGNED BY: AHC
DRAWN BY: AHC
CHECKED BY: JLT
APPROVED BY:
REVISED:

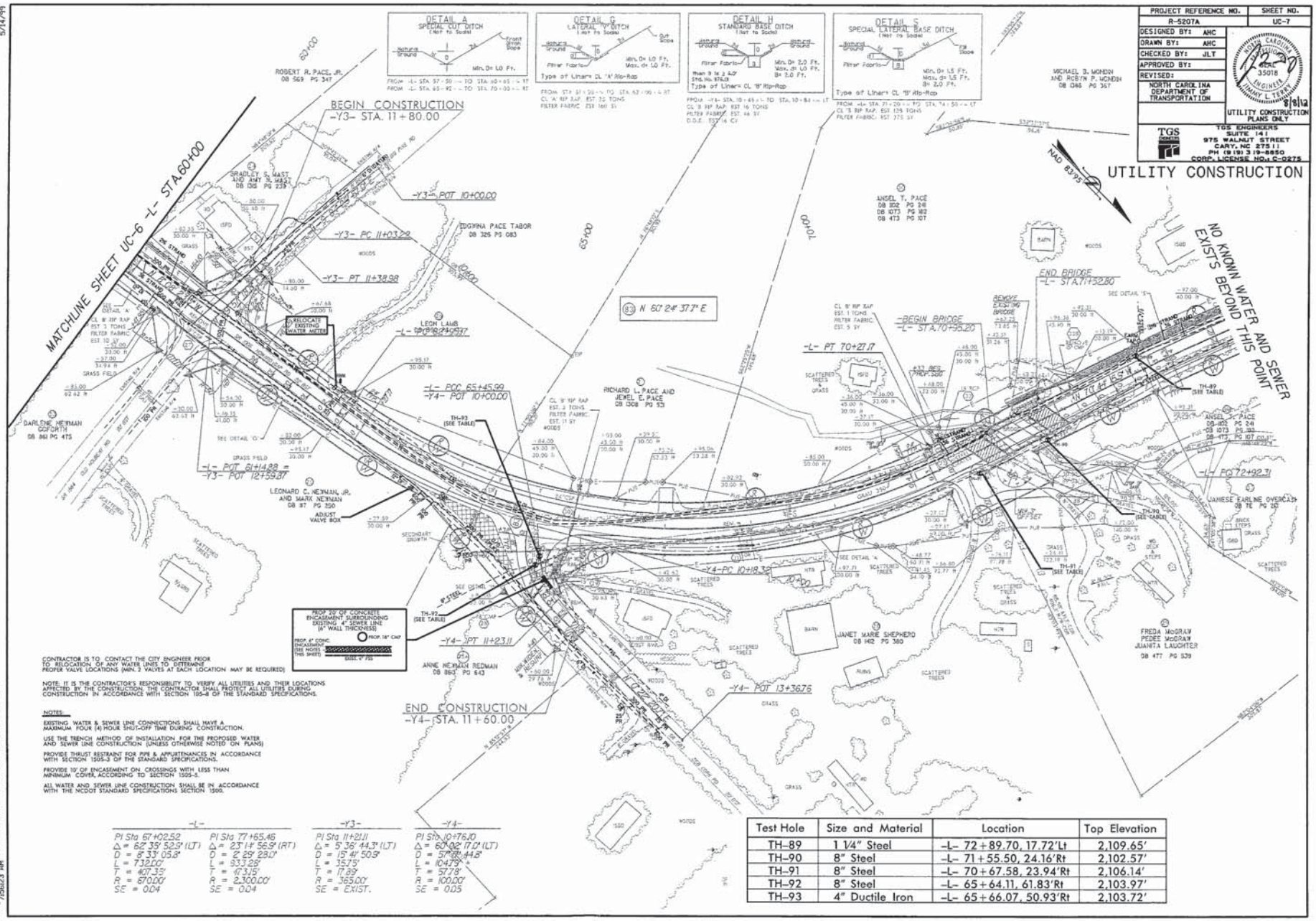
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

NORTH CAROLINA PROFESSIONAL SEAL 35018 ENGINEER JOHNNY L. TERRY 8/8/12

UTILITY CONSTRUCTION PLANS ONLY

TGS ENGINEERS
SUITE 141
975 WALNUT STREET
CARY, NC 27511
PH (919) 319-8850
CORP. LICENSE NO. C-0275

UTILITY CONSTRUCTION



Test Hole	Size and Material	Location	Top Elevation
TH-89	1 1/4" Steel	-L- 72+89.70, 17.72'Lt	2,109.65'
TH-90	8" Steel	-L- 71+55.50, 24.16'Rt	2,102.57'
TH-91	8" Steel	-L- 70+67.58, 23.94'Rt	2,106.14'
TH-92	8" Steel	-L- 65+64.11, 61.83'Rt	2,103.97'
TH-93	4" Ductile Iron	-L- 65+66.07, 50.93'Rt	2,103.72'

5/14/99

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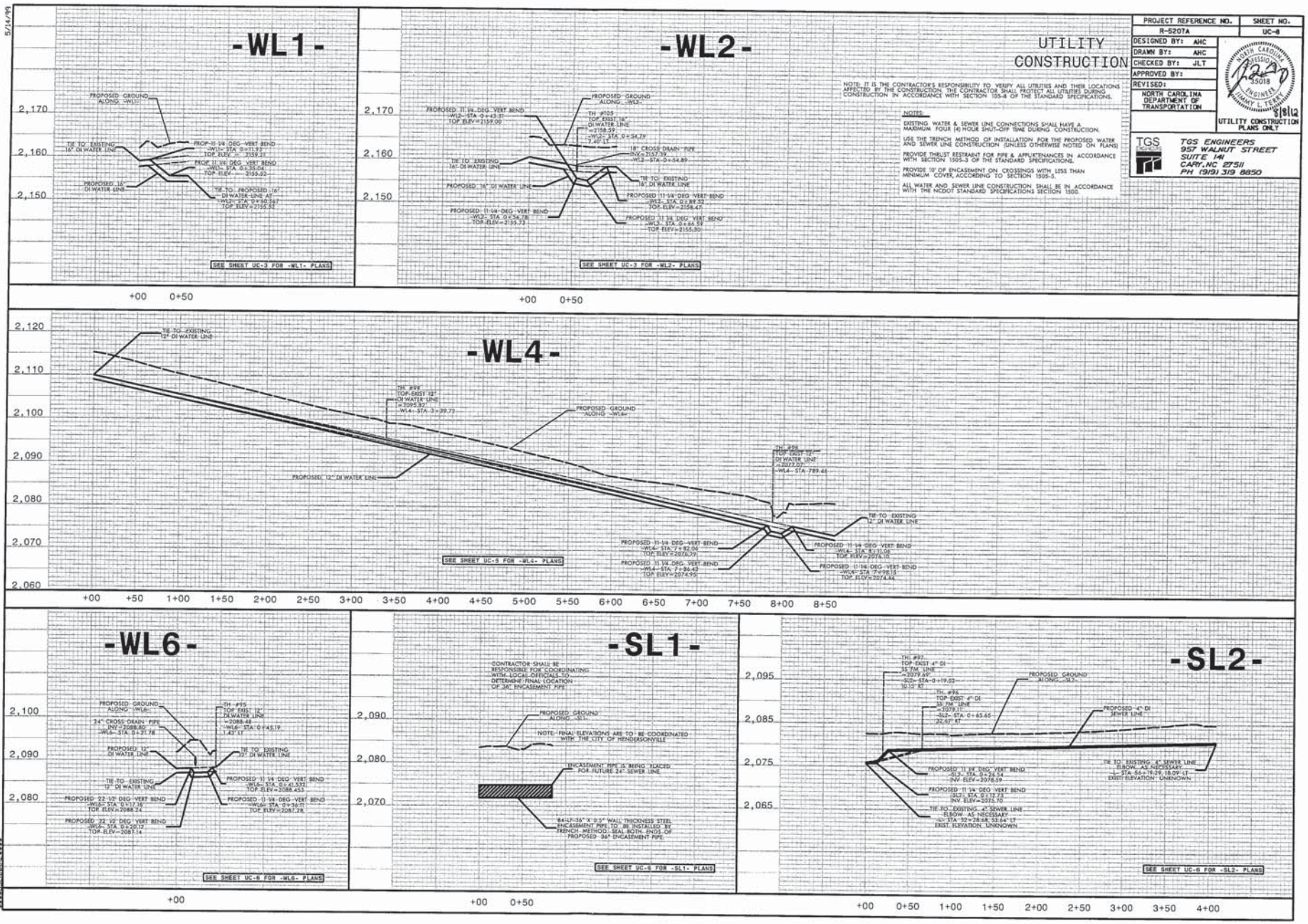
Return to Agenda

5/14/99



PROJECT REFERENCE NO.	SHEET NO.
R-5207A	UC-8

DESIGNED BY: AHC
DRAWN BY: AHC
CHECKED BY: JLT
APPROVED BY:
REVISED:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

NORTH CAROLINA PROFESSIONAL ENGINEER SEAL 35018 JAMMY L. TERRY 8/8/12

UTILITY CONSTRUCTION PLANS ONLY

UTILITY CONSTRUCTION

NOTE: IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY ALL UTILITIES AND THEIR LOCATIONS AFFECTED BY THE CONSTRUCTION. THE CONTRACTOR SHALL PROTECT ALL UTILITIES DURING CONSTRUCTION IN ACCORDANCE WITH SECTION 105-8 OF THE STANDARD SPECIFICATIONS.

NOTES:

EXISTING WATER & SEWER LINE CONNECTIONS SHALL HAVE A MAXIMUM FOUR (4) HOUR SHUT-OFF TIME DURING CONSTRUCTION.

USE THE TRENCH METHOD OF INSTALLATION FOR THE PROPOSED WATER AND SEWER LINE CONSTRUCTION (UNLESS OTHERWISE NOTED ON PLANS)

PROVIDE THRUST RESTRAINT FOR PIPE & APPURTENANCES IN ACCORDANCE WITH SECTION 1505-3 OF THE STANDARD SPECIFICATIONS.

PROVIDE 10' OF ENCASEMENT ON CROSSINGS WITH LESS THAN MINIMUM COVER, ACCORDING TO SECTION 1505-3.

ALL WATER AND SEWER LINE CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE NCDOT STANDARD SPECIFICATIONS SECTION 1500.

TGS ENGINEERS
TGS ENGINEERS
957 WALNUT STREET
SUITE 141
CARY, NC 27511
PH (919) 319 8850

SYSTEM #888
SYSTEM #999
INSERT SYSTEM #

Return to Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Lee Smith **Department:** Water/Sewer
Date Submitted: 11/24/2015 **Presenter:** Lee Smith
Date of Council Meeting to consider this item: 11/01/12

Nature of Item: Council Action

Summary of Information/Request: **Item #** _____

Staff has received and reviewed a proposed utility agreement (see attachment) between the City and the North Carolina Department of Transportation (NCDOT) regarding proposed water main relocation to be included in NCDOT Project R-5207-A. These improvements include the relocation of approximately 178 LF of 16-inch ductile iron water main, 938 LF of 12-inch ductile iron water main and 100 LF of 6-inch ductile iron water main along Howard Gap Rd. north of U.S Highway 64 East for an estimated cost to the City of $190,000. This proposed relocation project will replace water main in the existing shoulder of the roadway and must be relocated due to conflicts with the new roadway to be installed.

The NCDOT will bid, award and administer this project including the water and sewer improvements. In an effort to recover the cost for these improvements, the NCDOT will invoice the City, based on actual cost, in one payment within 60-days of said invoice. Staff has not programmed this project into the City's capital improvements plan for Fiscal Year 2012-2013. Since the current let date for this NCDOT project is proposed for 12/18/12, the City would not receive the invoice until late 2013. Due to the timing of this invoicing, staff will request funding for this project in the Fiscal Year 2013-2014 budget request.

Suggested Motion:

I move to authorize the city manager to approve the transfer of funds from the water and sewer fund cash reserve account to an account deemed appropriate by the finance department required to pay the NCDOT invoice in the amount of $213,760.50 and further, to authorize the utilities director to submit payment for the invoice in the same amount to the NCDOT associated with the utility agreement for NCDOT Project R-5207-A (Howard Gap Rd. Bridge Improvements) which included water main improvements along the portion of Howard Gap Road affected by this project.

[To disapprove any item, allow it to fail for lack of a motion.]

Attachments:

Utility Agreement for R-5207-A

Return to Agenda

CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Lew Holloway

Department: Downtown

Date Submitted: 11/17/2015

Presenter: Lew Holloway (as needed)

Date of Council Meeting to consider this item: December 3, 2015

Nature of Item: Council Action

Summary of Information/Request: **Item #** 10g

Sections 46-84 and 46-85 of Chapter 46 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES of the City of Hendersonville Code of Ordinances which outline Council's authority to allow Special Events and establish a Special Event Committee, need to be updated to reflect the adoption of the city's Special Event Policy and the changing make-up of the Special Event Committee itself.

The ordinance with suggested deletions and additions is attached.

Budget Impact: $ None 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.*

Attachments:

Sections 46-84 and 46-85 of Chapter 46 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES of the City of Hendersonville Code of Ordinances with deletions and additions.

Return to Agenda

Sec. 46-84. - Exception; permitted special events.

Notwithstanding the foregoing provisions of this article, the city council may authorize the temporary obstruction of streets or sidewalks, or the use of other public property, in conjunction with special events. Provided, however, the special event sponsor shall ensure that there is a continuous five-foot width of unobstructed sidewalk. Anyone desiring a special event permit shall make application to the city manager ~~detailing the nature and duration of the event and demonstrating how the event will benefit the general welfare of the city.~~ 1 In deciding whether to issue a special event permit, the city council shall ~~balance the stated civic purpose of the event against the inconvenience to the public of closing streets and sidewalks and against the cost to the city of ensuring the public health, safety and welfare which is attendant to the special event.~~ 2

(Code 1971, § 28-39; Ord. No. 08-0841, § 2, 8-7-08)

Sec. 46-85. - Events committee established; membership; duties.

(a) There is hereby officially designated an events committee, the purpose of which will be to review and evaluate applications for the temporary use of public property, including applications for special event permits pursuant to **section 46-84.**

(b) The membership of the events committee shall be as follows:
   (1) The chief of police or his designee;
   (2) The city manager or his designee; and
   (3) The director of public works or his designee;
   (4) ~~The representative of Downtown Hendersonville, Inc.,~~ 3 shall be an ex officio member of the committee, having voice but no vote.

(c) Requests for the use or obstruction of public property shall be made on forms promulgated by the city manager and shall be referred to the events committee.

(d) The events committee shall review such requests and, in the case of an application requiring city council approval, shall prepare a report setting forth the anticipated public costs of the special event and the recommendation of the committee, and shall forward such report and recommendation to the city council.

(e) The events committee itself shall have authority to issue special event permits in the following circumstances:
   (1) When the proposed special event will not result in the obstruction or blocking of streets or sidewalks and the total cost in city services will not exceed $1,000.00; or
   (2) When the proposed special event has been approved previously by city council and the proposal does not materially differ from that previously approved by the city council.

(f) When the events committee denies an application for a special event permit, the applicant shall have the right to have the matter considered by city council. In order to exercise that right, the applicant must make such request in writing to the city clerk within 15 days of the date of denial by the events committee.

(Code 1971, § 28-40)

Return to Agenda

Summary of Comments on Microsoft Word - Special Events Ordinance.doc

Page: 1

Number: 1 Author: lholloway Subject: Inserted Text Date: 11/10/2015 8:30:01 AM

by submitting a completed City of Hendersonville Special Event Permit Application.

Status

lholloway None 9/30/2015 2:25:24 PM -04'00'

Number: 2 Author: lholloway Subject: Inserted Text Date: 11/16/2015 4:47:39 PM

be guided by the City's Special Event Policy.

Status

lholloway None 9/30/2015 2:25:19 PM -04'00'

Number: 3 Author: lholloway Subject: Inserted Text Date: 8/31/2015 3:31:35 PM -04'00'

The Downtown Economic Development Director or his designee

Status

lholloway None 9/30/2015 2:25:28 PM -04'00'

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 11/25/15

Presenter: Terry Andersen

Date of Council Meeting to consider this item: 12/03/15

Nature of Item: Council Action

Summary of Information/Request: **Item #** 11

Mr. Terry Andersen of Carland & Andersen, Inc., Certified Public Accountants, will provide a presentation on the Fiscal Year 2014-15 Audit.

Budget Impact: $_____ 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.*

Attachments:

CARLAND & ANDERSEN, INC.
CERTIFIED PUBLIC ACCOUNTANTS

307 NORTH CHURCH STREET ▪ HENDERSONVILLE, NC 28792

MEMBER - AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
MEMBER - NORTH CAROLINA ASSOCIATION OF CERTIFIED PUBLIC ACCOUNTANTS

Ronald G. Carland, CPA
Terry B. Andersen, CPA

F.T. Carland, CPA
Trish Cheek, CPA
George B. Lee, CPA
Harold C. Reid, CPA

October 9, 2015

To the Honorable Mayor
and Members of the City Council
City of Hendersonville, North Carolina

We have audited the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the City of Hendersonville, North Carolina for the year ended June 30, 2015. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards and *Government Auditing Standards* and OMB Circular A-133, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated September 8, 2015. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Findings

Qualitative Aspects of Accounting Practices

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the City of Hendersonville, North Carolina are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the 2015 fiscal year. We noted no transactions entered into by the City of Hendersonville, North Carolina during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected.

The most sensitive estimates affecting the City of Hendersonville, North Carolina's financial statements were management's estimate of the allowance for doubtful accounts on taxes and accounts receivable and the estimate of depreciation expense on capital assets. The allowance for doubtful accounts on taxes and accounts receivable is based on a historical analysis of the percentage of receivables written off in prior years. The

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estimate of depreciation expense is based on the estimated useful lives of the assets which have been developed from historical data applicable to governmental units.

We evaluated the key factors and assumptions used to develop the estimates of the allowance for doubtful accounts and depreciation expense in determining that the estimates are reasonable in relation to the financial statements taken as a whole.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements

Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements.

Disagreements with Management

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations

We have requested certain representations from management that are included in the management representation letter dated October 9, 2015.

Management Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the City of Hendersonville, North Carolina's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

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Other Audit Findings or Issues

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the City of Hendersonville, North Carolina's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

We applied certain limited procedures to Management's Discussion and Analysis and the Law Enforcement Officer's Special Separation Allowance Schedules of Funding Progress and Employer Contributions, the Other Post Employment Benefits Schedules of Funding Progress and Employer Contributions, the Local Government Employees' Retirement System's Schedules of Proportionate Share of the Net Pension Liability (Asset) and Contributions, and the Firefighters' and Rescue Squad Workers' Pension Fund's Schedule of the Proportionate Share of Net Pension Liability (Asset), which are required supplementary information (RSI) that supplements the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

We were engaged to report on the individual fund statements, budgetary schedules, other schedules, and the schedule of expenditures of federal and state awards, which accompany the financial statements but are not RSI. With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

Restriction on Use

This information is intended solely for the use of the City Council of the City of Hendersonville, North Carolina and management of the City of Hendersonville, North Carolina and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

Carland & Andersen, Inc.

Carland & Andersen, Inc.

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Harold C. Reid, CPA

October 9, 2015

The Honorable Mayor
and Members of City Council
City of Hendersonville, North Carolina

In planning and performing our audit of the financial statements of the governmental activities, the business-type activities, the discretely presented component unit, each major fund, and the aggregate remaining fund information of the City of Hendersonville, North Carolina as of and for the year ended June 30, 2015, in accordance with auditing standards generally accepted in the United States of America, we considered the City of Hendersonville, North Carolina's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the City of Hendersonville, North Carolina's internal control. Accordingly, we do not express an opinion on the effectiveness of the City of Hendersonville, North Carolina's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations during our audit, we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Although we did not identify any deficiencies in internal control, we noted certain matters involving internal control and operating efficiency that, in our judgment should be reviewed. Following are our recommendations concerning these matters:

Period End Reconciliations

We noted, during the course of our audit procedures, that there were differences between amounts recorded for accounts receivable and payable in the accounting system in comparison to the subsidiary aging reports at year end.

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With accounts receivable, no regular reconciliation was performed between the aging report and the balances maintained in the general ledger accounting system. In accounts payable we observed instances where invoices paid after the close of the period were dated in the system to reflect a date paid earlier than the actual payment date. By performing a regular reconciliation between the receivable and payable aging reports to the general ledger accounting records, any differences can be corrected and management can be assured that the proper balances are being presented in the City's financial reports.

Downtown Event Revenues

In reviewing and analyzing the Downtown event activities, namely Rhythm and Brews and the Bear auction, we noted that the summary reconciliations prepared by the Economic Development staff is not provided to the Finance Department in order to perform a reconciliation with the City's accounting system. Although these revenues are not a material amount in comparison to the City's overall revenue, it is important since the funds collected determine amounts to be distributed to charities in the case of the Bear auction and also for the City's fiduciary responsibility to handle funds in a reasonable and prudent manner.

By carrying out regular reconciliations of these special event revenues any differences can be resolved and proper amounts will be reported both in the City's financial statements and to the beneficiaries of funds collected from these events.

Recreation Activities

As part of the audit procedures we incorporated a visit to Patton Pool to observe the activities related to the receipt and handling of revenues. As part of this observation we noted several areas of concern that can be improved-

A) The safe in the office area in the concession stand was unlocked and unattended, we recommend that the safe be locked at all times and only pool management have access to the safe. In addition, the cash maintained in the safe seemed excessive and consideration should be given to an improved system thereby reducing the amount of cash on hand.

B) We noted that when the registers are closed out for the day there is no system in place to determine what the expected gate revenue should be based on the number of individuals admitted. There should be a system of accountability to verify that the appropriate charges are made, collected, and deposited.

C) The daily reconciliation performed of expected revenue compared to actual deposits yield wide variances on a regular basis. Part of this problem consists of voids not being reported on the daily reconciliation submitted to the Finance Department. All voids should be noted on cash register tapes and submitted with the daily reconciliations.

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Overall there are improvements that should be implemented in Patton Pool's operations that will provide a greater level of assurance that the operating revenues are being appropriately handled, deposited into City accounts, and recorded properly in the accounting records.

Utility Adjustments

In reviewing the utility adjustment procedures for leaks it was noted that proper segregation of duties and approval procedures are in place, however no reconciliation is carried out between adjustments made and amounts recorded in the City's financial statements. Reports were not available from utility billings that could be utilized to reconcile to the adjustments recorded in the accounting system. We recommend that consideration be given to developing procedures reflecting approval of adjustments and a reconciliation to the amount of adjustments recorded in the accounting system as part of an overall regular reconciliation of utility revenues and receivables.

Last year we made a recommendation concerning utility billing information reconciliation and review, suggesting that there should be a reconciliation of reports from the automated meter reading system to amounts recorded in the City's accounting records. It is our understanding that this issue has not yet been resolved, but is a process that management and staff are continuing to work towards in improving this system.

External Funding Sources for Capital Projects

As we noted last year, there are several water and sewer capital projects that are being partially funded by loans from the State Revolving Loan Fund. Some draws on these loans were made during the recently completed fiscal year, but as of June 30, 2015 there was more than $3.5 million that could have been drawn on these approved loans. We recommend that available loan funds, as well as other sources when available, be requested in a timely manner.

Internal Control and Segregation of Duties

Because the City of Hendersonville is a local government with a limited number of staff positions in the Finance and Administrative Departments it is essential that management provide a developed system of internal control and an adequate plan for the segregation of duties. During our audit procedures we noted that the City has greatly improved the internal controls in place and the segregation of duties over its accounting processes.

One area where we feel it is essential to emphasize the importance of the segregation of duties is in the relationship between the Human Resources and Payroll Departments. Both of these departments handle sensitive information, employees in Human Resources that are responsible for the setup of new employees should not be involved in the processing of payroll and payroll staff should not be allowed access to the entering of new employees into the system. Also, passwords should never be shared between employees or departments of the City as this is a key component in maintaining an adequate system of internal control and segregation of duties.

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Lastly, we would like to emphasize that continuing to maintain an adequate system of internal control requires that the system be monitored, evaluated, and updated on an ongoing basis. We encourage both management and City Council to continue to take an active role in maintaining an effective system for the City of Hendersonville.

This communication is intended solely for the information and use of management, the Mayor and City Council, and others within the City of Hendersonville, and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

Carland & Andersen, Inc.

Carland & Andersen, Inc.

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

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Submitted By: Lee Smith
Department: Water/Sewer
Date Submitted: 11/23/2015
Presenter: Maria Wise
Date of Council Meeting to consider this item: December 3, 2015
Nature of Item: Presentation Only

Summary of Information/Request: **Item #** 12

Maria Wise, Program Director for the Mills River Partnership, will provide a presentation describing what the Partnership has accomplished over the last year. This presentation will also highlight upcoming efforts and projects with the Partnership.

Budget Impact: $_____ Is this expenditure approved in the current fiscal year budget? No 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.*

Attachments:

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Lisa White
Department: Finance
Date Submitted: 11-12-15
Presenter: Tammy Holland
Date of Council Meeting to consider this item: 12-3-2015
Nature of Item: Council Action

Summary of Information/Request:

Item # 13

Prior to the current fiscal year the City did not charge penalties for late payment of utility bills. Therefore, our collections were extremely slow and our outstanding accounts receivable balances very large. After research into other Cities and Utility's late fee charges, staff recommended that the City also charge late fees in order to increase collection timeliness.
City Council adopted new Late Fees for past due Water/Sewer bills included in this year's Fee Schedule adopted for fiscal year 2015-2016 as follows:

CURRENT LATE FEES:
Late Payment Fee (5 days after due date) add $10.00 to outstanding balance

Late Payment Fee (10 days after due date) add $15.00 to outstanding balance
Total late fees after 10 days late: $25.00

After five months of administering these fees, the customer service staff finds that having two fees added ($10 after 5 days past due and then a second fee of an additional $15.00 five days later) is confusing to customers and has resulting in a large number of customer complaints. Furthermore it is difficult and time consuming for staff to add fees twice per each of the four billing cycles. Since the purpose of the fees is not to increase revenues but rather to encourage more prompt payments staff requests that the fee structure be changed one fee once a bill is 15 days past due. Also, would like to request that fees be waived for the month of December.
PROPOSED LATE FEE:
Late Payment Fee (15 days after due date) add $15.00 to outstanding balance

Budget Impact: $ **10.00 less per late bill** Is this expenditure approved in the current fiscal year budget? No If no, describe how it will be funded.

There was no revenue budgeted for late fees, however after 5 months the revenue is over $65,000 (as of November).

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

I move that City Council revise the current City of Hendersonville Fee Schedule for fiscal year 2016 to amend the late fees charged to past due water/sewer bills to $15.00 after the bill is 15 days past due. Late fees to be waived for the month of December. Start new fee schedule January 1st, 2016,

Attachments:

None

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brian Pahle

Department: Admin

Date Submitted: 11/23/15

Presenter: Brian Pahle

Date of Council Meeting to consider this item: 12/03/15

Nature of Item: Discussion/Staff Direction

Summary of Information/Request: **Item #** 14

I will provide a PowerPoint presentation that will discuss background information on City special appropriations and will provide decision points that the City Council will need to take into consideration before directing staff.

I have attached a memo that provides an overview of the presentation and decision points.

Decision Points
1. Should the City adopt a formal contract to insure accountability for the expenditure of public funds by the receiving agency?
   a. How should payments be made (quarterly, semi-annually, annually…)?
   b. Should the City require the agency submit a status report? If so, how often or upon request?
   c. Should the City require an audit of the appropriation or only upon request?
2. Should the City allow appropriation to…
   a. For profit agencies,
   b. Nonprofit agencies with no 501 exempt status,
   c. Nonprofit agencies with pending 501 exempt status, and/or
   d. Nonprofit agencies with 501 exempt status?
      501 exempt status is registered with the IRS | Proof of registration would be required in the application

Budget Impact: $ 0 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.*

Attachments:

See below...

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Special Appropriations

A special appropriation is an allocation of funding to a specific outside agency. An agency may request for funding with the City each year during the budget process (a calendar of the special appropriations process is provided). City Council approves special appropriations based on applications submitted. This application serves as a less formal contract (Appendix A).

The majority of special appropriations are recorded in one area of the budget however, there are some that have been placed within individual department budgets. Additionally, special appropriations span multiple funds. A summary and history of these appropriations is provided (Appendix B).

North Carolina General Statutes 159-40 govern the "Special regulations pertaining to nonprofit corporations receiving public funds".

> *"(a) If a city or county grants or appropriates one thousand dollars ($1,000) or more in any fiscal year to a nonprofit corporation or organization, the city or county may require that the nonprofit corporation or organization have an audit performed for the fiscal year in which the funds are received and may require that the nonprofit corporation or organization file a copy of the audit report with the city or county.*
>
> *(b) Any nonprofit corporation or organization which receives one thousand dollars ($1,000) or more in State funds shall, at the request of the State Auditor, submit to an audit by the office of the State Auditor for the fiscal year in which such funds were received.*
>
> *(c) Every nonprofit corporation or organization which has an audit performed pursuant to this section shall file a copy of the audit report with the office of the State Auditor.*
>
> *(d) The provisions of this section shall not apply to sheltered workshops or to Adult Development Activity Programs or to private residential facilities for the mentally retarded and developmentally disabled or to Developmental Day Care Centers or to any nonprofit corporation or organization whose sole use of public funds is to provide hospital services or operate as a volunteer fire department, rescue squad, ambulance squad, or which operates as a junior college, college or university duly accredited by the southern regional accrediting association.*
>
> *(e) Repealed by Session Laws 1979, c. 905. (1977, c. 687, s. 1; 1977, 2nd Sess., c. 1195, s. 1; 1979, c. 905.)"*

Another article, attached (Appendix C), by the UNC School of Government describes local government contracts with nonprofit organizations. In a nutshell, a municipality may authorize an appropriation to a private entity (whether for profit or nonprofit) as long as the appropriation will accomplish a public purpose. Additionally, a direct appropriation may be made to a private organization to carry out any activity for which the local government is authorized to spend money. Understanding these regulations will assist in determining the appropriate procedures the City will require in its special appropriations process.

Ultimately, these decisions and information will be consolidated and placed in a special appropriations manual which will help guide the process in the future.

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Decision Points

1. Should the City adopt a formal contract to insure accountability for the expenditure of public funds by the receiving agency?
    a. How should payments be made (quarterly, semi-annually, annually…)?
    b. Should the City require a status report? If so, how often?
    c. Should the City require an audit of the appropriation or only upon request?
2. Should the City allow appropriation to…
    a. For profit agencies,
    b. Nonprofit agencies with no 501 exempt status,
    c. Nonprofit agencies with pending 501 exempt status, and/or
    d. Nonprofit agencies with 501 exempt status?

501 exempt status is registered with the IRS | Proof of registration would be required in the application

Calendar

January——————————Special Appropriations Informational Meeting

February 27——————————Special Appropriation Requests Due

March——————————Budget Office Compiles Requests

April——————————Submit Requests Binder to Council

June——————————Adoption of Budget for Special Appropriations

July——————————Sign Contract with Agencies that Receive Funding

Return to Agenda

City of Hendersonville

Request for Special Appropriations FY15-16

Contact: Brian Pahle, 828-233-3218, bpahle@hvlnc.gov

[Submit forms to City Hall room 314 by February 27]

Organization's Name: _____

Address: _____

City, State, ZIP: _____

Website address: _____

A. GENERAL INFORMATION

1. Program Name: _____

2. Contact Person/Title: _____

   Telephone Number: _____ Fax: _____

   E-mail address: _____

3. Total number of individuals served in the last complete fiscal year by this program: _____

4. Total number of the above individuals who are City residents: _____

   Please attach any documentation that supports this number.

   Percent of people served who are City residents: _____

5. Amount of Request: _____ 6. Total Program Budget: _____

   Percent of total program budget you are requesting from Hendersonville: _____

7. Please state the mission of your agency: _____

   _____

   _____

8. Will the funding be used to:

   ____ Maintain an existing program ____ Expand an Existing Program ____ Start a new program

9. Has your organization received funds from the City in the past for this or a similar program? _____

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If yes, please answer the following:

a. Does the amount of your request represent an increase over your previous appropriation? _____

If yes, explain the reason(s) for the increase. _____

_____

_____

b. Were any conditions or restrictions placed on the funds by the City Council? _____

If yes, describe how those conditions or restrictions have been met. _____

_____

_____

B. Program Overview.

1. Statement of Need: Identify the issue or need that the program will address (use statistical data to justify the need for the program). To what extent does this need or problem exist in the City of Hendersonville?

2. Program Summary:

a. Identify the target/recipients of program services. Specify the number of City residents your program will serve during the fiscal year and explain the basis upon which this number is calculated. Indicate any eligibility requirements your program has with respect to age, gender, income or residence.

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Appendix A

b. Identify what is to be accomplished or what change will occur. (e.g., begin your sentences with "The purpose of the program is to provide …" and describe the services to be provided.)

3. Program Funding:

a. Identify how City funds, specifically, will be used (i.e., funds will provide "X" amount of units of service.)

b. List the other agencies to whom you are submitting a request for funds for this program and the amount requested. How would this program be modified should revenues be lost?

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Appendix A

C. Organizational Capacity.

1. Describe your agency's capability to provide the program including its history, previous experience providing this service, management structure and staff expertise.

2. Does your organization have a strategic plan and a strategic planning process in place? _____

   The strategic plan should include a mission statement, goals, action steps to achieve the goals, and measures that assess the accomplishments of the goals. The Strategic Plan must be provided to the City upon request.

3. What is the authorized size of your board of directors? _____

   How many meetings were held by the board last year? _____

4. Does your organization have an audit performed? _____

   The audit must be provided to the City upon request.

We, the undersigned, confirm the information contained herein is accurate and can be verified as such. We understand and agree if the requested funds are approved the disbursement of funds are subject to all conditions established by the City Council. We understand that a signed formal contract will be required before the appropriation of funding.

_____ _____

Signature of Applicant Date

_____

Typed Name and Title

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Appendix B

5 Year Schedule

DESCRIPTION	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	INCREASE (DECREASE)
CHAMBER OF COMMERCE	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ -
FLAT ROCK PLAYHOUSE	$ 100,000	$ 100,000	$ 10,000	$ 80,000	$ 11,800	$ (88,200)
MAYORS ADV COUNCIL	$ 500	$ 500	$ 500	$ 500	$ 500	$ -
HANDS ON GALLERY	$ 50,000	$ 5,000	$ 5,000	$ 2,000	$ 600	$ (49,400)
CONTR TO PUBLIC TRANSIT	$ 79,800	$ 92,630	$ 98,675	$ 108,164	$ 116,866	$ 37,066
HEND CO RESCUE SQUAD	$ 8,000	$ 8,000	$ 10,000	$ 10,000	$ 10,000	$ 2,000
HERITAGE MUSEUM	$ 2,000	$ 5,000	$ 2,000	$ 5,000	$ -	$ (2,000)
HEND CO DISPUTE CENTR	$ 500	$ 500	$ 500	$ 500	$ 500	$ -
THE HEALING PLACE	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ -
SISTER CITIES PROGRAM	$ 500	$ -	$ 500	$ 2,300	$ 900	$ 400
MEDICAL LOAN CLOSET	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,200	$ 200
HEND CNTY PUB SCHOOLS	$ 10,000	$ 10,000	$ -	$ -	$ -	$ (10,000)
TEAM ECCO	$ 5,000	$ 5,000	$ 5,000	$ 4,000	$ 3,600	$ (1,400)
BOYS & GIRLS CLUB	$ 5,000	$ 10,000	$ 15,000	$ 15,000	$ 15,000	$ 10,000
SHUFFLEBOARD CLUB	$ 1,200	$ 1,200	$ 1,200	$ 1,200	$ 880	$ (320)
P'SHIP ECON DEVELOPMT	$ 11,000	$ 11,000	$ 11,000	$ 15,000	$ 15,000	$ 4,000
HENDERSONVILLE SYMPHONY	$ -	$ 4,000	$ 2,000	$ 2,000	$ 2,000	$ 2,000
MAINSTAY PROGRAM	$ -	$ 5,000	$ 7,500	$ -	$ 6,000	$ 6,000
MINERAL & LAP MUSEUM	$ -	$ 5,000	$ 5,000	$ 3,000	$ 2,600	$ 2,600
HENDERSON CO. AGRI-BUS	$ -	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000
COMM P'SHIP FOR PETS	$ -	$ 5,000	$ 10,000	$ 10,000	$ 9,000	$ 9,000
CRIME STOPPERS	$ -	$ 2,000	$ -	$ -	$ -	$ -
H'VILLE LITTLE THETRE	$ -	$ 15,000	$ -	$ -	$ 800	$ 800
MILLS RIVER PARTNERSHIP	$ -	$ -	$ 66,130	$ 66,130	$ 66,130	$ 66,130
ARTS COUNCIL	$ -	$ -	$ 1,500	$ 1,500	$ 1,400	$ 1,400
LEGAL SVC-DOMESTIC VIOLENCE	$ -	$ -	$ -	$ 1,500	$ 1,500	$ 1,500
CHILDREN & FAMILY RESOURCE CNT	$ -	$ -	$ -	$ 4,000	$ 3,700	$ 3,700
MERCHANTS & BUSINESS ASSOC	$ -	$ -	$ -	$ 2,000	$ 2,000	$ 2,000
BLUE RIDGE COMM COLLEGE ED	$ -	$ -	$ -	$ -	$ 400	$ 400
INTERFAITH ASSISTANCE MINISTRY	$ -	$ -	$ -	$ -	$ 3,000	$ 3,000
AMERICA IN BLOOM	$ -	$ -	$ -	$ -	$ 500	$ 500
Sub-Total Dollar Amount	$ 286,000	$ 302,330	$ 269,005	$ 351,294	$ 292,376	$ 6,376
Sub-Total Count	16	22	22	24	28	12

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Appendix B

5 Year Schedule – By Function

DESCRIPTION	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	INCREASE (DECREASE)
ECONOMIC DEVELOPMENT						
CHAMBER OF COMMERCE	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ -
P'SHIP ECON DEVELOPMT	$ 11,000	$ 11,000	$ 11,000	$ 15,000	$ 15,000	$ 4,000
HENDERSON CO. AGRI-BUS	$ -	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000
MILLS RIVER PARTNERSHIP	$ -	$ -	$ 66,130	$ 66,130	$ 66,130	$ 66,130
Sub-Total	**$ 21,000**	**$ 26,000**	**$ 92,130**	**$ 96,130**	**$ 96,130**	**$ 75,130**
HUMAN SERVICES						
HANDS ON GALLERY	$ 50,000	$ 5,000	$ 5,000	$ 2,000	$ 600	$ (49,400)
CONTR TO PUBLIC TRANSIT	$ 79,800	$ 92,630	$ 98,675	$ 108,164	$ 116,866	$ 37,066
HEND CO RESCUE SQUAD	$ 8,000	$ 8,000	$ 10,000	$ 10,000	$ 10,000	$ 2,000
HEND CO DISPUTE CENTR	$ 500	$ 500	$ 500	$ 500	$ 500	$ -
THE HEALING PLACE	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ 1,500	$ -
MEDICAL LOAN CLOSET	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,200	$ 200
BOYS & GIRLS CLUB	$ 5,000	$ 10,000	$ 15,000	$ 15,000	$ 15,000	$ 10,000
MAINSTAY PROGRAM	$ -	$ 5,000	$ 7,500	$ -	$ 6,000	$ 6,000
COMM P'SHIP FOR PETS	$ -	$ 5,000	$ 10,000	$ 10,000	$ 9,000	$ 9,000
CRIME STOPPERS	$ -	$ 2,000	$ -	$ -	$ -	$ -
LEGAL SVC-DOMESTIC VIOLENCE	$ -	$ -	$ -	$ 1,500	$ 1,500	$ 1,500
CHILDREN & FAMILY RESOURCE CNT	$ -	$ -	$ -	$ 4,000	$ 3,700	$ 3,700
Sub-Total	**$ 145,800**	**$ 130,630**	**$ 149,175**	**$ 153,664**	**$ 165,866**	**$ 20,066**
HISTORY, ARTS, AND CULTURE						
FLAT ROCK PLAYHOUSE	$ 100,000	$ 100,000	$ 10,000	$ 80,000	$ 11,800	$ (88,200)
HERITAGE MUSEUM	$ 2,000	$ 5,000	$ 2,000	$ 5,000	$ -	$ (2,000)
SISTER CITIES PROGRAM	$ 500	$ -	$ 500	$ 2,300	$ 900	$ 400
HENDERSONVILLE SYMPHONY	$ -	$ 4,000	$ 2,000	$ 2,000	$ 2,000	$ 2,000
H'VILLE LITTLE THETRE	$ -	$ 15,000	$ -	$ -	$ 800	$ 800
ARTS COUNCIL	$ -	$ -	$ 1,500	$ 1,500	$ 1,400	$ 1,400
Sub-Total	**$ 102,500**	**$ 124,000**	**$ 16,000**	**$ 90,800**	**$ 16,900**	**$ (85,600)**
EDUCATION						
BLUE RIDGE COMM COLLEGE ED	$ -	$ -	$ -	$ -	$ 400	$ 400
HEND CNTY PUB SCHOOLS	$ 10,000	$ 10,000	$ -	$ -	$ -	$ (10,000)
Sub-Total	**$ 10,000**	**$ 10,000**	**$ -**	**$ -**	**$ 400**	**$ (9,600)**
OTHER						
MERCHANTS & BUSINESS ASSOC	$ -	$ -	$ -	$ 2,000	$ 2,000	$ 2,000
MAYORS ADV COUNCIL	$ 500	$ 500	$ 500	$ 500	$ 500	$ -
TEAM ECCO	$ 5,000	$ 5,000	$ 5,000	$ 4,000	$ 3,600	$ (1,400)
SHUFFLEBOARD CLUB	$ 1,200	$ 1,200	$ 1,200	$ 1,200	$ 880	$ (320)
MINERAL & LAP MUSEUM	$ -	$ 5,000	$ 5,000	$ 3,000	$ 2,600	$ 2,600
INTERFAITH ASSISTANCE MINISTRY	$ -	$ -	$ -	$ -	$ 3,000	$ 3,000
AMERICA IN BLOOM	$ -	$ -	$ -	$ -	$ 500	$ 500
Sub-Total	**$ 6,700**	**$ 11,700**	**$ 11,700**	**$ 10,700**	**$ 13,080**	**$ 6,380**

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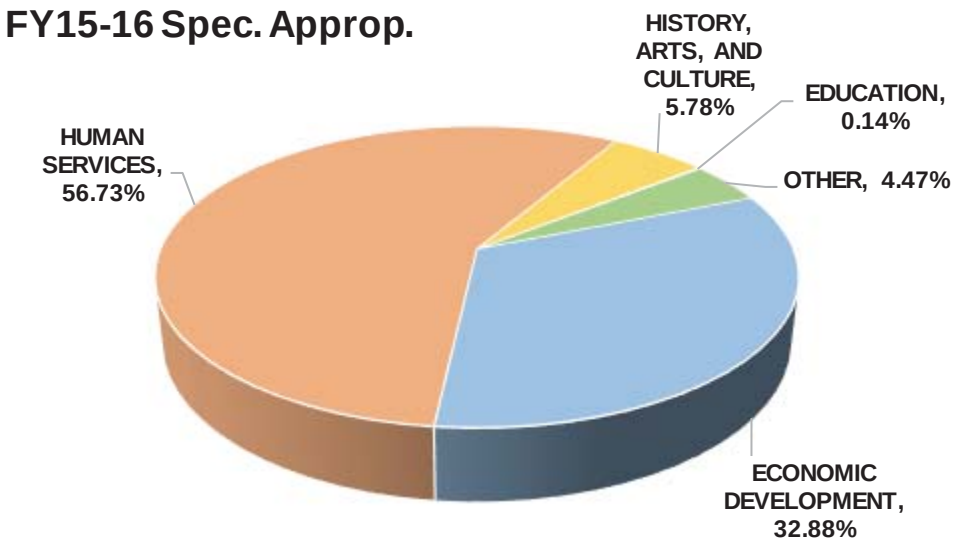
Appendix B

5 Year Summary

DESCRIPTION	FY11-12	FY12-13	FY13-14	FY14-15	FY15-16	INCREASE (DECREASE)
ECONOMIC DEVELOPMENT	$ 21,000	$ 26,000	$ 92,130	$ 96,130	$ 96,130	$ 75,130
HUMAN SERVICES	$145,800	$130,630	$149,175	$153,664	$165,866	$ 20,066
HISTORY, ARTS, AND CULTURE	$102,500	$124,000	$ 16,000	$ 90,800	$ 16,900	$ (85,600)
EDUCATION	$ 10,000	$ 10,000	$ -	$ -	$ 400	$ (9,600)
OTHER	$ 6,700	$ 11,700	$ 11,700	$ 10,700	$ 13,080	$ 6,380
Sub-Total	**$286,000**	**$302,330**	**$269,005**	**$351,294**	**$292,376**	$ 6,376



Local Government Contracts with Nonprofit Organizations: Questions and Answers

Frayda S. Bluestein and Anita R. Brown-Graham

Nonprofit organizations have long worked with governments to respond to community needs. The resulting partnerships have been powerful, combining the flexibility and service-delivery capabilities of the nonprofit sector with the financial and direction-setting capabilities of the public sector. They have resulted in improved local services in many areas, including human services, community development, economic development, and environmental protection.

Although they are touted as the wave of the future, these partnerships have not been without their fair share of challenges. This article follows other recent efforts by the Institute of Government, in partnership with the North Carolina Center for Nonprofits and the North Carolina Association of County Commissioners, to improve the relationships between local governments and nonprofits (see the sidebar, page 33). It focuses on the legal aspects of relationships between local governments and nonprofits, with particular attention to contracting. Although local governments and nonprofits work together or interact in many circumstances without contracting, contracts are the most common vehicles for these collaborations. It is important for representatives of both sectors to understand the requirements for and the limitations on these contracts. Discussed in the questions and answers that follow are three general topics: (1) the basic authority for and the limitations on local government contracts with nonprofits; (2) legal and practical consequences for nonprofits of receiving public funds from local governments; and (3) legal issues raised by contracts with faith-based organizations.

The following basic principles underlie most of the answers to the questions addressed in this article:

1. A local government has the authority to contract with and provide financial or in-kind assistance to any private organization to carry out any function for which the local government has authority to appropriate funds.
2. As a general rule, a nonprofit that receives funds from a local government does not become subject to the rules that govern a public agency, but the public agency may require the nonprofit to comply with certain accountability and other requirements as a condition of receiving the funds.
3. A faith-based organization that receives public funds or property may not use them for a religious purpose.

In addition to answering the main questions about local governments' contracts with nonprofits, this article includes several examples of issues related to providing assistance to specific types of nonprofits, including faith-based organizations.These examples are interspersed in the article in the "Assistance to . . ." sidebars (see pages 35–39).

1. What authority do local governments have to contract with nonprofit organizations, and what are the limitations on the exercise of that authority?

For North Carolina local governments, the authority to contract is directly related to the basic authority to spend money. A local government may contract for any purpose for which it may spend money. The three key legal limitations on the expenditure of funds by a local government are that (1) the expenditure be for a public purpose; (2) the activity supported be one in which the local government has statutory authority to engage; and (3) the expenditure not be inconsistent with the laws or the constitution of the state or federal government. The next three questions and answers discuss these limitations in turn.

2. What is a public purpose, and what is the source of this requirement?

The North Carolina Constitution says that local governments may levy taxes only for "public purposes."[1] Courts have applied this limitation broadly, not only to the taxing power but also to the appropriation and spending powers.[2] So any expenditure by a local government must be for a public purpose. The North Carolina Constitution also specifically authorizes appropriations to and contracts with private entities (whether for profit or nonprofit) but repeats the limitation that the appropriation or the contract accomplish a public purpose.[3]

The definition of "public purpose" is difficult to pin down. The courts have recognized that the concept is not fixed in time but shifts as governments adapt their activities to changes in the population, the economy, and other conditions.[4] The

The authors are Institute of Government faculty members. Bluestein specializes in local government law, including local government contracts, Brown-Graham in community development and public liability. Contact them at bluestein@iogmail.iog.unc.edu and brgraham@iogmail.iog.unc.edu.

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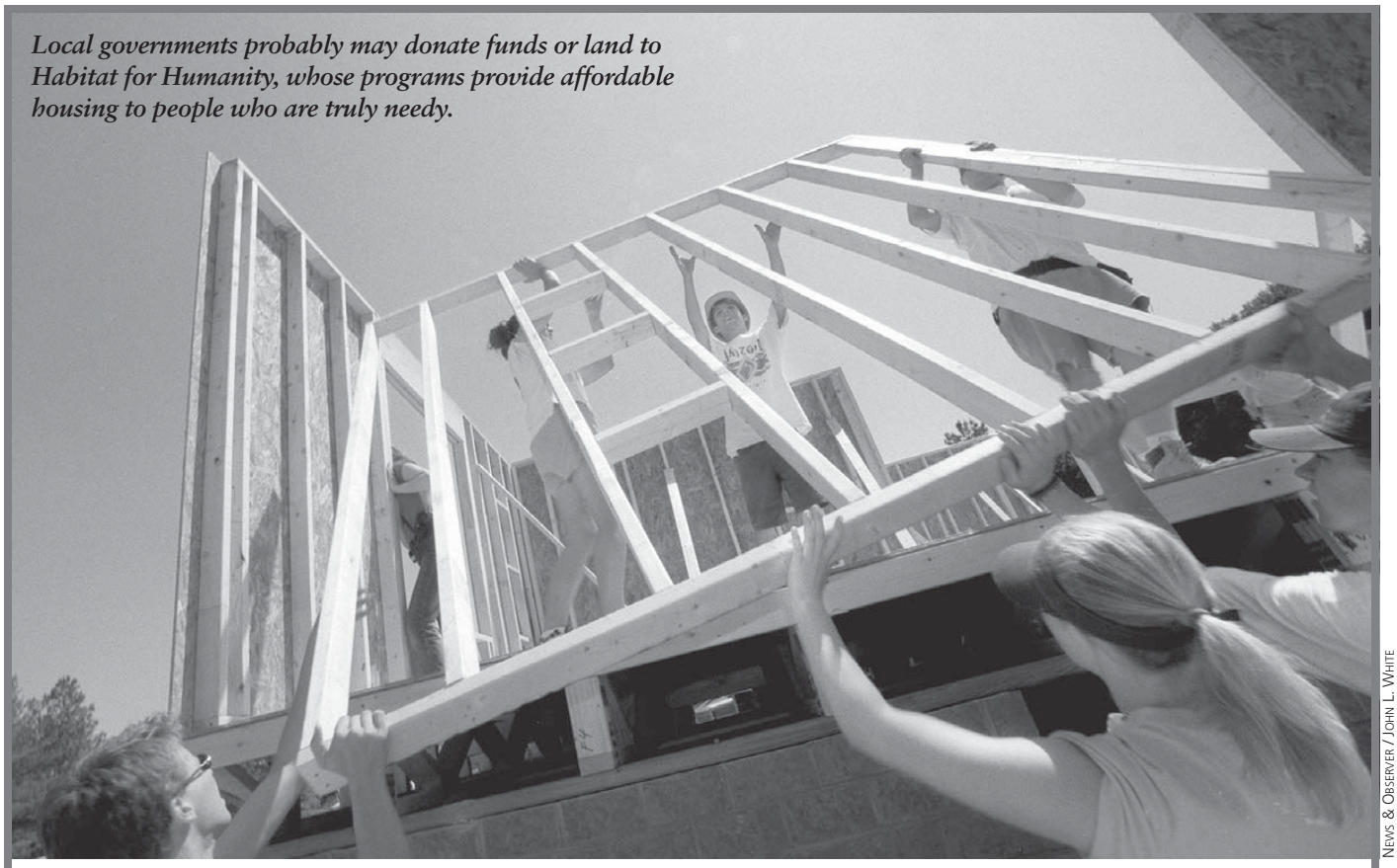

Local governments probably may donate funds or land to Habitat for Humanity, whose programs provide affordable housing to people who are truly needy.

News & Observer / John L. White

Helping Local Governments Work More Effectively with Nonprofits

The Institute of Government, in partnership with the North Carolina Center *for* Nonprofits and the North Carolina Association of County Commissioners, has undertaken a project to help local governments and nonprofit organizations work together more effectively. The initiatives of the project include community assistance, training, and publications. The project's Web site, www.nonprofit-gov.unc.edu, provides a detailed overview of this work and answers frequently asked questions about government-nonprofit relationships.

Community assistance. The Association of County Commissioners' project Counties as Catalysts for Stronger Families has been the focus of the community assistance. Institute faculty and colleagues from the Jordan Institute for Families at UNC–CH's School of Social Work conducted fifteen "collaboration workshops" across North Carolina in April and May of this year to strengthen families and close the academic achievement gap. Eighteen counties are participating in these collaborative efforts, and a wide variety of government and nonprofit organizations serve as lead agencies.

Training. In June 2001, with the support of the Association of County Commissioners, the Institute offered its initial "school" for local government liaisons to nonprofit organizations, Navigating Nonprofit–Government Relationships. The school was designed to help city and county staff assess and improve their governments' relations with nonprofits. The workshop has generated considerable interest. A second offering is planned for October 1–2 in Hickory. Institute faculty also have built consideration of government–nonprofit relationships into other schools and conferences throughout the state.

Publications. In the past year, the Institute published *20 Questions Nonprofits Often Ask about Working with Local Government*[1] and several articles on nonprofits in *Popular Government*, including "A Primer on Nonprofit Organizations," "How Local Governments Work with Nonprofit Organizations in North Carolina," and "Strengthening Relationships between Local Governments and Nonprofits."[2] Research for these and related publications was supported by a grant from the Jessie Ball duPont Fund, which provided seed money for the Institute's Project To Strengthen Nonprofit–Local Government Relationships.

—Gordon P. Whitaker

Notes

1. Lydian Altman-Sauer, Margaret Henderson, & Gordon P. Whitaker (Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 2000).

2. Gita Gulati-Partee, *A Primer on Nonprofit Organizations*, Popular Government, Summer 2001, p. 31; Gordon P. Whitaker & Rosalind Day, *How Local Governments Work with Nonprofit Organizations in North Carolina*, Popular Government, Winter 2001, p. 25; Lydian Altman-Sauer, Margaret Henderson, & Gordon P. Whitaker, *Strengthening Relationships between Local Governments and Nonprofits*, Popular Government, Winter 2001, p. 33.

courts have used two guiding principles in determining whether a particular activity is for a public purpose: (1) whether it involves "a reasonable connection with the convenience and necessity of the [local government]" and (2) whether it "benefits the public generally, as opposed to special interests or persons."[5] The first principle deals with the issue of whether the activity is "within the appropriate scope of governmental involvement and is reasonably related to communal needs."[6] The courts have analyzed this issue by comparing the activity in question with others that have been approved by the courts, recognizing, again, that the appropriate scope of governmental activity shifts in response to the changing needs and issues in the community.

The North Carolina courts have offered at least two refinements of the second principle. First, it is not necessary to show that every citizen will benefit from an activity for it to be considered a public purpose.[7] Furthermore, the fact that one or more private individuals benefit does not eliminate the public purpose. In a case upholding a North Carolina local government's payments and other assistance to a private business for economic development, the North Carolina Supreme Court held that "an expenditure does not lose its public purpose merely because it involves a private actor. Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose."[8] In that case the court found that, even though the private business would receive funds and other direct benefits, they were incidental to the primary public goal (economic development) of the appropriation. In other words, a private individual or business may directly benefit from a contract or an appropriation. This does not extinguish the public purpose as long as the public will benefit and the private benefit does not outweigh the public benefit.

(For examples of the application of these principles, see the "Assistance to . . ." sidebars.)

3. Explain the requirement for "statutory authority." Must there be a statute specifically authorizing the contract?

North Carolina local governments do not have inherent authority. They operate under authority delegated to them by the state legislature through enabling laws. So, in addition to its serving a public purpose, a particular action of a local government (including an expenditure or a contract) must be authorized by a state statute.

This does not necessarily mean there must be a statute that specifically authorizes the local government to enter into a contract for every activity it might wish to support. The state constitution, as noted earlier, contains a general authorization for contracts with private entities. In addition, parallel statutes for cities and counties authorize them to contract with any private entity to carry out any public purpose in which they have statutory authority to engage.[9] This means that as long as a statute authorizes a particular activity, the local government has the choice of carrying out the activity itself or contracting with a third party to carry out all or part of the activity.

4. What about the limitation having to do with violations of state and federal laws or constitutions?

Even if an activity serves a public purpose and is statutorily authorized, a local government may not engage in it if it violates state or federal law, or is unconstitutional. This is true because of the supremacy of the state and federal governments over local governments. Simply put, local governments may not act in a way that is inconsistent with state or federal law. An example may help readers understand how this limitation works.

> *A contract with a nonprofit community development organization to provide low-income housing may meet the requirements of public purpose and statutory authority. If, however, the paid executive director of the nonprofit is a member of the governing board of the local government, the contract will violate a state statute that prohibits conflicts of interest unless the procedures in that statute are complied with (see the discussion at question 16 about what constitutes a conflict of interest). A contract that violates the state conflict-of-interest law is unenforceable.*[10]

Contracts that violate state or federal constitutional provisions also are invalid and may expose the local government to liability (including monetary damages) for violations of individual civil rights, such as equal protection, due process, or freedom of speech. A full discussion of constitutional violations that might occur in the contracting context is beyond the scope of this article.[11] Because of the significant involvement of faith-based organizations in local government issues, a more detailed discussion of the limitation imposed by the federal constitution's prohibition on government establishment of religion (commonly referred to as the requirement to separate church and state) follows.

5. Are local governments prohibited from contracting with religious (faith-based) organizations?

No. Local governments may contract with faith-based nonprofits for services as long as those contracts do not violate the federal or state constitutions or other laws. Generally speaking, a contract with faith-based groups will be deemed lawful if the contract has a neutral purpose and effect both toward religion and among religions, and avoids excessive government entanglement with religion. In other words, the terms of the contract must have the effect of safeguarding (1) the religious freedom of beneficiaries, both those who are willing to receive services from religious organizations and those who object to receiving services from such organizations, and (2) the religious integrity and character of faith-based organizations that are willing to accept government funds to provide services to the needy. (The sidebar on page 40 explains in greater detail these and other restrictions on contracts with faith-based organizations.)

6. What, if any, limitations must a contract involving public funds impose on the activities of the religious organization? What limitations may the contract impose?

Notwithstanding widespread thought to the contrary, there are few legal limitations on religious organizations that receive public funding for programs. Although the public funder is free to impose religion-neutral restrictions, the only generally applicable restriction is that public funds not be used to pay for worship services, sectarian instruction, or proselytization. An example may help illustrate these basic principles.

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A faith-based Welfare-to-Work training program uses county funding to buy Bibles and give Bible instruction. Several clients complain that they are being pressured to join the sponsoring church or change their religious beliefs. Under constitutional limitations, public funds may not be used to coerce any person to support or participate in any religion. Therefore the faith-based organization could lose the contract for making the purchases and appearing to condition services on religious activity.

Fearful of a lawsuit, the county amends the contract to provide that the same faith-based organization may run the program but must agree not to use county funds to buy Bibles and give Bible instruction and may not make conversion a requisite of the program. Those provisions are appropriate.

The amended contract also requires the organization to remove all religious art, scripture, and other symbols from the walls of the fellowship hall during program hours. These restrictions are illegal because they result in government control over the internal operation of the church. As such, they may not be imposed as conditions of the contract.

A common misperception is that the use of public funds in program delivery automatically subjects the faith-based institution to the same standards as the public funder. That is not so. Religious institutions retain their autonomy even when under contract with local governments. So, for example, religious organizations retain their right to use religious criteria in hiring, firing, and disciplining employees. Although it would be illegal for local government employers to discriminate in employment on the basis of religion, it is permissible for them to fund a religious group that engages in such discrimination.

Another common misperception is that religious organizations are required to establish a separate organization as a prerequisite to receiving government funding. Again, that is not the case. However, many religious groups do establish a separate organization, or at least segregate government funds in a separate account, to limit the scope of fiscal audits and to protect the autonomy of their organization.

7. The last several questions and answers have addressed limitations on contracting. What about grants and appropriations? Are there different rules for these transactions?

No. Both the basic authority for local governments and the limitations discussed so far are the same regardless of the form of assistance being provided. Contracts, grants, appropriations, and in-kind contributions (such as donations of property or land, procedures for which are discussed at question 17) are all subject to the same limitations. In effect, each of these involves an expenditure of public funds. A few differences among these forms of expenditure are worth noting, however.

Grants. Although grants and contracts often are thought of separately, a grant is really a kind of contract. It involves the public agency's providing funds in exchange for a promise by the grantee to carry out certain prescribed activities or to produce particular results.

There are, however, some practical differences between grants and other types of contracts. The process for awarding grants is usually different from the process for awarding other kinds of contracts. Competition is typically structured differently, and in many cases a grant may describe the required performance in less detail than other contracts.

Another important difference is that local government grants often involve "pass-through" funds from the state or federal government. Funds and eligibility standards for these grants originate with the state or federal government but are awarded at the local level. These types of grants may require that the local government include reporting, accounting, and other requirements and that it use specified procedures for awarding the grants. With other kinds of contracts, the local government has more discretion to include terms and requirements as it deems appropriate.

Appropriations. Like a grant or other contract, a direct appropriation may be made to a nonprofit organization to carry out any activity for which the local government is authorized to spend money. An appropriation is a budgetary action

Assistance to a YMCA

The local YMCA is seeking contributions to fund the construction of a new facility. May the city contribute funds for that purpose?

The city has authority to provide and appropriate funds for recreation programs under G.S. 160A-353. YMCAs typically provide at least some types of recreation programs that would fall within this authority.

The YMCA also may conduct programs for young people to deter delinquency or crime. Support for these programs could be justified under the city's general ordinance-making authority to protect the health, safety, and welfare of its citizens (G.S. 160A-274).

On the other hand, the YMCA may conduct programs that are religious in nature or that are otherwise outside the statutory authority or other limits of the city's power to appropriate funds. If the city provided funds through a contract, it could limit the use of the funds to activities that fall within its authority. Establishing limits is harder to do with a contribution to support the construction of new facilities. Although no case provides guidance on this question, it seems reasonable that as long as the city obtains a contractual promise from the YMCA that it will use at least some part of the facility to conduct programs that are within the scope of the city's authority, the contribution to the building is a lawful expenditure. The fact that other parts of the building will be used for purposes outside the city's authority is probably not a bar to making the contribution.

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Assistance to United Way

May a local government make a donation to United Way?

One of the difficulties with contributions to United Way is that it works with many different organizations, some but not all of which carry out purposes that local governments may legally fund. For this reason a local government should earmark a contribution to United Way to guarantee that the funds will be used only for organizations that are within the scope of the unit's authority. An alternative would be for the local government to make the contribution directly to those organizations rather than through United Way.

that involves the governing board's approving the expenditure of funds for a particular purpose.[12] Although an appropriation may not be accompanied by the same paperwork as grants and other contracts, it really should be treated in the same way. In jurisdictions that require private entities to submit proposals when they are requesting appropriations, the proposals should form the basis for the obligations that bind successful applicants, along with any other conditions that the local government may impose (examples of these conditions are discussed at question 15). In practice, an appropriation is likely to be less specific than a grant or other contract. It may simply take the form of a lump-sum payment by the local government to the nonprofit organization. However, the legal limitations discussed at questions 1–4 still apply. Therefore the local government and the nonprofit organization must take care to ensure that the funds are used only for purposes that the local government has authority to support.

Contracts for services. As noted, a grant or an appropriation may take the form of a contract. In addition, local governments may contract for services with nonprofit organizations in the same way that they contract with other private entities to provide specific services, such as transportation or day care. These contracts may be made through the unit's regular contracting process, rather than through a competitive budgeting or grants process, and will have the same terms and conditions as those regularly imposed on the unit's service providers.

8. How does a local government decide which nonprofits it will support?

The decision-making process varies widely among local governments in North Carolina. In some jurisdictions the governing board appoints a committee to evaluate requests for support from nonprofit organizations as part of the budget development process. Other jurisdictions handle these requests informally, on a case-by-case basis.

If the form of support is an appropriation or a donation of property (see the discussion at questions 7 and 17), the local governing board must ultimately make the decision. However, many contracts, especially service contracts, may be awarded by the manager or department staff under a delegation of authority from the governing board (see the discussion at question 11). There is no legal requirement that support for nonprofit organizations be centralized or coordinated. The decision-making process is more likely to be determined by the type of support that the nonprofit seeks (appropriation, grant, or contract for services) than by the fact that a nonprofit is involved.

DIG (Durham Innercity Gardeners) teaches youths to tend a garden and market produce. It is a project of SEEDS (Southeastern Efforts Developing Sustainable Spaces), a nonprofit that receives some funds from the Durham County government.

News & Observer / Chuck Liddy

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9. Must all agreements between local governments and nonprofits be reduced to written contracts with original signatures?

No, but it is a good idea to reduce the common understanding between the parties to writing in order to avoid conflicts in performance and administration of the project or the activity. Several statutory provisions require certain kinds of contracts to be in writing. A state statute requires all contracts by cities to be in writing but provides that the governing board may "ratify" (approve after the fact) contracts that fail to meet this requirement.[13] Another law requires contracts of $500 or more for the sale of goods to be in writing, but again, there are exceptions recognized in the law.[14]

The courts have long recognized that the most important issue in determining whether an enforceable agreement exists is whether there is proof that the party against whom enforcement is sought intended to be bound by the agreement. The easiest way to prove that is to present something in writing, signed or otherwise authenticated by that person.[15] Oral agreements, even when allowed, may be difficult to enforce.

Recently enacted federal and state laws provide legal recognition of electronic contracts and signatures.[16] So even when a contract is required, it does not necessarily have to be a piece of paper with an original signature.

10. Is it true that local governments may not enter into a contract that extends beyond the current fiscal year? Is there any limit to the length of time for which a local government may contract?

The answer to both questions is no. Although local governments operate on a year-to-year budget, state law specifically authorizes them to enter into contracts for a term that extends into subsequent fiscal years.[17] State law also makes clear that when a local government does enter into a contract that obligates it to make payments in a subsequent fiscal year, the governing board is legally obligated to budget the funds necessary to pay those obligations in each subsequent fiscal year.[18] Although state law does not specifically require all continuing contracts to be approved by the governing board, in light of the obligation that these contracts place on the budgeting decisions of the board, it may be advisable to seek governing board approval.

There does not appear to be any limitation on the term for which a local government may contract, except that a contract that does not state a term will probably not be interpreted to be perpetual. Instead, a court would most likely interpret the contract to be for a "reasonable term" as indicated by the purpose of the contract and the apparent intent of the parties.[19]

11. What procedures apply to contracts between local governments and nonprofit organizations?

It is hard to account for every procedural requirement that might apply to a particular contract. Following is a discussion of the most common requirements to consider.

Governing board approval. The governing board of a local government has the basic authority to act for the unit.[20] This means that the authority to make contracts (and grants and appropriations) rests with the governing board. Unless a statute specifically requires the board to act, however, the board may delegate the authority for these actions to an appointed officer within the unit.[21] The governing body must make budgetary decisions, including appropriations to nonprofit organizations. Decisions on grants or other contracts generally may be made by the governing board or may be delegated to the manager, a department head, or another appointed official or board.

It is important for a nonprofit contracting with a local government to make sure that the person or the board that approves the contract has the legal authority to do so. A contract made on behalf of a local government by someone who does not have authority to act on its behalf is not enforceable, even if the nongovernmental party (the nonprofit) reasonably believed that the person or the board did have authority.[22]

Competitive bidding.[23] For North Carolina local governments, only two categories of public contracts require bidding: (1) contracts for construction or repair work and (2) contracts for the purchase or lease-purchase of apparatus, supplies, materials,

Assistance to a Nonresident Nonprofit

May a city contribute money to a nonprofit that provides services outside the city's jurisdiction? For example, may a city support a nonprofit that operates a homeless shelter located outside the city?

A key consideration in analyzing whether a local government may provide support in this circumstance is whether the nonprofit provides a benefit to the citizens of the local government (see questions 2 and 3 of the main article). It does not matter where the nonprofit is located, as long as there is a benefit enjoyed by the citizens of the supporting local government. In addition, it is not necessary that all citizens within the jurisdiction benefit. As long as the facility or the program is open to all citizens and there is some actual or expected participation or benefit by citizens of the supporting jurisdiction, the expenditure is lawful. The local board, of course, has the discretion to decide whether the likely participation justifies the financial support and, if so, in what amount.

The program also must be one for which the local government has authority to appropriate funds. For example, cities do not have authority to support county volunteer fire departments that provide fire services only in the unincorporated areas of the county. On the other hand, if there is an agreement between the city and the volunteer fire department for mutual aid or some other service that benefits residents of the city, a contribution will be legally justifiable. Applying these principles to the original question, since a local government has authority to provide shelter for the homeless (see G.S. 157-9), it may support a shelter located in another jurisdiction as long as citizens of the local government will derive some benefit from it.

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Assistance to Habit for Humanity

May a local government donate land to Habitat for Humanity, which will use it to build a house for a private individual to own?

Both cities and counties have authority to support affordable housing, including through the conveyance of real property.[1] Of course, if the conveyance is without monetary consideration, there must be a promise in exchange for the property that it will be used for a public purpose. Even though a private individual will benefit from the new house, it is generally understood that the community as a whole benefits from having affordable housing available and from improving the living conditions of its citizens. Under this reasoning a court would likely uphold the contribution of funds or property to Habitat for Humanity, an organization that is dedicated to the goals just described and whose programs are designed to ensure that the benefit will go to people who are truly needy.

Notes

1. G.S. 153A-378 (counties); G.S. 160A-456(b) (cities). *See* the discussion in David M. Lawrence, Local Government Property Transactions 138–39 (2d ed., Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 2000).

or equipment.[24] The specific procedures required for these contracts depend on the estimated amount of the expenditure.[25] Contracts that do not fall within these two categories or that fall below the minimum dollar thresholds do not require bidding. *Most contracts with nonprofit organizations involve services and are not subject to the competitive-bidding requirements.*

Many local governments seek competition even when they are not required to do so. This is certainly a good strategy if there is competition for the desired service. It promotes fairness and encourages competitive pricing. When local governments seek competition at their own option (rather than under state law requirements), the terms of the competition, including the basis for award of the contract, may be established in the discretion of the local unit. The unit may award the contract to the bidder who best meets the needs of the unit, rather than the one who submits the bid with the lowest price.

Contracts or grants that involve state or federal funds may have additional bidding requirements with which the local government must comply as a condition of receiving the funds.

Fiscal approvals. State law requires contracts by local governments to be "preaudited" to ensure that (1) the obligation created by the contract is supported by an appropriation (in other words, that the board has authorized the money to be used for the contracted purpose) and (2) uncommitted funds remain in the budget sufficient to pay the obligation.[26] This requirement is carried out through a "preaudit certificate," a written statement signed by the finance officer that the two-part test (the preaudit) has been conducted. The statement must appear on every contract. According to the statute and to cases applying it, if a contract does not contain the preaudit statement, it is void and may not be enforced by either party.

If a contract involves a financing agreement (a kind of transaction that involves a borrowing of money by the local government or payment over time for an asset), additional approvals —for example, by the state Local Government Commission— may apply.[27]

12. Is a local government required to determine whether it can provide the service in house before contracting with a private entity to provide the service?

No, although some may do so as a matter of local discretion. There is no legal requirement or preference for performing functions or delivering services using public employees rather than through contracts with private entities. When the bidding requirements apply (see the discussion on competitive bidding at question 11), the local government is required to give the private sector the opportunity to contract. In addition, some units of government have privatization or managed-competition programs in place, under which the units systematically compare the cost and the desirability of using the private sector with the cost and the desirability of public delivery. These programs are implemented as a matter of local policy, however, and are not mandated by law.

13. Do all the principles discussed so far also apply to contracts with for-profit organizations?

Yes. As a general rule, the subject of a contract, not the entity with whom the contract is made, is the most important consideration in determining whether the local government has the authority to make the contract. The procedural requirements and other limitations are the same, regardless of the profit status of the contracting entity. The fact that an entity receiving support from a local government is a for-profit organization may feature prominently in the analysis of whether the expenditure meets the public-purpose requirement, but the legal standard that a court would apply is the one discussed at question 2. Furthermore, a private for-profit entity is less likely than a nonprofit organization to be limited in its use of public funds. For example, a nonprofit organization will be prohibited from using public funds for religious or other purposes for which funds may not legally be appropriated.

14. What are some other ways in which a nonprofit's contract with a local government differs from a nonprofit's contract with a private entity?

A nonprofit should be prepared for the open and public nature of the public contracting process, which may not be present when the nonprofit contracts with private entities. When a local government board makes a decision on a contract, a grant, or an appropriation, that decision must be made in an open meeting. The board generally does not have the legal authority to conduct its discussion of this type of transaction in a closed session. There are a few exceptions to this rule, such as when the acquisition of property by the local government is involved or when the matter relates to litigation or something that is covered by the attorney-client privilege.[28]

In addition, all the documents associated with the transac-

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tion, including proposals, correspondence, and contract documents, are public records.[29] Again, there are a few exceptions. Documents constituting trade secrets as defined by state law that are a part of a bid proposal may be confidential and excluded from public access.[30] In addition, tax returns and some financial information of a private organization may be covered by one or more exceptions to the public records law.[31] It seems unlikely, however, that any of these exceptions would apply to contracts typically entered into by nonprofit organizations, because their tax information already is subject to public scrutiny. Thus a nonprofit organization should assume that all or most of the documents held by a local government in connection with the nonprofit's work with that government are subject to public inspection.

15. What requirements are imposed on a nonprofit when it contracts with a local government?

Although relatively few legal requirements *automatically* apply to a nonprofit by virtue of its contract with a local government, the local government may impose requirements on a nonprofit through the contract itself or otherwise, as a condition of receiving the funds. As a general rule, a nonprofit's receipt of public funds does not make it subject to the rules that govern public agencies, such as those pertaining to bidding, public personnel, public records, and open meetings. Only when the nonprofit is significantly controlled by the public agency have the courts extended these types of requirements to a private nonprofit entity.[32]

Some examples of requirements that do apply or might be imposed follow.

Fiscal accounting. State law specifically authorizes local governments to require that a nonprofit that receives $1,000 or more in any fiscal year have an audit performed for the fiscal year in which the funds are received.[33] Local governments also may be responsible for administering state or federal programs that contain fiscal accounting requirements. Finally, a local government may require nonprofits to account for funds they receive, in whatever manner the local government deems appropriate as a condition of providing funds. A nonprofit that receives funds under a grant, a contract, or an appropriation that contains this requirement is legally bound to comply with it. When fiscal accounting is not required by state or federal law, a local government has flexibility in designing the reporting requirement, and should consider ways of requiring accountability that strike a balance between the government's needs and the nonprofit's capacity (see the sidebar, page 43).

Conflicts of interest. As noted at question 16, state law prohibits a public official who has responsibility for contracting, from benefiting from a contract with the unit of government that he or she represents. A person who contracts on behalf of a nonprofit (and who is not a public official) is not subject to this law, even when funds that came from a public entity are being spent. A local government may, however, require a nonprofit organization to adopt a conflict-of-interest policy as a condition of receiving a contract, a grant, or an

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Assistance to Faith-Based Organizations

May a local government enter into an exclusive contract with a faith-based organization to provide job placement if the organization is the only one in the area that can provide the services?

Yes, under limited conditions. Neither federal nor state law absolutely prohibits a local government from contracting with a faith-based organization to be the sole provider of services in a particular area. However, beneficiaries of the services are entitled to an alternative provider if they object to the religious character of the sole provider. If someone objects, the local government must itself provide the services to those who choose not to participate with the religious organization, or engage an acceptable provider outside the area to provide an equivalent and accessible service in a timely manner.

May a local government make funds to build houses available to some nonprofits but refuse to make such funds available to a qualified church group because of its religious character?

No. If the local government elects to involve nonprofit providers in the delivery of services, then it may not automatically exclude providers because of their religious character. In a recent case, the Fourth Circuit Court of Appeals wrote,

> *We recognize the sensitivity of this issue, and respect the constitutional imperative for government not to impermissibly advance religious interests. Nevertheless, by refusing to fund a religious institution solely because of religion, the government risks discriminating against a class of citizens solely because of faith. The First Amendment requires government neutrality, not hostility, to religious belief.*[1]

May a local government require as a part of its contract with a faith-based institution running an abstinence program for teenagers that the advisory council reflect the diverse demographics of the community?

No. A series of specific constitutional protections would prohibit such a requirement. Faith-based providers may not be required to alter their form of internal governance to be eligible for participation in a government program. The structural form of a religious organization often is dictated by religious doctrine, and "ecclesiastical polity" (the political organization of a church) is protected by the state and federal constitutions.

Notes

1. Columbia Union College v. Oliver, ___ F.3d ___ (No. 00-2193, June 26, 2001) [state funding case finding adequate safeguards against diversion of money to sectarian use under Mitchell v. Helms, 530 U.S. 793 (2000)].

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Contracts with Faith-Based Organizations

Anita R. Brown-Graham

The Establishment Clause of the First Amendment to the U.S. Constitution ultimately controls the legality of contracts with faith-based organizations. It dictates that "Congress shall make no law respecting an establishment of religion." Although some have viewed the First Amendment as a wall of separation between the government and religion, the courts never have interpreted it so literally.[1] This sidebar addresses the tests employed by the courts to assess the legality of government contracts with faith-based organizations.

The *Lemon* Test

The only recent U.S. Supreme Court case considering the legality of public contracts with religious organizations is *Bowen v. Kendrick*.[2] In *Bowen* the Court upheld the constitutionality of the Adolescent Family Life Act (AFLA), which offered federal grants to public and private (including religious) agencies to curtail teenage sexuality and pregnancy and to assist unwed mothers. The *Bowen* Court applied a three-part test that it had set forth in *Lemon v. Kurtzman* for determining when a governmental practice violates the Establishment Clause. Under *Lemon* a local government may contract with a faith-based institution if the contract (1) has a secular purpose, (2) has a primary effect of neither advancing nor inhibiting religion, and (3) does not create an excessive entanglement between the government and religion.[3] Although the Supreme Court has modified the *Lemon* test, it still appears to set the parameters for analyzing government contracts with religious institutions.

Secular Purpose

In considering whether a contract has a secular purpose, the courts may ask whether the government "has abandoned neutrality and acted with the intent of promoting a particular point of view in religious matters."[4] The *Bowen* Court deferred to Congress's declaration that the legitimate secular purpose behind the AFLA was the elimination or the reduction of social and economic problems caused by teenage sexuality, pregnancy, and parenthood.

Similarly, courts will usually defer to a local government's sincere articulation of a secular purpose. However, when there is no question that the purpose behind the contract is either to endorse or to disapprove religion, courts will find the contract to violate the First Amendment.[5]

Primary Effect

The "primary effect" prong of the *Lemon* test focuses on the effect of the local government's action, irrespective of purpose. If the primary effect is to advance or inhibit religion, the action is unconstitutional. The *Bowen* Court concluded that the primary effect of the AFLA was not to advance religion. Although many of the "necessary services" mentioned by the AFLA involved education or counseling, areas in which religious organizations might arguably infuse "proselytization" (efforts to convert clients to their beliefs), the Court found "nothing inherently religious about these activities."[6]

The second prong mandates that local governments not show favoritism for religion or among religions, or discriminate against religion. In determining the effect of the local government's action, a court may look to factors such as whether the aid is available to religious and nonreligious organizations alike, whether the aid to religious organizations is direct or indirect, and whether the religious organizations would likely divert the aid to advance religion.[7]

Excessive Entanglement

The "excessive entanglement" prong of the *Lemon* test prohibits governments from excessive entanglement in religious affairs. Local governments risk excessive entanglement when they become partners with organizations in programs that are pervasively religious. If the programs require obedience to religious dogma, mandatory attendance at religious services, and study of a particular religious doctrine, local governments should beware. To ensure that their funding is not used to advance religion, they must engage in ongoing surveillance of the programs, which may well constitute excessive entanglement. In *Bowen* the Court acknowledged that grant monitoring might require a review of the educational materials or a visit to the site, but it summarily dismissed the idea that such inspections would intrude on religion. Because no grantees were presumed to be "pervasively sectarian," the Court found intensive monitoring unnecessary.

The form of aid and the funding process also may result in excessive entanglement. Although there is no prohibition against annual funding to religious organizations, the risk of entanglement is lessened when a payment is one-time.[8]

A final concern in determining excessive entanglement is the possibility of political divisiveness. To date, this concern has been confined to cases in which a government pays direct financial subsidies to parochial schools or to teachers in parochial schools.[9] However, with the increased incidence and criticism of government partnerships with religious organizations, the concern soon may be raised in other types of cases.

Other Tests

In addition to using the *Lemon* test, courts may analyze challenges to government contracts with religious organizations under an endorsement test, a neutrality test, a coercion test, and a free-speech test.[10] Because the Supreme Court has not mandated that courts use a particular test when analyzing Establishment Clause cases, courts are free to select the test that best fits the case.

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Although some have viewed the First Amendment as a wall of separation between the government and religion, the courts never have interpreted it so literally.

The endorsement test requires courts to consider the following: (1) "whether the government [subjectively] intends to convey a message of endorsement or disapproval of religion" and (2) whether the government practice actually has had "the effect of communicating a message of government endorsement or disapproval of religion."[11]

The neutrality doctrine demands that the government remain neutral toward religion. In 1995 the Supreme Court relied on this doctrine to declare that, by failing to provide school funds to a religious student group in a limited public forum, the University of Virginia engaged in discrimination against viewpoints and violated the students' free speech rights.[12]

The coercion test makes clear that "government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way 'which establishes a [state] religion or religious faith, or tends to do so.'"[13] Clearly, a Welfare-to-Work program that is mandated by the county would run afoul of this test if participation was mandatory and the only service provider was a religious organization that made its religious tenets a core of its program.

The free-speech test requires governments that provide public funds to groups to refrain from showing a preference between religious and nonreligious groups.[14]

Other Authorities

In considering the limitations on a local government's ability to contract with a faith-based organization, officials also must take the North Carolina Constitution into consideration. Article I, Section 13, states that "all persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience." Although the state and federal constitutional provisions are not identical, state courts have said that the two provisions secure similar rights. Thus, cases involving the state constitution are usually analyzed using the federal tests discussed earlier.

Despite similar analyses a challenge to a local government's contract with a religious organization may come under the federal or state constitution, or both. For example, the North Carolina Supreme Court recently struck down a state law that provided a tax exemption for religious or Masonic organizations operating homes for senior citizens but denied the benefit to secular institutions offering the same services.[15] The court found that the provision violated both the state and the federal constitution.

Finally, federal or state law may impose nondiscriminatory restrictions on a faith-based institution that receives funds. For example, the Personal Responsibility and Work Opportunities Reconciliation Act of 1996, which coined the now-popular term "charitable choice," provides that, although states and local governments may use federal Welfare-to-Work funds to contract with religious organizations to provide services, (1) those funds may not be expended for sectarian worship, instruction, or proselytization; (2) participants must be provided with notice that they have a right to an accessible, nonsectarian alternative; and (3) voluntary programs must be truly optional.[16]

Notes

1. *See* Bowen v. Kendrick, 487 U.S. 589 (1988) (upholding, on their face, federal grants for teenage sexuality counseling, including counseling offered by faith-related centers).
2. *Id.*
3. Lemon v. Kurtzman, 403 U.S. 602, 612–13 (1971). The *Lemon* test was modified for cases involving aid to religious schools in Agostini v. Felton, 521 U.S. 203, 232–33 (1997).
4. Ehlers-Renzi v. Connelly School of the Holy Child, 224 F.3d 283, 288 (4th Cir. 2000). *See also* Edwards v. Aguillard, 482 U.S. 578, 585 (1987) (striking down Louisiana law that forbade teaching of evolution in public schools unless accompanied by teaching of creationism).
5. *See, e.g.*, Hall v. Bradshaw, 630 F.2d 1018 (4th Cir. 1980).
6. *Bowen*, 487 U.S. at 602.
7. *See* Mitchell v. Helms, 530 U.S. 793, 809 (2000).
8. *See* Christopher Bass, *Appropriations to Church-Affiliated Organizations,* Local Government Law Bulletin No. 75 (Nov. 1996).
9. *Id.*
10. Deborah L. Ross, *The Religious Clauses: Protecting the Rights of Religious Minorities in a Diverse Society*. Trial Briefs 10 (Jan. 2001).
11. Lynch v. Donnelly, 465 U.S. 688, 690–92 (1984).
12. Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 829–32 (1995).
13. *See* Jones v. Clear Creek Indep. Sch. Dist., 977 F.2d 96, 97 (5th Cir. 1992).
14. *See, e.g.*, Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993) (holding that if school opened its classroom to certain secular community and civic groups after school hours, it could not deny use to religious group).
15. *In re* Springmoor, Inc., 348 N.C. 1, 498 S.E. 177 (1998).
16. 42 U.S.C. § 604a. The act extends coverage of the charitable choice provision to Temporary Assistance for Needy Families, Welfare-to-Work, Community Services Block Grants, and drug treatment funds for 2000 (part of Block Grants in Children's Health, Substance Abuse and Mental Health Services Administration).

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appropriation from the local government. This has become a common requirement for state grants to local governments and also may be a requirement for state or federal pass-through grants or contracts awarded by local governments.

Purposes for which funds or property may be used. As noted at questions 1 and 2, a major limitation imposed on a nonprofit that accepts public funds is that the funds be used only for the purpose for which they were awarded. This is a particularly important limitation for faith-based organizations but applies equally to others. This limitation does not necessarily mean that each dollar must be traced, but it does mean that the nonprofit organization must be prepared to account for the use of the money and to show that the terms of the contract, the grant, or the appropriation have been met, and that the funds have not been used for a different, unauthorized purpose. As noted at question 17, if a local government donates property to a nonprofit, it must ensure that the property is used only for purposes for which the local government may appropriate funds.

16. What about conflicts of interest? For example, if a county commissioner also serves on the board of a nonprofit, is the county legally barred from contracting with that nonprofit?

State law makes it unlawful for a public official to benefit from a contract with the unit he or she represents.[34] For example, a local government generally may not contract with a business owned by one of its board members. A number of exceptions apply, however, including one that allows a limited amount of contracting in small jurisdictions.[35]

The conflict-of-interest laws do not apply if the public official does not receive any financial benefit from the contract. Also, a public official is not considered to have an interest in a contract if he or she is an employee, rather than an owner, of the entity that contracts with the local government. So it is legal for a local government to contract with or provide other support to a nonprofit when a member of the local government's board is a volunteer (unpaid) member or salaried employee of the nonprofit board. In addition, it is legal under the "employee" exception for a local government to contract with a nonprofit whose paid executive director also is a member of the local government board, provided that the local government complies with the statutory requirements for approving contracts under that exception.[36]

The board members and the employees of both the local government and the nonprofit always must consider the nonlegal issues that might arise when a person is involved on both sides of a contract. There may be negative publicity from this type of transaction, and citizens as well as members of the nonprofit may question whether the board member or other person can adequately execute his or her responsibilities to both organizations, especially if a conflict was to arise over the contract. Thus even when the law does not prohibit a contract, avoiding it may be advisable if an ethical issue or perception of conflict of interest might arise.

Other kinds of connections might exist between a local government official and people who are involved with a nonprofit that wishes to contract with the local government. Relatives or spouses of public officials from a particular local government are not legally barred from doing business with that nonprofit, but government officials and nonprofit staff should weigh the possibilities of negative publicity, public perception, and difficulty in administration before they enter into these types of undertakings.

17. May a local government donate property to a nonprofit or provide other in-kind support of nonprofit activities?

Yes. Subject to the requirements of public purpose and statutory authority, discussed at questions 1–3, local governments may provide in-kind support of whatever nature they choose. This includes not only the sale or the donation of property but also technical support or other assistance that may be provided using the unit's employees, building space, land, or equipment. Although the state constitution generally prohibits a local government from giving public money or property to a private person or entity,[37] North Carolina court cases have recognized that a promise to use property for a public purpose is legally sufficient consideration to support its conveyance.[38] This means that as long as the proposed use is one for which the local government has authority to spend money, the local government may provide in-kind support as an outright donation in lieu of or in addition to a cash appropriation. The local government also may convey property at less than fair market value in exchange for cash or a promise of public services. Finally, the local government may choose to sell property to nonprofit organizations using the procedures designed to get fair market value, in the same manner as it would for (and in competition with) other private entities.

There is a special statutory procedure under which local governments may convey property to nonprofit entities without having to receive competition from other private entities. Under G.S. 160A-279 a city or a county may convey property to any entity that carries out a public purpose for which a local government has authority to appropriate funds.[39] Conveyances under this statute must be approved by the governing board. Notice of the proposed action must be advertised, and the unit must wait ten days after the notice is published before completing the transaction.[40] The statute also requires that the local government place conditions on the conveyance to ensure that the property will be put to a public use. In the case of real property, the condition could be embodied in a deed limitation providing that the property reverts to the government if it ceases to be used for a public purpose. For personal property the condition would likely take the form of a contractual agreement with the recipient, who promises to return or pay fair value for the goods if the use changes. Property acquired through the exercise of eminent domain may not be conveyed under this statute.

There are other statutory authorizations for donations of property for specific purposes. For example, state law specifically authorizes local governments to sell or donate real property to volunteer fire departments or volunteer rescue squads that provide services to the local government.[41] State law also sets out procedures for conveying surplus automobiles to entities that will convey them to Work First participants, subject to certain limitations described in the statute.[42] Further, state

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Accountability: It's More than an Audit

Requiring nonprofits to account for their use of public funds is standard practice. The most common form that this requirement takes is an audit. An audit, however, is a very limited tool for obtaining accountability. Technically an audit is an independent verification that financial statements follow generally accepted accounting principles. It does not provide information about how funds have been used, nor does it measure what results have been achieved.

To be useful, accountability measures should be incorporated into the contracting process before and during the contract. Also, they should be designed to ensure that the desired outcomes of the contract are achieved.

Two key aspects of a local government contract with a nonprofit affect the type of accountability measures that are appropriate: nature and size.

Nature of the contract: a purchase of services or general program support. Accountability measures for a contract to purchase services from a nonprofit should be tied to the services to be delivered. Such measures may be similar to those that would be required in contracts with for-profit entities. Contracts to provide more general programmatic support, however, are likely to demand a different type of accountability. Thus a grant to a local arts organization to promote cultural activities in the community should be treated differently than a contract to provide meals or transportation to needy people. (For an illustration of different outcome measures for these two types of contracts, see the bulleted item titled "Develop performance-based contracts.")

Size of the contract: one size doesn't fit all. Accountability measures should be consistent with the level and the type of support involved. A contract that involves a small amount of money may not justify detailed accountability measures. For example, a small, inexperienced nonprofit may seek funds for a service that is important to the community, and it may be the sole provider of that service—such as a mission that provides shelter or food for the homeless. In such a case, taking some risk with a small contribution of funds may be justifiable, weighing the lack of a competitive market, the strong need for the service, and the limited investment involved against the potential instability associated with the nonprofit.

With these factors in mind, local governments should consider taking the following steps to increase the effectiveness of local government contracts with nonprofits.

- ***Evaluate capacity:*** Determine whether the nonprofit has the capacity to carry out the contract before entering into it. Obtain information about staff resources, experience, prior contracts or projects completed, references, and current funding. As noted earlier, the extent of this evaluation should be based on the size and the type of contract. In addition, in determining whether the contracting option itself is the most desirable arrangement, the local government should consider its own capacity to monitor the contract. Neither party benefits if the contract requires nonprofits to provide information that the local government does not have the capacity to review and evaluate in a timely manner.
- ***Develop performance-based contracts:*** Contracts should identify the outcomes that the nonprofit will be responsible for delivering. These may be defined quite specifically (for example, "Provide two meals a day to an average of 200 people per day") or stated in more general terms (for example, "Promote downtown development through support of cultural events downtown"), but both parties should have a common understanding of what they expect the nonprofit to produce. Ideally these results would be priorities for the local government and be agreed on by both parties. They are best if jointly developed, and expressed in writing in terms that minimize the need for clarification or interpretation during the contract period.
- ***Monitor during performance:*** Develop milestones and interim dates for monitoring performance. Such benchmarks allow both parties to evaluate the contract and identify trouble spots early in the process. Consider developing periodic reporting requirements, which may be used as a basis for making partial or progress payments for work completed. This benefits nonprofits, which often have cash flow problems and cannot afford to wait until the end of the contract period to be reimbursed for their expenses. It improves their ability to meet their obligations under the contract.

law authorizes a local government to donate to a 501(c)(3) nonprofit any bicycles that are held by law enforcement agencies and that remain unclaimed after notice has been provided according to the statute.[43]

Local governments also may include nonprofit organizations and their staff in other activities. For example, a local unit might include nonprofit staff in its training programs or use its purchasing power to purchase goods or services on behalf of the nonprofit for use in programs that the local government has authority to fund. Further, a local government may make the expertise of its staff available to the nonprofit as a form of in-kind assistance that might save money for both the local government and the nonprofit. In each case the basic legal limitations on these types of in-kind assistance are the same as those discussed at the beginning of this article. If the activity of the nonprofit is one that the local government has legal authority to support, it can provide in-kind support in a wide variety of ways.

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Conclusion

Nonprofit organizations have cooperated with the public sector since colonial times to provide food, medical care, and social services to those in need. The recent movement toward enhancing that partnership presents both opportunities and challenges. To many local governments, reducing agreements to written contracts only serves to codify an existing relationship. For others it requires a new level of detail and accountability. In either event the contract provides important parameters for both the local government and the nonprofit organization. Contracts should focus on the services to be provided but also must be consistent with state and federal law. The legal parameters take on constitutional dimensions when questions regarding the freedom of religion or speech arise. Without the guidance and protection of a good contract, a local government funder and its nonprofit partner may run into legal or practical problems despite their shared good intentions. Working within the limitations discussed in this article, local governments and nonprofits can continue and expand their collaborative efforts to improve the lives of the people in their communities.

Notes

1. N.C. Const. art. V, § 2(1).
2. Hughey v. Cloninger, 37 N.C. App. 107, 245 S.E.2d 543 (1978), *aff'd*, 297 N.C. 86, 253 S.E.2d 898 (1979).
3. N.C. Const. art. V, § 2(7).
4. Mitchell v. North Carolina Indus. Dev. Fin. Auth., 273 N.C. 137, 144, 159 S.E.2d 745, 750 (1968).
5. Madison Cablevision v. City of Morganton, 325 N.C. 634, 646, 386 S.E.2d 200, 207 (1989).
6. Maready v. City of Winston-Salem, 342 N.C. 708, 722, 457 S.E. 2d 615, 624 (1996).
7. Briggs v. City of Raleigh, 195 N.C. 223, 226, 141 S.E. 597, 599–600 (1928).
8. *Maready,* 342 N.C. at 724, 467 S.E. 2d at 625.
9. N.C. Gen. Stat. §§ 160A-20.1, 153-449. Hereinafter the General Statutes will be referred to as G.S.
10. Lexington Insulation Co. v. Davidson County, 243 N.C. 252, 90 S.E.2d 496 (1955).
11. For more information on liability for local government officials, *see* Anita R. Brown-Graham, A Practical Guide to the Liability of North Carolina Cities and Counties (Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 1999).
12. *See* Lydian Altman-Sauer, Margaret Henderson, & Gordon P. Whitaker, 20 Questions Nonprofits Often Ask about Working with Local Government 13, 15–16 (Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 2000).
13. G.S. 160A-16.
14. G.S. 25-2-201(1).
15. "Otherwise authenticated" means indicated by some mark or symbol as being adopted by the party to be charged. *See* G.S. 25-1-201(39) (definition of "signed" as explained in the amended official comment).
16. 15 U.S.C.A. § 7001(a); G.S. 66-317.
17. G.S. 160A-17, 153A-13.
18. G.S. 159-13(15). Similar language exists in the budgeting requirements for local school units. This fact suggests that there is implicit authority for local school units to enter into continuing contracts. *See* G.S. 115C-432(b)(4).
19. John N. Hutson, Jr., & Schott A. Miskimon, North Carolina Contract Law § 2-30-2 (New York: LEXIS Publishing, 2001).
20. *See* G.S. 160A-12, 153A-12.
21. An example of a statute that requires board action is G.S. 143-129, which requires contracts for construction or repair work estimated to cost $100,000 or more to be awarded by the governing body.
22. L&S Leasing, Inc. v. City of Winston-Salem, 122 N.C. App. 619, 471 S.E.2d 118 (1996). The rule on this issue is different for public agencies than for private ones. With private entities the doctrine of "apparent authority" allows the enforcement of a contract made by an agent who seemed to but did not actually have authority to bind the entity. Courts have declined to apply this rule to public agencies. See Frayda S. Bluestein, A Legal Guide to Purchasing and Contracting 6–7 (Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 1998).
23. For a complete discussion, *see* Bluestein, A Legal Guide.
24. G.S. 143-129, -131.
25. Currently, advertisement and sealed bids are required for construction and repair contracts estimated to cost $100,000 or more, and for purchase contracts estimated to cost $50,000 or more. G.S. 143-129. Informal bids (no advertisement or sealed bids required) are required for contracts costing between $5,000 and the formal limit. G.S. 143-131.
26. G.S. 159-28(a).
27. *See* G.S. 158-143, 160A-20.
28. *See* G.S. 143-318.9 through -318.11.
29. G.S. 132-1.
30. G.S. 132-1.2. For a discussion of what constitutes a trade secret, *see* David M. Lawrence, Public Records Law for North Carolina Local Governments ch. 9 (Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 1997).
31. Lawrence, Public Records Law, at 133–36, ch. 11.
32. *See* News and Observer Publishing Co. v. Wake County Hosp. Sys., 55 N.C. App. 1, 284 S.E.2d 542 (1981).
33. G.S. 159-40.
34. G.S. 14-234.
35. G.S. 14-234(d1) (allowing contracts for most services up to $25,000 per year in cities with a population of 15,000 or less, and in counties with no incorporated municipality with a population of 15,000 or more). For a detailed analysis of the conflict-of-interest laws and of ethics for public officials, *see* A. Fleming Bell, II, Ethics, Conflicts, and Offices: A Guide for Local Officials (Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 1997).
36. *See* G.S. 14-234(c1).
37. N.C. Const. art. I, § 32 ("No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services").
38. *See* Brumley v. Baxter, 225 N.C. 691, 36 S.E.2d 281 (1945) (upholding conveyance of city property to private veterans' organization for recreational use of veterans).
39. This provision does not apply to local school units, which must receive monetary consideration when disposing of property because of the constitutional requirement that all school funds be used exclusively for public school systems. N.C. Const. art. IX, § 7; David M. Lawrence, Local Government Property Transactions 93 (2d ed., Chapel Hill: Inst. of Gov't, The Univ. of N.C. at Chapel Hill, 2000).
40. G.S. 160A-279 requires compliance with the procedures of G.S. 160A-267 (private sale).
41. G.S. 160A-277.
42. G.S. 160A-279(a).
43. G.S. 15-12(b).

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Brian Pahle

Department: Admin

Date Submitted: 11/23/15

Presenter: Brian Pahle

Date of Council Meeting to consider this item: 12/03/15

Nature of Item: Council Action

Summary of Information/Request: **Item #** 16a

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.

Every month you will receive a staff report detailing the contingency appropriations made from the two months priors last Wednesday to the prior month's last Wednesday. For example for a December meeting you will receive a report of all contingencies appropriated from the last Wednesday in October to the last Wednesday in November. Reporting will be done in this manner in accordance with the publication of the City Council agenda.

The following contingency appropriations were made:

1: $523 for an overage in the tuition reimbursement account	(General Fund)
2: $1,500 for property insurance on new vehicles	(General Fund)
3: $4,890 to cover the remainder of the Assembly Room IT upgrades	(General Fund)
4: $500 for additional advertising in the Admin. Department	(General Fund)
5: $4,672 for Engineering Intern expenses	(General Fund)
6: $400 for additional supplies in the Admin. Department	(General Fund)
7: $1,000 for property insurance on new vehicles	(WS Fund)
8: $18,107 to cover a portion of the Assembly Room IT upgrades	(WS Fund)
9: $1,320 for Engineering Intern expenses	(WS Fund)

Budget Impact: $ 0 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.*

N/A

Attachments:

None

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Tammie Drake

Department: Admin

Date Submitted: 11.24.15

Presenter: Tammie Drake

Date of Council Meeting to consider this item: 12/03/15

Nature of Item: Presentation Only

Summary of Information/Request: **Item #** 17

Announcements/Upcoming Appointments:

TREE BOARD: The terms of two members on the Tree Board will expire in February: Ben Pace and Richard Baxter. Mr. Pace has declined reappointment. Consideration of these appointments will be on your January 2016 agenda. This will leave two vacant positions on this Board.

ENVIRONMENTAL SUSTAINABILITY BOARD: There are five City resident positions and two of those are vacant.

Budget Impact: $_____ 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.*

Attachments:

board membership lists

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: Sue Anderson, Planning Director

Department: Development Asst Dept

Date Submitted: November 24, 2015

Presenter: Sue Anderson

Date of Council Meeting to consider this item: December 3, 2015

Nature of Item: Discussion/Staff Direction

Summary of Information/Request: **Item #** 17b

File # P15-4-M

The City of Hendersonville has received a NCDOT Bicycle Planning Grant and City Council has budgeted $5,000 toward the match for the grant. Blue Ridge Bicycle Club will be donating $10,000 towards the City's required 30% match. Total amount for the study is approximately $50,000.

The Council appointed Selection Committee will meet on Tuesday December 1st to discuss the six consultant proposals received. Staff anticipates bringing a Selection Committee consultant recommendation to City Council in January.

As part of the Bicycle Plan process, NCDOT requires a Steering Committee to guide the process and work with the consultant. An attached sheet shows NCDOT's suggestion for the general categories to be considered for the Steering Committee along with possible suggestions for representation on the Committee in parentheses. The size of the Steering Committee is at City Council's discretion.

Staff will be bringing this item back to City Council in January for Council's consideration in appointing members for the Steering Committee.

Budget Impact: $_____ 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.*

Staff discussion only.

Attachments:

Steering Committee Sheet

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NCDOT Potential Members of a Bicycle and/or Pedestrian Plan Steering Committee

General categories for representation:

- **Relevant Planning staff** (Sue Anderson – Planning Director & Staff Support / Dave Hazzard – Planner & Staff Support)
- **Police representative** (Officer Garrett Gardin – PD Bicycle Officer)
- **Public Works Director** (Tom Wooten – Public Works Director)
- **Local council member** (Council Appointment)
- **Medical facility or health representative** (Dr. Ken Shelton – Pardee Hospital / Jodi Grabowski – Park Ridge Community Outreach)
- **Elderly person possibly from retirement center/community (typically more for pedestrian plans)** (Dr. Bernie Fox - retiree)
- **Chamber or downtown business or major employer** (Donnie Kirkwod – Manager at Sycamore Cycles / Lorie Dorsey – Manager at Mast General Store / Lance Norton – Outdoor Manager at Mast General Store)
- **School system representative** (Dan Keally – Hendersonville High School Teacher / Tommy Oakman – Human Resource Manager Blue Ridge Community College)
- **Major community representative (someone who can speak for a large sector of the community)**
- **YMCA and other community physical activity-centered organizations** (Stacy Taylor – Health Education Director at HC Department of Health / Tim Hopkin – Director of HC Park and Recreation / Laura Rice – HC Trips for Kids)
- **One or two long-time (well known) town residents that can potentially represent the mixed demographic of the local community**
- **A knowledgeable bicycle or pedestrian advocate (depending upon which type of plan you are creating): someone who is already a**

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strong active voice for bicycle or pedestrian needs. (Joe Sanders – President Blue Ridge Bicycle Club)

- **NCDOT Division Planning Engineer** (Steve Cannon – NCDOT District Engineer)
- **MPO/RPO representative** (Tristan Winkler – Transportation Planner at FBMPO)
- **Any other special populations**

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CITY OF HENDERSONVILLE
AGENDA ITEM SUMMARY

Submitted By: John Connet

Department: Admin

Date Submitted: 11/24/2015

Presenter: John Connet

Date of Council Meeting to consider this item: 12/03/2015

Nature of Item: Discussion/Staff Direction

Summary of Information/Request: **Item #** 19

City Manager John Connet requests a closed session in accordance with NCGS 143-318.11(a) (5) to establish or instruct the staff concerning the position to be taken by or on behalf of the City Council on negotiating for the acquisition of real property identified as Henderson County parcels 016852 and 0109187 for the purpose of expanding a public street and constructing a parking lot.

Budget Impact: $ TBD 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 move that the City Council enter closed session in accordance with 143-318.11 (11)(5) to establish or instruct the staff concerning the position to be taken by or on behalf of the City Council on negotiating for the acquisition of real property.

Attachments:

None