

A G E N D A
HICKORY CITY COUNCIL

August 4, 2015



7:00 p.m.



AGENDA
www.hickorync.gov

If you have any questions about any item on this agenda or if you need more information about any item in addition to the information contained in the agenda package, please call the City Manager at 323-7412. A “Citizen Comment Sheet”, which explains the procedure to address the City Council, is located on the table outside Council Chambers. We also encourage you to complete the Comment Sheet and offer any suggestions or questions you have. For more information about the City of Hickory go to: www.hickorync.gov.

Hickory City Council
76 North Center Street

August 4, 2015
7:00 p.m.

- I. Call to Order
- II. Invocation by Rev. Bob Thompson, Pastor, Corinth Reformed Church
- III. Pledge of Allegiance
- IV. Special Presentations
- V. Persons Requesting to Be Heard
 - A. Dr. Delores Hammer – Proposed Building of a Complex by the Hickory Public Authority on 4th Street SW.
 - B. Kim Clarke– Proposed Building of a Complex by the Hickory Public Authority on 4th Street SW.
 - C. Paul Gadd– Proposed Building of a Complex by the Hickory Public Authority on 4th Street SW.
 - D. Christine Winn– Proposed Building of a Complex by the Hickory Public Authority on 4th Street SW.
 - E. Crystal Rogers– Proposed Building of a Complex by the Hickory Public Authority on 4th Street SW.
 - F. Denise Poe – Corridor Reserved for Future Thoroughfare Located on Buckskin Drive, in Gunpowder Point.
- VI. Approval of Minutes
 - A. Regular Meeting of July 14, 2015 **(Exhibit VI.A.)**
- VII. Reaffirmation and Ratification of Second Readings. Votes recorded on first reading will be reaffirmed and ratified on second reading unless Council Members change their votes and so indicate on second reading.
 - A. Approval to Purchase a CAD, RMS, and Message Switch Server from OSSI in the Amount of \$123,419. **(First Reading Vote: Unanimous)**
 - B. Budget Ordinance Amendment Number 1. **(First Reading Vote: Unanimous)**

- C. Approval to Purchase .890 Acres Located at 1352 12th Avenue NE, Hickory, PIN 3713-14-43-2647 in the Amount of \$100,000. **(First Reading Vote: Unanimous)**

VIII. Consent Agenda: All items below are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests. In which event, the item will be removed from the Consent Agenda and considered under Item IX.

- A. Approval to Issue a Pyrotechnic Display Permit to Hickory Crawdads. **(Exhibit VIII.A.)**

Mark Seaman, General Manager of the Hickory Crawdads has submitted a request to obtain permission to have a public fireworks display on the following dates: September 11, 2015 with the rain date of September 12, 2015.

The North Carolina Fire Code requires a mandatory operational permit for the use and handling of pyrotechnic special effects material. The Division of Fire & Life Safety Bureau shall review all required documentation. The Fire Prevention Bureau will also inspect the pyrotechnics display area prior to the event to ensure compliance with all guidelines and codes. Staff recommends approval of the pyrotechnics displays.

- B. Approval to Issue a Pyrotechnic Display Permit to Hickory Motor Speedway. **(Exhibit VIII.B.)**

Kevin Piercy, General Manager of the Hickory Motor Speedway has submitted a request to obtain permission to have a public fireworks display on the following 2015 dates: August 15, 2015 and September 7, 2015.

The North Carolina Fire Code requires a mandatory operational permit for the use and handling of pyrotechnic special effects material. The Division of Fire & Life Safety Bureau shall review all required documentation. The Fire Prevention Bureau will also inspect the pyrotechnics display area prior to the event to ensure compliance with all guidelines and codes. Staff recommends approval of the pyrotechnics displays.

- C. Approval of Annual Maintenance Agreement with Grayson Fitness Repair and Maintenance, Inc. **(Exhibit VIII.C.)**

Since 2003 the City of Hickory Fire Department has deployed a series of physical fitness equipment. The department has had an annual preventive maintenance program since 2003 for the equipment in order to keep the equipment operational. Staff requests acceptance of a proposal from Grayson Fitness Repair & Maintenance Inc. to continue the quarterly service necessary to maintain the exercise equipment. The service agreement provides quarterly service to each piece of fitness equipment that is located at each of the fire stations. Staff recommends approval of the exercise equipment preventive maintenance agreement.

- D. Acceptance of a Sanitary Sewer Line Easement for the Property of Josephine B. Hambrick, Wells Fargo NA, Margaret H. Glaze and Wilson E. Glaze II, described as PIN 3723-15-63-5314. **(Exhibit VIII.D.)**

Staff requests acceptance of a 25 foot temporary construction and 25 foot permanent sanitary sewer line easement for the property of Josephine B. Hambrick, Wells Fargo NA, Margaret H. Glaze and Wilson E. Glaze II, described as PIN 3723-15-63-5314. This easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012, in the amount of \$2.946 million dollars. The easement was negotiated for a total sum of \$5,000 in exchange for the easement. Staff recommends approval of this temporary construction and permanent sanitary sewer easement across the property.

- E. Acceptance of a Sanitary Sewer Line Easement for the Property of Linda Bumgarner Sigmon described as PIN 3723-16-83-0899. **(Exhibit VIII.E.)**

Staff requests acceptance of a 25 foot temporary construction and 25 foot permanent sanitary sewer line easement for the property of Linda Bumgarner Sigmon described as PIN 3723-16-83-0899. This easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012, in the amount of \$2.946 million dollars. The easement was negotiated for a total sum of \$8,000 in exchange for the easement. Staff recommends approval of this temporary construction and permanent sanitary sewer easement across the property.

- F. Acceptance of a Sanitary Sewer Line Easement for the Property of Russell D. Dellinger and wife, Stacy J. Dellinger described as PIN 3723-15-64-7165. **(Exhibit VIII.F.)**

Staff requests acceptance of a 25 foot temporary construction and 25 foot permanent sanitary sewer line easement for the property of Russell D. Dellinger and wife, Stacy J. Dellinger described as PIN 3723-15-64-7165. This easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012, in the amount of \$2.946 million dollars. The easement was negotiated for a total sum of \$2,694 in exchange for the easement. Staff recommends approval of this temporary construction and permanent sanitary sewer easement across the property.

- G. Acceptance of a Sanitary Sewer Line Easement for the Property of Chris Albert Bumgarner and wife, Lisa H. Bumgarner described as PIN 3723-11-75-1017. **(Exhibit VIII.G.)**

Staff requests acceptance of a 25 foot temporary construction and 25 foot permanent sanitary sewer line easement for the property of Chris Albert Bumgarner and wife, Lisa H. Bumgarner described as PIN 3723-11-75-1017. This easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012, in the amount of \$2.946 million dollars. The easement was negotiated for a one free sanitary sewer service connection in exchange for the easement. Staff recommends approval of this temporary construction and permanent sanitary sewer easement across the property.

- H. Approval of Six Days of Vacation Time as Incentive Prizes for Participation in the Annual United Way Campaign. **(Exhibit VIII.H.)**

The United Way Campaign Committee requests six days of vacation time to be used as prizes for participation in the annual United Way Campaign, which will be held in August 2015. The City is a strong supporter of United Way since they play an important and critical role in our community. We use our campaign to educate the City's workforce about the various programs and services United Way provides, and also to provide an easy way to make a donation. The opportunity to win some vacation time will provide an incentive for participation and contribute to the success of the campaign.

- I. Acceptance of Bid and Award of Construction Contract with Hickory Sand Company, Inc. in the Amount of \$154,500 for the Construction of the NC Highway 64-90 Waterline Project. **(Exhibit VIII.I.)**

The NC Highway 64-90 waterline project consist of installing approximately 5,200 – linear foot of new 8-inch PVC waterlines, five new fire hydrants and other customary appurtenances in a previously unserved area. This project is intended to provide improved fire protection for Ellendale Elementary School and provide water service to customers along the line. Staff evaluated the bid packages and found Hickory Sand Company, Inc. to be the lowest responsible bidder. This is proposed to be funded as a component of the Public Utilities Department operating budget in the reimbursable materials line with funds already received from Alexander County Government. Staff

recommends Council's acceptance and award of the project to Hickory Sand Company, Inc. in the amount of \$154,500 for the construction of the NC Highway 64-90 waterline project.

- J. Approval of Renewal Agreement between the Western Piedmont Council of Governments (WPCOG) and the City of Hickory to Support the Western Piedmont Stormwater Partnership for Phase II Public Education. **(Exhibit VIII.J.)**

The City was issued an NPDES Phase II Stormwater Permit by the North Carolina Department of Environment and Natural Resources on July 1, 2005. One of the requirements of the permit in the Public Education and Outreach Minimum Measure is that the City develop and implement a public education and outreach program to raise public awareness on the causes and impacts of stormwater pollution. This renewal agreement is the result of the establishment of a regionally focused and municipally supported Phase II public education and outreach coalition, the Western Piedmont Stormwater Partnership, which is administered by the WPCOG. The activities in this agreement will meet the public education and outreach minimum measures of this section of the NPDES Phase II Permit.

This agreement would be for the period July 1, 2015 through June 30, 2016. Payment would be in quarterly installments of \$2,758.25. Funding for this agreement is available from the current stormwater budget. Staff recommends Council's approval of the renewal agreement with WPCOG for an amount not to exceed \$11,033.

- K. Approval of a Contract to Kercher Engineering, Inc. in the amount of \$57,375 for Pavement Management Study to Prioritize the Condition of Streets in the City of Hickory to better optimize the Resurfacing Schedule and Maintenance Operations. **(Exhibit VIII.K.)**

City Staff requested qualifications from firms, interviewed and selected the most qualified firm to meet the City's pavement condition needs. The last pavement condition assessment was done in 2007. This condition study is a vital tool that not only rates the streets with a numerical value, but also allows for the Street Department to plan needed maintenance for several years. The benefits of this study will provide the City with an outside professional source to provide data that will give us the tools to provide our citizens with the best use of our resurfacing funds and maximize the results of our street maintenance program. Staff recommends approval of the contract with Kercher Engineering, Inc. in the amount of \$57,375.

- L. Approval of Awarding the Resurfacing Contract Utilizing Federal Funds to Maymead, Inc. for Asphalt Resurfacing. **(Exhibit VIII.L.)**

Staff prepared formal bid documents for an estimated 2,660 tons of asphalt surface course in-place and 4,000 square yards of asphalt milling. The asphalt binder unit price will be adjusted according to NCDOT standard procedures. All work will be paid on an in-place unit price basis as the Community Development Block Grant (CDBG) budget allows. Resurfacing under this contract will be performed in the CDBG eligible funding areas. Maymead, Inc. was the responsible responsive low bidder at the unit price of \$52 per ton for S9.5A asphalt surface, \$52 per ton for S9.5B asphalt surface, \$52 per ton for S4.75A asphalt surface, \$595 per ton for binder and \$4.75 per square yard for asphalt milling for the pavement resurfacing project. Currently there is \$75,000 in the CDBG Public Infrastructure line item. Unbudgeted program income may be added if it becomes available over the FY15-16 year. Staff recommends approval of the resurfacing contract utilizing federal funds be awarded to Maymead, Inc.

- M. Approval of Awarding a Contract to J.T. Russell & Sons, Inc. for Asphalt Resurfacing for FY 15/16. **(Exhibit VIII.M.)**

Staff prepared formal bid documents for an estimated 10,650 tons of asphalt surface course in-place and 9,000 square yards of asphalt milling. The asphalt binder unit price

will be adjusted according to NCDOT standard procedures. All work will be on an in-place unit price basis as the resurfacing budget allows. J.T. Russell & Sons, Inc. was the responsible responsive low bidder at the unit price of \$50.50 per ton for S9.5A asphalt surface, \$50 per ton for S9.5B asphalt surface, \$56 per ton for S4.75A asphalt surface, \$536 per ton for binder and \$7 per square yard for asphalt milling for the pavement resurfacing project. Total bid amount of \$919,900 (\$459,950 for the Fall 2015 schedule and \$459,950 for the Spring 2016 schedule). Funds are budgeted in the Street Division's FY15-16 budget. Staff recommends approval of the resurfacing contract with J.T. Russell & Sons, Inc.

- N. Adopt a Resolution to Reaffirm City Council's Support of the Deidra Lackey Memorial Park Project. **(Exhibit VIII.N.)**

Staff requests Council to consider the Resolution declaring the City's intent to reaffirm their continued support and approval of the Deidra Lackey Memorial Park Project. The memorial park facilities would be a gift to the City of Hickory and the public. In addition, based on its location the memorial park would serve as an enhanced entry point to the proposed river walk. Council has previously expressed support for the project and the proposed resolution reaffirms Council's support for the project. Staff recommends Council adopt the Resolution declaring City Council's intent to reaffirm their continued support and approval of the Deidra Lackey Memorial Park Project.

- O. Grant Project Ordinance Amendment Number 1. **(Exhibit VIII.O.)**

1. To budget a \$166,000 transfer of Capital Reserve-Appropriated Fund Balance and to budget an additional \$664,000 of Federal Revenue to the Falling Creek Bridge Project. NCDOT Agreement ID #3390 Municipal Bridge Agreement-Federal in the amount of \$1,200,000 (\$960,000 (80%) Federal and \$240,000 (20%) Local) was approved by the City of Hickory Council on August 21, 2012. This amendment request makes necessary adjustments to original CPO#1 (FY13) and GPOA (FY15) to align total project revenues and expenditures for the projected project.

- P. Budget Ordinance Amendment Number 2. **(Exhibit VIII.P.)**

1. To appropriate \$166,000 of Capital Reserve-Fund Balance Appropriated and transfer to the General Capital Project Fund for the Falling Creek Bridge Project. These funds are the required local matching funds for the replacement of Bridge No. 327 located on Falling Creek Road.

2. To appropriate \$900,000 of General Fund-Fund Balance Appropriated and budget in the Transportation Fund-Other Professional Services line item. Funds will be used for the AGI Associates LLC and CRA Enterprises Inc. airport settlement.

IX. Items Removed from Consent Agenda

X. Informational Item

XI. New Business:

A. Public Hearings

1. Consideration of Voluntary Contiguous Annexation of 2.001 Acres Located at 2191 13th Avenue Drive SE. **(Exhibit XI.A.1.)**

Burgin-Hickory Properties, LLC submitted a petition for the voluntary contiguous annexation of 2.001 acres of property located at 2191 13th Avenue Drive SE. The annexation area consists of a commercial development site, which is the proposed future location of a Sheetz retail facility. The owners of the property

are seeking annexation in order to obtain utility services (water and sewer) for a commercial development site. The property is currently located within the City's extra-territorial jurisdictional area (ETJ) and is zoned Regional Commercial (C-3). Staff finds the petition to be in conformity with applicable statutes, and recommends approval of the voluntary annexation petition.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on July 17, 2015.

2. Consideration of Designating the Whisnant Hosiery Mills Complex as a Local Historic Landmark. **(Exhibit XI.A.2.)**

The Whisnant Hosiery Mills complex located at 74 8th Street SE was built in 1929 with significant expansions in 1937 and 1966. The complex serves as a reminder of the pivotal role that the hosiery industry played in the development of the City of Hickory. The property is now known as Moretz Mill and has recently undergone an extensive rehabilitation. The owners of the property have requested that the property be designated as a local historic landmark. The property has been listed on the National Register of Historic Places since 2013. If the property is designated as a local historic landmark all changes to the exterior of the building and site would need approval from the Hickory Historic Preservation Commission. If designated, there would be a 50 percent deferral on all property taxes provided that property maintains its historic integrity. Staff recommends Council approve the local landmark designation ordinance for the Whisnant Hosiery Mills property.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on July 24, 2015.

B. Departmental Reports:

1. Airport Presentation - Settlement Agreement and Release of Claims. **(Exhibit XI.B.1.)**

As a result of a recent mediation effort between the City of Hickory and AGI Associates, LLC and CRA Enterprises, LLC, a settlement agreement was reached that gave back to the City of Hickory full control of remaining facilities at the airport that had been in dispute, specifically the leasehold interest of the Moose Hangar as well as other hangars on the property. The City gained \$2.1 million in the value of hangars and other assets for \$900,000.

2. Information Presentation – Proposed Changes to Chapter 4 (Animal and Fowl) Ordinance. **(Exhibit XI.B.2.)**

The City of Hickory approves organizations to use public property to host events for the public. Over the years, citizens and staff have expressed concerns about animals being allowed at these events due to public safety concerns for the citizens and animals attending the event. City Staff to include, Legal, Police, Parks and Recreation, and Branding/Public Information Office have worked together to develop proposed changes to Chapter 4 (Animal and Fowl) Ordinance restricting animals within the "footprint" of the approved special event on public property. These proposed changes are in the interest of protecting the public from potential aggressive animals that could cause harm to a human or another animal, and to ensure the appropriate public health and sanitation of food and surrounding areas. Staff requests City Council's feedback in order to precede with any changes to Chapter 4 (Animal and Fowl) Ordinance that would restrict animals from approved special events on public property.

3. Update from Bond Implementation Commission on Bond Projects

4. Appointments to Boards and Commissions

CATAWBA COUNTY ECONOMIC DEVELOPMENT BOARD OF DIRECTORS FOR HICKORY

(Terms Expiring 6-30; 3-Year Terms with Unlimited Appointments) (Appointed by City Council)

Position One Gary Garvey and Stephen Shuford have expressed interest

CITIZENS ADVISORY COMMITTEE

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

At-Large Bert Showfety declined appointment 7-20-2015

COMMUNITY RELATIONS COUNCIL

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Caucasian VACANT

Other Minority VACANT

Other Minority VACANT

Alderwoman Patton to nominate Sandi Fotheringham to Community Relations Council, Caucasian Representative.

HICKORY REGIONAL PLANNING COMMISSION

(Terms Expiring 6-30; 3-Year Terms With Unlimited Appointments)

(Appointed by City Council)

Burke County (Mayor to Nominate) VACANT Since 8-6-2008

Brookford (Mayor to Nominate) VACANT Since 6-2006

Catawba County (Mayor to Nominate) Oscar Vasquez
(Eligible for Reappointment)

HISTORIC PRESERVATION COMMISSION

(Terms Expiring 6-30; 3-Year Terms (Appointed by City Council)

At-Large (3) VACANT

INTERNATIONAL COUNCIL

(Appointed by Mayor with the Concurrence of City Council)

(10) Positions VACANT

LIBRARY ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Ward 1 VACANT

Ward 3 VACANT

Alderman Seaver to nominate Joy Tilton to Library Advisory Board, Ward 3 Representative.

PARKS AND RECREATION COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

At-Large Minority VACANT

PUBLIC ART COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Ward 3 VACANT

At-Large (Mayor Nominates) VACANT

PUBLIC HOUSING AUTHORITY

(Terms Expiring 6-30; 5-Year Terms (Appointed by Mayor)

Tenant Representative (Mayor Nominates) VACANT

RECYCLING ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
Ward 3 VACANT

UNIVERSITY CITY COMMISSION

(Terms Expiring 6-30; 2-Year Terms) (Appointed by City Council)
At-Large VACANT

Alderman Seaver to nominate Mary-Margaret Baker to University City Commission, At-Large Representative.

YOUTH COUNCIL

(Terms Expiring 6-30; 1-Year Terms) (Appointed by City Council)

Hickory Career Arts Magnet VACANT

- C. Presentation of Petitions and Requests

- XII. Matters Not on Agenda (requires majority vote of Council to consider)

- XIII. General Comments by Members of Council, City Manager or City Attorney of a Non-Business Nature

- XIV. Closed Session Per NC General Statutes 143-318.11(a)(1)(3) to consult with the attorneys regarding the following: (Action on these items, if any, will occur in Open Session)
 - 1. Approval of Closed Session Minutes of June 16, 2015 - NCGS §143-318.11(a)(1)
 - 2. Approval of Closed Session Minutes of June 22, 2015 - NCGS §143-318.11(a)(1)
 - 3. Approval of Closed Session Minutes of July, 14, 2015 - NCGS §143-318.11(a)(1)
 - 4. Discuss Potential Litigation - NCGS §143-318.11(a)(3)

- XV. Adjournment

***Hickory City Code Section 2-56. Public Address to Council:**

“When conducting public hearings, considering ordinances and otherwise considering matters wherein the public has a right to be heard, when it appears that there are persons present desiring to be heard, the Mayor shall require those opposing and favoring the proposed action to identify themselves. Each side of the matter shall be given equal time. Those opposing the proposed action shall be allowed 15 minutes for presentation, followed by 15 minutes for those favoring the action, with the opponents then to have five minutes for rebuttal and the proponents to then have five minutes for surrebuttal. Those persons on either side shall have the right to divide their allotted time among them as they may choose. The Council, by majority vote, may extend the time for each side equally. On matters in which the person desiring to address the Council does not have a legal right to speak, the Council shall determine whether it will hear the person. The refusal to hear a person desiring to speak may be based upon grounds that the subject matter is confidential, that its public discussion would be illegal, that it is a matter not within the jurisdiction of the Council or for any other cause deemed sufficient by the Council. Any person allowed to speak who shall depart from the subject under discussion or who shall make personal, impertinent or slanderous remarks, or who shall become boisterous while addressing the Council shall be declared out of order by the Mayor, or by vote of the Council, and barred from speaking further before the Council unless permission to continue shall be granted by a majority vote of the Council, under such restrictions as the Council may provide.”

**The City of Hickory holds all public meetings in accessible rooms.
Special requests for accommodation should be submitted by individuals
with disabilities at least 48 hours before the scheduled meeting.
Phone Services (hearing impaired) – Call 711 or 1-800-735-2962**

A Regular Meeting of the City Council of the City of Hickory was held in the Council Chamber of the Municipal Building on Tuesday, July 14, 2015 at 7:00 p.m., with the following members present:

Brad Lail	Rudy Wright	Hank Guess
Bruce Meisner	Aldermen	David P. Zagaroli
Danny Seaver		Jill Patton

A quorum was present.

Also present were: City Manager Mick Berry, Assistant City Manager Rodney Miller, Assistant City Manager Andrea Surratt, Deputy City Attorney Arnita Dula, City Attorney John W. Crone, III, Deputy City Clerk Sarah Prencipe and City Clerk Debbie D. Miller

- I. Mayor Wright called the meeting to order. All Council members were present.
- II. Invocation by Alderman Seaver
- III. Pledge of Allegiance
- IV. Special Presentations

A. Recognition of Retiring Boards and Commissions Members

Jeff Neuville (present)	Business Development Committee
Dave Gissy	Business Development Committee
Dave Paist (present)	Business Development Committee
Michael Holland (present)	Citizens Advisory Committee
Steven Bowman	Community Appearance Commission
Neal Orgain	Community Relations Council
Ray Cerda	Community Relations Council
Christopher Wilson (present)	Historic Preservation Commission
Thomas Dobbins	Historic Preservation Commission
Kathy Ivey	Library Advisory Board
Bee Yang	Parks and Recreation Commission
Michael (Tony) Wood	Parks and Recreation Commission
Thomas McBrayer (present)	Public Art Commission
Clement Geitner	Public Housing Authority
J.C. Epting Jr. (present)	Recycling Advisory Board
Bill McBrayer (present)	University City Commission
Joseph Butler	Youth Council
Kathryn McKenna Shaver (present)	Youth Council
Laura Velazquez	Youth Council
Darion Best	Youth Council
Jordan Hatch	Youth Council
Zackariah Amrani	Youth Council
Marina Pitofsky	Youth Council
Jamen Beck	Youth Council

Mayor Wright recognized each of the retiring Boards and Commissions members. He presented those present with a Certificate of Appreciation.

Mr. Dave Paist commented that it was an honor to serve on the Business Development Committee. He was one of the people that helped establish the Committee approximately five years ago. There was a need for something more formal between the small business community and the City government. He commented that the people that were taking the retiring members places are in a better position and are better folks to carry it forward. He thanked City Council for putting some trust into this group and for the opportunity.

Mayor Wright stated that the comment had been made that the new people coming in might be better qualified to carry the torch. He disagreed with that and said that they are in a better position because the prior members had laid the groundwork. Every commission has left their responsibility better covered than it was when they started. He thanked them. The City is in better shape today, and in a better position than it was five years ago.

B. Educational Video by Office of Communications

Mr. Berry asked Mrs. Dana Kaminske to the podium to present a video to Council and discuss the background of how it was produced.

Communication Specialist Mrs. Dana Kaminske advised Council that she helps put together and run Neighborhood College for the City and the citizens. Through that process they had some citizens ask questions after attending City Council meetings. They addressed those questions in a video. She thanked the Leadership 2000 students for their assistance, as well as City Staff and interns. She presented Council with the educational video and advised that it would be put out on YouTube. She commented that the video would make it more fun for people to find out how and why they should come to City

Council meetings. Mrs. Kaminske thanked intern Melissa Loveless and Staff for their creativity.

Mayor Wright commented that he could see this video going viral.

V. Persons Requesting to Be Heard

- A. Mr. Mark Faruque, 2080 6th Street NW, requested City Council indefinitely postpone approval of the plan to construct a secondary parking lot for Glenn Hilton Park on the property contiguous to his home located on 6th Street NW. He believed there had been a serious lack of communication by the parties involved and felt that up until the past few days the City had shown little concern or sensitivity for the negative impact that this parking lot might have on the value and privacy of their 22 year old home. He stated that on or about June 14, 2014 he arrived home from work to find an aerial picture of the lot with a hand written note to the effect "proposed parking lot, call with any questions". He called and left a message but neither he nor his wife were contacted that day. The following evening they arrived home from work and were shocked to see that the lot had already been cleared. They saw some men surveying the lot at that time. He commented that it was obvious that the clearing was well beyond the marking stakes. They were surprised to find out last week that some of the Council members were completely unaware that approximately 2,000 square feet of their property had been cleared at that time. He advised that they had been told that the lack of direct communication from the City was in large part due to the fact that they had hired an attorney from Charlotte immediately after the lot was cleared. Once attorneys are involved correspondence usually occurs through them. They did not hire an attorney to sue the City of Hickory, but when they saw what had transpired without any forewarning they felt that they had to get legal advice on what the local laws were, and what their rights were as property owners. They did not have any idea that it was within the City's right to construct a parking lot on a piece of land designated as residential. They found it difficult that anybody in their position wouldn't have done the same thing. A meeting was arranged and occurred on July 16, 2014 at the site and included both attorneys and Mr. McLeod. At that time no specific plans were laid out but they were repeatedly assured that they would be kept closely apprised of all plans as they were developed and the goals were to have the least impact on their property as possible. No construction would be undertaken until they were satisfied. Following this meeting there was no additional correspondence until they received a set of plans to review in April of this year. They provided concerns and feedback that were forward to Ms. Dula by their attorney, but her response did not address the specifics of their concerns and they were never contacted directly by the City Planners, or by Mr. McLeod. He advised that the next time that they became aware of any activity was two weeks ago when they saw the article in the Hickory Daily Record that City Council had approved a motion to accept a bid from a local contractor. At that point they felt that the City had failed to keep their promise of allowing them significant input in the final planning and had chosen to create an adversarial relationship over this issue when it had previously been very amicable. They contacted their attorney who recommended that they reach out directly to Council members. At this point they contacted Alderwoman Patton. They met with Mr. McLeod and Mr. Miller last night and several miscommunications and omissions were resolved, but there is still much that needs formalized and discussed prior to their acceptance of the current proposal. Much has happened to bring everyone to the table this past week and it is still their desire to work with the City to find a resolution that is satisfactory to everyone.

Mayor Wright asked if anyone else wished to speak to Council. No one appeared.

VI. Approval of Minutes

A. Regular Meeting of June 16, 2015

Alderman Zagaroli moved, seconded by Alderman Seaver that the Minutes of June 16, 2015 be approved. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Zagaroli seconded by Alderman Seaver and the motion carried unanimously.

B. Special Meeting of June 22, 2015

Alderwoman Patton moved, seconded by Alderman Lail that the Minutes of June 22, 2015 be approved. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderwoman Patton seconded by Alderman Lail and the motion carried unanimously.

C. Special Meeting of June 25, 2015

Alderman Seaver moved, seconded by Alderwoman Patton that the Minutes of June 25, 2015 be approved. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Seaver seconded by Alderwoman Patton and the motion carried unanimously.

- VII. Reaffirmation and Ratification of Second Readings. Votes recorded on first reading will be reaffirmed and ratified on second reading unless Council Members change their votes and so indicate on second reading.

Alderwoman Patton moved, seconded by Alderman Meisner that Item "G" be deferred until Staff could work with the Faruque's to develop a plan that would protect their property for screening. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderwoman Patton seconded by Alderman Meisner and the motion carried unanimously.

Alderwoman Patton moved, seconded by Alderman Seaver that Items "A" through "F" be reaffirmed and ratified on second reading. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderwoman Patton seconded by Alderman Seaver and the motion carried unanimously.

- A. Approval of Community Development Block Grant Funding Agreement with Hickory Soup Kitchen, Inc. for Fiscal Year 2015-2016 in the Amount of \$20,000. (First Reading Vote: Unanimous)
- B. Approval of Community Development Block Grant Funding Agreement with AIDS Leadership Foothills-Area Alliance, Inc. for Fiscal Year 2015-2016 in the Amount of \$15,000. (First Reading Vote: Unanimous)
- C. Approval of Community Development Block Grant Funding Agreement with Exodus Outreach Foundation, Inc. for Fiscal Year 2015-2016 in the Amount of \$10,000. (First Reading Vote: Unanimous)
- D. Approval of Community Development Block Grant Funding Agreement with City of Refuge Community Development Center, Inc. for Fiscal Year 2015-2016 in the Amount of \$3,550. (First Reading Vote: Unanimous)
- E. Approval of Community Development Block Grant Funding Agreement with Habitat for Humanity of the Catawba Valley, Inc. for Fiscal Year 2015-2016 in the Amount of \$20,000. (First Reading Vote: Unanimous)
- F. Consideration of Rezoning Petition 15-01. (First Reading Vote: Unanimous)
- G. Approval of an Invitation to Bid and Contract to Huffman Grading Co. Inc. in the Amount of \$121,287 for Additional Parking at Glenn C. Hilton Jr. Recreation Park. (First Reading Vote: Ayes: Alderman Meisner, Alderman Seaver, Alderman Guess, Mayor Pro Tempore Zagaroli and Alderwoman. Nay: Alderman Lail)

- VIII. Consent Agenda: All items below are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests. In which event, the item will be removed from the Consent Agenda and considered under Item IX.

Alderman Meisner moved, seconded by Alderwoman Patton approval of the Consent Agenda. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Meisner seconded by Alderwoman Patton and the motion carried unanimously.

- A. Called for a Public Hearing for Consideration of Voluntary Contiguous Annexation of 2.001 acres Located at 2191 13th Avenue Drive SE. (Authorize Public Hearing for August 4, 2015)

RESOLUTION 15-17
RESOLUTION DIRECTING THE CLERK TO INVESTIGATE A PETITION RECEIVED
UNDER G.S. 160A-31 AND/OR 160A-58.1, AS AMENDED

WHEREAS, a petition from Burgin-Hickory Properties, LLC requesting annexation of an area described in a petition was received on June 16, 2015 by the City Council of the City of Hickory; and

WHEREAS, G.S. 160A-31 and G.S. 160A-58.1 provide that the sufficiency of the petition shall be investigated by the Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Hickory deems it advisable to proceed in response to this request for annexation.

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

THAT, the Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the City Council the result of her investigation.

CERTIFICATE OF SUFFICIENCY

TO THE CITY COUNCIL OF THE CITY OF HICKORY, NORTH CAROLINA:

I, Debbie D. Miller, City Clerk, do hereby certify that I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-31 and/or G.S. 160A-58.1, as amended:

2191 13th Avenue Drive SE, Hickory, NC, containing 2.001 acres more or less

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Hickory this 19th day of June, 2015.

/s/ Debbie D. Miller, City Clerk

(SEAL)

RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION, PURSUANT TO G.S. 160A-31 OR G.S. 160A-58.1, AS AMENDED

WHEREAS, a petition requesting annexation of the area described herein has been received; and

WHEREAS, the City Council of the City of Hickory has, by Resolution, directed the clerk to investigate the sufficiency thereof; and

WHEREAS, certification by the Clerk as to the sufficiency of said petition has been made.

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

Section 1: That a public hearing on the question of annexation of the area described herein will be held at 7:00 p.m. on August 4, 2015, in the Council Chambers of the Julian G. Whitener Municipal Building, located at 76 North Center Street, Hickory, North Carolina.

Section 2: The area proposed for annexation is described as follows:
Property of Burgin-Hickory Properties, LLC located at 2191 13th Avenue Drive SE, Hickory, NC containing 2.001 acres more or less.

Section 3: Notice of said public hearing shall be published in *The Hickory Daily Record*, a newspaper having general circulation in the City of Hickory, at least ten (10) days prior to the date of said public hearing.

RESOLUTION NO. 15-18

A RESOLUTION DETERMINING THE INTENT TO ANNEX INTO THE CORPORATE LIMITS OF THE CITY OF HICKORY CERTAIN PROPERTY OWNED BY BURGIN – HICKORY PROPERTIES LLC AND CALLING FOR A PUBLIC HEARING ON THE SAME

WHEREAS, Burgin-Hickory Properties LLC is the owner of certain real property as described herein, which property is located at 2191 13th Avenue Drive SE, Hickory, NC, containing 2.001 acres more or less; and

WHEREAS, such property is immediately adjacent to the existing corporate limits of the City of Hickory; and

WHEREAS, it is in the best interest of the health, safety and well-being of the residents of the City of Hickory to annex such property into the corporate limits of the City of Hickory as authorized by N.C.G.S. Section 160A-31; and

NOW, THEREFORE BE IT RESOLVED by the Hickory City Council, sitting in open session this 14th day of July, 2015, at a regularly scheduled meeting of the governing body of said Council, duly called and posted in accordance with the statutes of the State of North Carolina, as follows:

Section 1: That the Hickory City Council does determine that it is in the best interest of the health, safety and well-being of the residents of the City of Hickory to annex the property described hereinafter into the corporate limits of the City of Hickory.

Section 2: That a public hearing on the question of annexation of the area described herein will be held at 7:00 p.m. on August 4, 2015, in the Council Chamber of the Julian G. Whitener Municipal Building, located at 76 North Center Street, Hickory, North Carolina.

Section 3: The same being that property reflected on a maps entitled Map 1, Existing City Boundary, Burgin-Hickory Properties, LLC – Voluntary Contiguous Annexation, subject property outlined in red, Map 2, Existing Land Use Burgin – Hickory Properties, LLC – Voluntary Contiguous Annexation, subject property outlined in red and Map 3, Existing Zoning Hickory Properties, LLC – Voluntary Contiguous Annexation, subject property outlined in red.

Section 4: Notice of said public hearing shall be published in *The Hickory News*, a newspaper having general circulation in the City of Hickory, at least ten (10) days prior to the date of said public hearing.

- B. Called for a Public Hearing for Consideration of Designating the Whisnant Hosiery Mills Complex as a Local Historic Landmark. (Authorize Public Hearing for August 4, 2015)
- C. Approved the Renewal of Taxicab and Other Passenger Vehicles for Hire Franchises.

Company	Taxicabs	Passenger Vehicle for Hire
Mile High Enterprises dba The Hickory Hop	0	5
Yellow Cab	13	1
Diamond Cab of Hickory	3	0
Hickory Limousine	0	3
Platinum Limousine LLC	0	3
Total	16	12

Annually, these companies apply for a renewal of their Certificate of Convenience and Necessity for the operation of taxicabs and other vehicles for hire.

- D. Approved a Cemetery Deed from City of Hickory to Jacqueline E. Connor, (Southside Cemetery, Plot 4B, Lot Number 9 and 10, Section 4) (Prepared by Deputy City Attorney Arnita Dula).
- E. Approved the Transfer of a Cemetery Deed from Daniel C. Dillon and wife, Catherine H. Dillon to Sherry Lynn Pruitt, (Oakwood Cemetery, Section, 57A, Lot Nos. 1 and 2) (Prepared by Attorney Jimmy R. Summerlin Jr.).
- F. Approved the Transfer of a Cemetery Deed from Peggy F. Flowers, Widow of John R. Flowers and the Estate of David S. Flowers to Peggy F. Flowers, (Oakwood Cemetery, Section 38, Block G, Lot 3, Plots 001, 004, 005, and 008) (Prepared by Attorney Rufus F. Walker Jr.).
- G. Approved the Transfer of a Cemetery Deed from Peggy F. Flowers, Widow of John R. Flowers and the Estate of David S. Flowers to Peggy Flowers, (Oakwood Cemetery, Section 36, Block J, Lot 3, Plots 001, 002, 003, 004, and 005) (Prepared by Attorney Rufus F. Walker Jr.).
- H. Approved on First Reading the Purchase of a CAD, RMS and Message Switch Server from OSSI in the Amount of \$123,419.

Hickory Police Department requests approval to purchase a CAD, RMS and Message Switch Server in the amount of \$123,419 from OSSI. The CAD, RMS and Message Switch Server will allow Hickory Policy Department to receive calls from citizens, dispatch those calls to the officers, allow officers to write the necessary reports and submit the reports using the message switch. This purchase is a sole source as OSSI is the police

department's current vendor of this product and switching vendors would be cost prohibitive. Funds were approved in the FY2015-2016 budget.

- I. Approved the Adoption of the Amended Memorandum of Understanding regarding the Greater Hickory Metropolitan Organization for Alexander, Burke, Caldwell and Catawba Counties.

On May 27, 2015 the Greater Hickory Metropolitan Planning Organization Technical Advisory Committee approved the amended Metropolitan Planning Organization (MPO) Memorandum of Understanding (MOU). Several changes were made to the MOU with the most important involving the MPO officially accepting the Unifour RPO into the MPO's planning boundary (all four counties). Due to the significance of this action, the MPO member municipalities must approve the amended MOU by resolution. Staff requests approval of adoption of the amended Memorandum of Understanding regarding the Greater Hickory Metropolitan Organization for Alexander, Burke, Caldwell and Catawba Counties.

RESOLUTION 15-20

THAT WHEREAS, it is recognized that the proper movement of travel within and through the Hickory urbanized area is highly desirable element of a comprehensive plan for the orderly growth and development of the area, and;

WHEREAS, there are a number of governmental jurisdictions within the Hickory urbanized area which have been authorized with implementation and regulatory responsibilities for transportation by North Carolina General Statutes, and;

WHEREAS, it is desirable that coordinated, comprehensive and cooperative transportation planning processes be maintained in the Hickory urbanized area to ensure that the transportation system is maintained on an efficient and economical basis commensurate with the public health, safety and welfare, and;

WHEREAS, a revised Memorandum of Understanding between the Town of Brookford, Town of Cahaj's Mountain, Town of Catawba, Village of Cedar Rock, City of Claremont, City of Conover, Town of Connelly Springs, Town of Drexel, Town of Gamewell, Town of Glen Alpine, Town of Granite Falls, City of Hickory, Town of Hildebran, Town of Hudson, City of Lenoir, Town of Long View, Town of Maiden, City of Morganton, City of Newton, Town of Rhodhiss, Town of Rutherford College, Town of Sawmills, Town of Taylorsville, Town of Valdese, Alexander County, Burke County, Caldwell County, Catawba County and the North Carolina Department of Transportation has been prepared that sets forth the responsibilities and working arrangements for maintaining a continuing, comprehensive and cooperative transportation planning process, and;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HICKORY, NORTH CAROLINA:

That the Memorandum of Understanding between the Town of Brookford, Town of Cahaj's Mountain, Town of Catawba, Village of Cedar Rock, City of Claremont, City of Conover, Town of Connelly Springs, Town of Drexel, Town of Gamewell, Town of Glen Alpine, Town of Granite Falls, City of Hickory, Town of Hildebran, Town of Hudson, City of Lenoir, Town of Long View, Town of Maiden, City of Morganton, City of Newton, Town of Rhodhiss, Town of Rutherford College, Town of Sawmills, Town of Taylorsville, Town of Valdese, Alexander County, Burke County, Caldwell County, Catawba County and the North Carolina Department of Transportation, be approved and that the Mayor and City Clerk are hereby directed to execute the Memorandum of Understanding.

- J. Approved on First Reading Budget Ordinance Amendment Number 20.

ORDINANCE NO. 15-33
BUDGET ORDINANCE AMENDMENT NUMBER 20(A)

BE IT ORDAINED by the Governing Board of the City of Hickory, that pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2015.

SECTION 1. To amend the General Fund the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Debt Service	144,100	
TOTAL	144,100	0

To provide the additional revenue for the above, the revenues will be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Sales and Services	144,100	
TOTAL	144,100	0

SECTION 2. Copies of the budget ordinance amendment shall be furnished to the Clerk of the Governing Board, and to the City Manager (Budget Officer) and the Finance Officer for their direction.

- K. Approved on First Reading Budget Ordinance Amendment Number 1.

ORDINANCE NO. 15-34
BUDGET ORDINANCE AMENDMENT NUMBER 1

BE IT ORDAINED by the Governing Board of the City of Hickory, that pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, that the following amendment be made to the annual budget for the fiscal year ending June 30, 2016.

SECTION 1. To amend the General Fund the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
General Government	146,200	-
Other Financing Uses	-	146,200
Culture and Recreation	73,604	-
Public Safety	12,180	-
Transportation	1,366	-
TOTAL	233,350	146,200

To provide the additional revenue for the above, the revenues will be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Miscellaneous	1,366	-
Other Financing Sources	85,784	-
TOTAL	87,150	0

SECTION 2. To amend the Water and Sewer Fund the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Environmental Protection	242,814	-
TOTAL	242,814	0

To provide the additional revenue for the above, the revenues will be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Sources	242,814	-
TOTAL	242,814	0

- L. Approved the Special Events Activities Application, Mel's Jingle Run (Benefitting Operation 300 & PORCH), Sarah Prencipe (Op300 Volunteer), Leslie Knapp (Mellow Mushroom), and Mandy Pitts (PORCH Volunteer), Operation 300, PORCH, and Mellow Mushroom (Peace-A-Pie Makers, LLC), December 12, 2015, Sails on the Square Stage and 5K Route, 6:00 a.m. to 12:00 p.m.

- IX. Items Removed from Consent Agenda – None

- X. Informational Item

- A. Proposed Technical Amendments to Blue Bloodhound, LP Economic Development Agreement.

In review of the final agreements with Blue Bloodhound, LP, it was determined the intended three year improvement period was incorrectly defined to end 12/31/2017. The unintended effects of this error are reflected in some additional provisions of the agreement. Documentation for the State of North Carolina One NC grant award, for which these grants are being used as a match, allow 36 months for investments and job creation beginning 6/23/2015. Scott Millar, Catawba EDC President, requested mirroring the State filings in his presentation to the Board. Carrying the technical correction throughout the document include extending the initial date of 12/31/2017 to June 23, 2018 in the following provisions:

- 1) Second Whereas, in the date defining the Improvement Period
- 2) Paragraph 1.1
- 3) Paragraph 5.
- 4) The Chart in Paragraph 7.c. and text in 7.e, and
- 5) Exhibit A., section (b).

City Manager Mick Berry advised City Council that at their Special Meeting they had approved an Economic Development Agreement with Blue Bloodhound. He clarified that there was a date which needed to be changed in that contract. Defined as the three year period of time that Blue Bloodhound would have to create the jobs that were required per the agreement actually needed to be the date of June 23, 2018 instead of December 31,

2017. He advised of the sections of the agreement that required the date change so they have a full three years from the time Council approved the incentive agreement to fulfill the obligations of the contract.

- B. Report of City Manager Mick Berry's travel to North Carolina City County Managers Seminar, Wilmington, North Carolina, June 18 – 21, 2015. (Lodging - \$127.44; Meals - \$51.00; Registration - \$250; Mileage - \$348.45; Tips for Parking - \$12.00)

Mr. Berry reiterated his travel which occurred June 18-21, 2015 to the North Carolina City County Managers Seminar in Wilmington, North Carolina.

XI. New Business:

- A. Public Hearings

- B. Departmental Reports:

1. Approved on Second Reading Budget Ordinance Amendment Number 20.

To appropriate Tourism Development Authority (TDA) revenue to repay debt on new parking deck in FY2014-15 budget. The City entered into an agreement with the Tourism Development Authority (TDA) in August 2014 to build a parking deck to accommodate visitors to the convention center. The City secured a \$3 million loan with BB&T for a term of 15 years at 2.94% with an increase in TDA rental payments pledged to repay the debt. The first debt payment came due in April 2015, yet an appropriation of the rental payments was not established in the FY2014-15 budget. The attached Budget Ordinance Amendment appropriates the additional revenue that has been received from the TDA as a result of their increase in rental payments.

Mr. Berry asked Assistant City Manager/Chief Financial Officer Rodney Miller to the podium. He advised Council that Mr. Miller would explain Budget Ordinance Amendment Number 20, which Council approved on first reading in the Consent Agenda. The Budget Amendment was necessary to cleanup some changes at the end of the fiscal year so everything would be in order for the auditors to move forward with the audit. He advised Council that Staff was requesting a second reading on that amendment after Mr. Miller's presentation.

Assistant City Manager Rodney Miller discussed Budget Ordinance Amendment Number 20 which was to appropriate revenue that was received from the Tourism Development Authority to repay the debt that City Council entered into in August of 2014 to build the parking deck at the Convention Center. Occupancy tax proceeds were pledged for that. Those are given to the City in the form of rental payments to repay that debt. The debt is with BB&T, term of 15 years, 2.94 percent interest. That payment became due and was paid in April 2015, yet an appropriation did not exist for that debt payment. The annual budget ordinance is the legal document which allows Staff to proceed with expenditures in a fiscal year. That ordinance expired as of June 30, 2015. The action requested was to clean up the books per se but it will not fix the ordinance as of June 30, 2015. He advised that the members serving on the audit committee would hear this item again from the City's external audit firm, Martin Starnes and Associates. That will be an audit finding as of June 30th because the City exceeded appropriations for that functional area for debt service at year end. This action will clean that up for future financial statements, but as the audit did expire on June 30, 2015, and that budget ordinance expired, that will be reflected in the annual audit.

Mayor Wright commented that Tourism Development Authority (TDA) rental payments pay the debt and the TDA rental comes principally from the occupancy tax, but also from operating revenues of the TDA and the Convention Center.

Mr. Miller confirmed that was correct.

Mayor Wright commented that the City of Hickory and City of Conover own it, but the City had taken on the responsibility of being the disbursing agent. He confirmed that this was just an oversight.

Mr. Miller confirmed that was correct, likewise there is an arrangement with Conover and the County for the expansion of the Convention Center. Also paid for with those rental payments and occupancy tax proceeds.

Mayor Wright advised the City of Hickory has always had a representative on the TDA Board who has been well advised of what is going on and what the sources of repayment were and what the City's actual commitment is.

Mr. Miller advised that is correct.

Alderman Seaver moved, seconded by Alderwoman Patton approval of Budget Ordinance Amendment Number 20 on second reading. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Seaver, seconded by Alderwoman Patton and the motion carried unanimously.

Mayor Wright commented that as you drive down and you see that activity going on over there in front of the Convention Center it looks like a happening area. It looks like things are going on in Hickory. Together with all of the new hotels that have been built in that area it gives a great impression to passersby and visitors.

2. Approved on First Reading the Purchase .890 Acres Located at 1352 12th Avenue NE, Hickory, PIN 3713-14-43-2647 in the amount of \$100,000.

Staff requests approval to purchase .890 acres next to the existing Public Services Complex. The property owner, Ms. Katie Childers, approached the City about purchasing this parcel located at 1352 12th Avenue NE, PIN 3713-14-43-2647. The City owns the property to the south and east. The purchase of this property would close out the northwest corner of the public services property. There is an old skating rink structure on the property that would be of no use to the City. The estimated cost to demolish the structure would be approximately \$9,000 - \$10,000, and would eliminate an eyesore in the neighborhood. Also on the property is a metal building that is approximately ten years old, which could be utilized by Public Services. A budget amendment was previously approved by City Council for the purchase of the property. Staff recommends approval of the purchase of the property in the amount of \$100,000 and approval of the demolition of the old skating rink building located on the property.

Mr. Berry asked the City's Public Services Director Mr. Chuck Hansen to the podium to present City Council with a request to purchase property next to the Public Services facility.

Public Services Director Chuck Hansen presented a PowerPoint presentation. He advised that the request was for approval of an offer to purchase approximately .89 acres adjacent to the existing Public Services facility. The funding was out of last year's budget and had been set aside in that budget. He advised that the offer came to them from Mrs. Childers for the property located at 1352 12th Avenue NE. Mrs. Childers ran a business there, known as the old skate rink in Highland. He commented that some of the citizens in Highland would like to see that building disappear due to its age and structure. There had been a viable business ran in that location for years. Mrs. Childers is getting out of the business she was in and is ready to get rid of the property. He advised that they were approached approximately a year ago about this transaction evolving. He showed a photo and pointed out the Public Services facility property, the front entranceway of the facility, and the existing fire station water tower that is located there. He pointed out the subject property and advised that public services is located on two sides of it. He pointed out 12th Avenue on the north side of the property. He advised that this cleans up the last parcel on that side. They intend to demolish the old skate building on the property. He pointed out a metal building that was approximately 10 years old and approximately 2500 feet in size. They will incorporate it into operations of public services using it for storage in the winter time to keep items from freezing up. This will open up a spot in the garage. They will incorporate that in the fence line and clean the building up from 12th Avenue to the Highland neighborhood side. The offer was for \$100,000. The property is on the books for a little more than that. They had an appraisal done approximately a year ago and the appraisal was a little more than the tax value. He advised that this offer was a little less than tax value realizing that they would have to spend a little bit of money on it to demolish it. They will be cleaning the corner up with relationship to the complex for the future and getting an eyesore in the neighborhood out of the way at the same time. He requested Council's approve of the offer to purchase.

Alderman Lail moved, seconded by Alderman Meisner approval of the purchase of the property located at 1352 12th Avenue NE, Hickory. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Lail seconded by Alderman Meisner and the motion carried unanimously.

3. Presentation of Crafting Hickory Logo

Mr. Berry asked the City's Communications Director/Brand Manager Mandy Pitts to the podium to present City Council with Crafting Hickory Logos.

Communications Director Mandy Pitts presented City Council with a PowerPoint presentation. She advised that Crafting Hickory had been a process that Staff had embarked on since last winter when discussions were being held about the next steps of the bond and all of the projects moving forward. They contracted with North Star Destination Strategies who helped develop "Life Well Crafted" which is almost four years old. She advised that the brand continues to be strong as it has been tested in different markets and they have feedback from people that have invested in Hickory and people that have visited Hickory. She advised that we are not replacing the Life Well Crafted Logo. This is an initiative under the Life Well Crafted brand. She commented there is a family of brands. We have the libraries, Parks and Recreation Well Crafted; the Convention Center, Meetings Well Crafted, Visitors Well Crafted and Well Treated. We also have the symphony, Music Well Crafted. This is a family of brands with our Youth Council, as well as the Community Relations Council. This is another logo that is just part of the family. Crafting Hickory initiative includes more than the bond. It includes the Deidre Lackey Memorial Park; the Friends of Hickory Downtown Park; the future Kiwanis citywide splash pads that have been in discussion; several civic and business partnerships projects coming up once all of these project start coming along; it also includes projects that we have been doing like Operation No Vacancy, the entire mill district; Community Appearance Landscape Grants. That all works together and even adds an Inspiring Spaces Plan and the communities campaign Boost Hickory. She advised that they met with the Chairs of the Bond Committee and they narrowed down the logos to two. She showed renderings of two options. The logo stays with the brand. She commented that it is really the "verb", Life Well Crafted is the "noun". She asked Council for their thoughts.

Mayor Wright questioned which of the two that the Bond Committee likes?

Ms. Pitts advised that it was split. She commented that this is the look. A lot of times we spend a lot of time thinking about the colors, and they are important, and the leaf, and how big words are. It is really about the initiative. We need to focus on this is going to be the "verb" moving forward. In her experience over the years in working with the brand we need to make a decision and move forward with the initiatives.

Alderman Zagaroli commented that option two looked dated and option one was "with it".

Mayor Wright commented that option two looked so traditional. Mayor Wright polled the audience which was split as well.

Alderman Patton commented that Alderman Zagaroli was an "artsy" kind of guy. He has the "eye".

City Attorney John Crone suggested City Council to make a motion to approve one.

Mayor Wright moved, seconded by Alderman Patton approval of the Crafting Hickory logo option number one. Vote: Ayes: Alderman Lail, Alderman Seaver, Alderman Zagaroli, and Alderman Patton. Nays: Alderman Meisner, Alderman Guess and Mayor Wright. The motion carried.

4. Appointments to Boards and Commissions

BUSINESS DEVELOPMENT COMMITTEE

(Terms Expiring 6-30; 2 Year Terms) (Appointed by City Council)

At-Large VACANT
At-Large VACANT

Mayor Wright nominated Cheryl Garnett and Ed Henson to Business Development Committee, At-Large Representatives.

CATAWBA COUNTY ECONOMIC DEVELOPMENT BOARD OF DIRECTORS FOR HICKORY

(Terms Expiring 6-30; 3-Year Terms with Unlimited Appointments) (Appointed by City Council)

Position One Gary Garvey and Stephen Shuford have expressed interest

CITIZENS ADVISORY COMMITTEE

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

At-Large VACANT

Mayor Wright nominated Bert Showfety to Citizens Advisory Committee, At-Large Representative.

COMMUNITY RELATIONS COUNCIL

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Caucasian VACANT
 Other Minority VACANT
 Other Minority VACANT

HICKORY REGIONAL PLANNING COMMISSION

(Terms Expiring 6-30; 3-Year Terms With Unlimited Appointments)
 (Appointed by City Council)

Burke County (Mayor to Nominate) VACANT Since 8-6-2008
 Brookford (Mayor to Nominate) VACANT Since 6-2006
 Caldwell County (Mayor to Nominate) James R. Noggle
 (Eligible for Reappointment)
 Catawba County (Mayor to Nominate) Oscar Vasquez
 (Eligible for Reappointment)

Mayor Wright nominated James Noggle to Hickory Regional Planning Commission, Caldwell County Representative.

HISTORIC PRESERVATION COMMISSION

(Terms Expiring 6-30; 3-Year Terms (Appointed by City Council)

Licensed Architect VACANT
 At-Large (3) VACANT

Alderman Guess nominated Ernest Sills to Historic Preservation Commission, Licensed Architect Representative.

INTERNATIONAL COUNCIL

(Appointed by Mayor with the Concurrence of City Council)

(10) Positions VACANT

LIBRARY ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Ward 1 VACANT
 Ward 3 VACANT

PARKS AND RECREATION COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

At-Large Minority VACANT
 At-Large (2) VACANT

Mayor Wright nominated Angie Aycock to Parks and Recreation Commission, At-Large (2) Representative.

PUBLIC ART COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Ward 3 VACANT
 At-Large (Mayor Nominates) VACANT
 At-Large (Mayor Nominates) VACANT

Mayor Wright nominated Mylinda Strittmatter to Public Art Commission, At-Large Representative.

PUBLIC HOUSING AUTHORITY

(Terms Expiring 6-30; 5-Year Terms (Appointed by Mayor)

Position 3 (Mayor Nominates) VACANT
 Tenant Representative (Mayor Nominates) VACANT

Mayor Wright nominated Matthew Fallaw to Pubic Housing Authority, Position 3 Representative.

RECYCLING ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Ward 3 VACANT
 At-Large (1) VACANT

Mayor Wright nominated Jeffrey Enders to Recycling Advisory Board, At-Large (1) Representative.

UNIVERSITY CITY COMMISSION

(Terms Expiring 6-30; 2-Year Terms) (Appointed by City Council)
At-Large VACANT

YOUTH COUNCIL

(Terms Expiring 6-30; 1-Year Terms) (Appointed by City Council)

Hickory Career Arts Magnet VACANT

The Youth Council Applicant Review Committee Makes the Following Recommendation for Appointment to the Youth Council:

Kyle Chang – Challenger High School – Challenger High School Representative

Mayor Wright acknowledged the recommendation of Kyle Chang to Youth Council, Challenger High School Representative.

Alderman Seaver moved seconded by Alderman Meisner approval of the above nominations. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Seaver seconded by Alderman Meisner and the motion carried unanimously.

Mayor Wright commented because of some dramatic changes being proposed by HUD, he probably would recommend to Council that they expand the numbers of members of the Board of the Public Housing Authority to get broader representation and to insure the best representation for the neediest people in Hickory. That would require a Resolution and perhaps a change in the State Statute regarding Hickory's Public Housing Authority. He commented that it is not as simple as it might sound, but it is probable that he would be proposing that.

Alderman Seaver questioned the number of seats currently on the board.

Mayor Wright advised seven. Six are filled after the appointment tonight and one is held by a tenant representative. The existing tenant representative is not physically in a position to hold that seat. Another tenant representative would need to be found, and perhaps expand it beyond that.

C. Presentation of Petitions and Requests

XII. Matters Not on Agenda (requires majority vote of Council to consider)

Ms. Delores Hammer requested to speak to Council regarding the addition of more bus lines if the housing project was in an area where there were no bus lines.

Mayor Wright advised Ms. Hammer that she would need to speak at the next meeting. He explained the process. There is no requirement to sign-in to speak, but he had asked if anyone else wished to speak to Council earlier in the meeting.

XIII. General Comments by Members of Council, City Manager or City Attorney of a Non-Business Nature

Mayor Wright congratulated City Manager Mick Berry on becoming a grandfather.

Alderwoman Patton requested an update from Staff regarding data from the recycling program.

City Manager Mick Berry advised that Staff would do that in a few months, which would give citizens time to get used to the recycling program.

Alderwoman Patton commented that it would be nice if there was pickup for recycling every week and trash pickup every other week.

Mayor Wright mentioned that Alderman Guess, Alderman Zagaroli, Assistant City Manager Andrea Surratt, City Manager Mick Berry and himself would be going to Washington on Thursday to lobby for the 22 million dollar TIGER grant that the City is well entitled to. They will be speaking with the City's Representatives and Senators to ask for their assistance in obtaining the grant. He commented think what that could do on top of what we have already accumulated through tax credits, grants, donations, private investments and 40 million dollar bond issuance. What could be done for Hickory with another 22 million dollars?

Mr. Berry introduced interns: Will Sigmon, an ASU student; Bradley Setzer, interning in the Legal Department, a Wake Forest University student in his third year of law school; Paul Wood, a St. Stephens High School rising senior; Melissa Loveless interning in the Communications

July 14, 2015

Department, she attended Western Carolina University. Mr. Berry introduced the new Library Director, Ms. Sarah Greene. She previously served as Library Director in Caldwell County.

City Attorney John Crone requested Council go into closed session (Per NC General Statutes 143-318.11(a)(3)) to discuss settlement of two matters of litigation concerning the airport: AGI Associates LLC versus the City of Hickory, Federal Case 5:13-CV-61-RLV which is pending in the United States District Court for the Western District; and an ejectment action that was filed by the City of Hickory in Burke County (15-CVM-350) regarding what is known as the Moose Hangar at the airport. Council was aware that a mediation had taken place that was very lengthy. Mr. Crone advised that he had a proposed settlement agreement and resolution for discussion in closed session. He requested Council return to open session and consider approval of the terms of settlement and the resolution that approved the terms of settlement.

Mayor Wright moved seconded by Alderman Seaver to go into closed session to consult with the attorneys on the items requested by City Attorney John Crone. The motion carried unanimously.

Mayor Wright announced that he moved seconded by Alderman Seaver and the motion carried unanimously.

Council convened to closed session at approximately 7:54 p.m. Alderman Lail excused himself from the meeting at that time.

Council reconvened to open session at approximately 8:21 p.m.

City Attorney John Crone requested Council approve a Resolution authorizing the settlement of disputed issues between the City of Hickory and AGI Associates LLC, and CRA Enterprises LLC, concerning the Hickory Regional Airport. The Resolution included terms of settlement that were negotiated by the City of Hickory and the other opposing parties on July 13th during a 12 hour mediation in Charlotte. Mr. Crone had reviewed the documents with Council in closed session. The terms of the settlement agreement were attached to the Resolution. Mr. Crone requested a motion to approve.

Alderman Zagaroli moved seconded by Alderwoman Patton approval of the Resolution and the attached settlement agreement. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Zagaroli seconded by Alderwoman Patton and the motion carried unanimously. He advised that Alderman Lail was unable to stay for the closed session and was not present for the vote.

RESOLUTION NO. 15-21

A RESOLUTION AUTHORIZING SETTLEMENT OF DISPUTED ISSUES BETWEEN THE CITY OF HICKORY AND AGI ASSOCIATES, LLC AND CRA ENTERPRISES, LLC CONCERNING HICKORY REGIONAL AIRPORT

WHEREAS, the City of Hickory is the owner of the HICKORY REGIONAL AIRPORT ('Airport') located partially in Catawba County and partially in Burke County; and

WHEREAS, AGI ASSOCIATES, INC. ("AGI") is a corporation that is a purchaser for value of security interests in certain Airport property ("the Airport Security") given by PROFILE AVIATION CENTER, INC. ("Profile") to RBC Centura Bank (the "Bank") to secure the financing of four hangars constructed by Profile on land at the Airport leased from the City (the "Encumbered Hangars"); and

WHEREAS, CRA ENTERPRISES, LLC ("CRA") is the lessee from the City of that hangar at the Airport known as the "Moose Hangar"; and

WHEREAS, AGI and CRA are controlled by a common entity;

WHEREAS, Profile defaulted on its obligations to RBC and the City and filed bankruptcy, and as a result the City was put in possession of the Encumbered Hangars and Profile went out of business; and

WHEREAS, AGI purchased the Airport Security from the Bank and sued the City for the value of the Encumbered Hangars under the legal theory of unjust enrichment; and

WHEREAS, the City acknowledges that it has received financial benefit from the return to it of the Encumbered Hangars and has agreed to pay AGI \$850,000 in settlement of the suit; and

WHEREAS, the City wishes to repossess the Moose Hangar to support the operations of the Airport and filed an action of Summary Ejectment against CRA in Burke County; and

July 14, 2015

WHEREAS, the City and CRA have agreed to settle the Summary Ejectment action and to terminate the lease of the Moose Hangar in consideration of a payment by the City to CRA of \$50,000.;

WHEREAS, representatives of the City, and AGI, and CRA have executed a summary Settlement Agreement and have further agreed to execute a detailed Settlement Agreement and Settlement Documents upon the approval of the Hickory City Council;

NOW, THEREFORE BE IT RESOLVED by the Hickory City Council, sitting in open session this date, at a regularly scheduled meeting of the governing body of said Council, duly called and posted in accordance with the statutes of the State of North Carolina, that the dispute between the parties be resolved in accordance with the Settlement Agreement proposed and attached hereto, the same being incorporated herein by reference, and the City Manager is authorized to execute such documentation as may be deemed necessary in their opinion to complete the transaction, the same to be effective immediately upon execution of the appropriate documents.

Done this 14th day of July, 2015.

TERMS OF SETTLEMENT

1. The City of Hickory, North Carolina (the "City") will pay the sum of \$850,000.00 to AGI Associates, LLC ("AGI") upon delivery of executed settlement documents in full settlement of claims including, without limitation, those claims asserted by AGI in Civil Action No. 5:13-CV-61-RLV pending in the United States District Court for the Western District of North Carolina. AGI will file a voluntary dismissal with prejudice within 5 days of receipt of the payments set forth in paragraphs 1 and 2 herein.
2. The City will pay the sum of \$50,000.00 to CRA Enterprises Inc. ("CRA") for early termination of that certain lease to CRA of property known as the Moose Hangar which is subject to a summary ejectment proceeding pending in the District Court for Burke County, North Carolina under Case No. 15-CVM-350 (the "State Court Action").
3. Settlement Documents shall include, with limitation:
 - Comprehensive Settlement Agreement including mutual releases.
 - Dismissal with Prejudice of the State Court Action.
 - Consensual Termination of the Moose Hangar lease.
 - An order/resolution of the City Council of the City of Hickory approving these Terms of Settlement.
4. Representatives of the City shall use their best efforts to bring this matter on before the City Council on July 14, 2015 for consideration/approval in open session and to expedite authorization of the applicable disbursements.
5. AGI and CRA will furnish evidence of appropriate authority for their signatories to the Settlement Documents.
6. The parties acknowledge that this is a binding settlement agreement, although the parties intend to enter a more formal settlement agreement that will replace this agreement.

This 13th day of July, 2015.

XIV. There being no further business, the meeting adjourned at 8:23 p.m.

Mayor

City Clerk

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Stephen L Moore, Deputy Fire Chief
Contact Person: Stephen L Moore
Date: 7/9/15
Re: Public Fireworks Display

REQUEST

Additional date have been submitted to obtain approval to issue a pyrotechnic display permit to Hickory Crawdads for the below listed date.

BACKGROUND

Mark Seaman, General Manager of the Hickory Crawdads, has submitted a request to obtain permission to conduct a public fireworks display on the following additional date: September 11, 2015 with the rain date of September 12, 2015.

ANALYSIS

The North Carolina Fire Code requires a mandatory operational permit for the use and handling of pyrotechnic special effects material. The Division of Fire & Life Safety Division shall review all required documentation such as but not limited to the following: Alcohol Tobacco and Firearm's (ATF) License, Operator and Assistant Operators Permits from North Carolina Office of State Fire Marshal (NCOSFM), Site Plan, and the one million dollar liability insurance policy. The Fire & Life Safety Division will also inspect the pyrotechnics display area prior to the event to ensure compliance with NCOSFM Guidelines, National Fire Protection Association (NFPA) NFPA 1123 Code for Fireworks Display, and NFPA 1126 Use of Pyrotechnics Before a Proximate Audience (if applicable) are met.

RECOMMENDATION

Staff recommends approval of the above pyrotechnics displays.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Stephen L. Moore

7/9/2015

Initiating Department Head

Date

A. Dula
Deputy City Attorney, A. Dula

7-27-15
Date

Rodney Miller
Asst. City Manager Rodney Miller

7-28-15
Date

Asst. City Manager, A. Surratt

Date

Melissa Miller
Finance Officer, Melissa Miller

7-28-15
Date

Bo Weichel
Purchasing Manager, Bo Weichel

7-28-15
Date

Date

Recommended for approval and placement on _____ Council agenda (as Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date



HICKORY CRAWDADS BASEBALL CLUB

PO BOX 1268, Hickory, NC 28603

Phone: 828-322-3000 Fax: 828-322-6137

www.hickorycrawdads.com crawdad@hickorycrawdads.com

July 3, 2015

City of Hickory
PO Box 398
Hickory, NC 28603-0398

The Hickory Crawdads would like to request road closures for the following roads, 24th Street NW and 14th Avenue Circle NW, for our fireworks shows on the following nights:

Friday, September 11, 2015
Rain date: Saturday, September 12, 2015

We have spoken with Sammy Burnett at Pepsi, (please see attached letter), and they have agreed to allow us to close the road on our fireworks nights.

We have been in contact with Stephen Moore, Deputy Fire Chief, concerning the Crawdads' responsibilities in order to conduct a safe fireworks show. We agree to adhere to any requirements and recommendations they have concerning the shows.

Thank you for your consideration of our request. I can be reached through any of the methods below. Please let me know if we need to provide any additional information.

Thank you,

Mark Seaman
General Manager
Hickory Crawdads
Office – 828-322-3000
Cell – 828-640-1422
Email – mseaman@hickorycrawdads.co

Class "A" Affiliate of the Texas Rangers
Members of the South Atlantic League





January 19, 2010

Mr. Mark Seaman
HICKORY CRAWDADS
PO Box 1268
Hickory, NC 28603

Dear Mark,

Until further notice Pepsi-Cola of Hickory grants the Hickory Crawdads permission to display fireworks within proximity to Pepsi-Cola property during the 2010 baseball season and in coming years. We ask that you provide a schedule of planned events so we can make necessary operational changes on those days.

Once again I respectfully request that you ask the city to provide a better barricade for closing off the street on event nights? It would be particularly helpful if they would provide a sign that explains the closings to people that are using the road. A reference to the Fire Marshall would make the sign more authoritative as we have discussed.

Go Crawdads!

Sincerely,

A handwritten signature in cursive script that reads "Sammy Burnett".

Sammy Burnett
East Division Sales Manager
Pepsi-Cola Bottling of Hickory

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Stephen L Moore, Deputy Fire Chief
Contact Person: Stephen L Moore
Date: 7/15/15
Re: Public Fireworks Display

REQUEST

Additional date have been submitted to obtain approval to issue a pyrotechnic display permit to Hickory Motor Speedway due to inclement weather of previously approved dates.

BACKGROUND

Kevin Percy, General Manager of the Hickory Motor Speedway, has submitted a request to obtain permission to conduct a public fireworks display on the following additional dates: August 15, 2015 and September 7, 2015.

ANALYSIS

The North Carolina Fire Code requires a mandatory operational permit for the use and handling of pyrotechnic special effects material. The Division of Fire & Life Safety Division shall review all required documentation such as but not limited to the following: Alcohol Tobacco and Firearm's (ATF) License, Operator and Assistant Operators Permits from North Carolina Office of State Fire Marshal (NCOSFM), Site Plan, and the one million dollar liability insurance policy. The Fire & Life Safety Division will also inspect the pyrotechnics display area prior to the event to ensure compliance with NCOSFM Guidelines, National Fire Protection Association (NFPA) NFPA 1123 Code for Fireworks Display, and NFPA 1126 Use of Pyrotechnics Before a Proximate Audience (if applicable) are met.

RECOMMENDATION

Staff recommends approval of the above pyrotechnics displays.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Stephen L. Moore

7/15/15

Initiating Department Head

Date

Auntie M. Dula
Deputy City Attorney, A. Dula

7-27-15
Date

Rodney Miller
Asst. City Manager Rodney Miller

7-28-15
Date

Asst. City Manager, A. Surratt

Date

Melissa Miller
Finance Officer, Melissa Miller

7-28-15
Date

Bo Weichel
Purchasing Manager, Bo Weichel

7-28-15
Date

Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Matt Hutchinson, Battalion Chief
Contact Person: Matt Hutchinson
Date: July 9, 2015
Re: Annual Maintenance for Fitness Equipment at all Fire Stations

REQUEST

To establish an exercise equipment preventive maintenance agreement with Grayson Fitness Repair and Maintenance, Inc. located in Charlotte, North Carolina; to perform a quarterly service on all stationary fitness equipment located at each fire station.

BACKGROUND

Since 2003 the City of Hickory Fire Department has deployed a series of physical fitness equipment consisting of a treadmill, cross-trainer, and recumbent exercise bike at each of the fire stations. The department has had an annual preventive maintenance program since 2003 for the equipment in order to keep the equipment operational. This equipment, though already 11 years old, has continued to provide good service to our employees. Staff wishes to accept a proposal from Grayson Fitness Repair & Maintenance Inc. to continue the quarterly service necessary to maintain the exercise equipment.

ANALYSIS

The service agreement provides quarterly service to each piece of fitness equipment that is located at each of the fire stations.

RECOMMENDATION

Staff recommends approval of the exercise equipment preventive maintenance agreement.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE: 010-5300-524.45-01

Reviewed by:

C. Fred Heller
Initiating Department Head

7/9/15
Date

Arnita M. Dula
Deputy City Attorney, A. Dula

7-27-15
Date

Robyn Miller
Asst. City Manager, R. Miller

7-28-15
Date

Asst. City Manager, A. Surratt

Date

Melissa Miller
Finance Officer, Melissa Miller

7-28-15
Date

Administrative Services Director

Date

Bo Weichel
Purchasing Manager, Bo Weichel

7-28-15
Date

Recommended for approval and placement on _____ Council agenda (as Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date



PREVENTATIVE MAINTENANCE PROGRAM

Effective 10/ 01 / 15 , a preventative maintenance program exists between Grayson Fitness Repair & Maintenance, Inc. and City of Hickory(Fire Dept. Station 7)-465 Catawba Valley Blvd., SE, Hickory, NC 28602 (Work Site)

(Billing Address)

Tax exempt: _____ P.O. # _____ Email: _____

For a period of 12 month(s), Grayson Fitness will provide preventative maintenance for your fitness equipment. The program will include 4 visit(s) over term, at an interval of 1 visit(s) per 3 month(s).

Each visit will consist of all preventative maintenance suggested by the manufacturer, diagnostic evaluation for wear and tear and pro-active service.

The rate for this program is \$ 580.00 for the term, billed at \$ 145.00 per visit. Invoicing for the program will be done at the completion of each visit and net 30 days. Payment in full is to be sent to Grayson Fitness Repair & Maintenance, Inc., at P.O. Box 42446, Charlotte, NC 28215.

This rate does not include the (non-warranty) Service Trip Charge or Labor and Parts Cost for any service that may be required but is not specific in this agreement. These additional services will be billed on a separate invoice. The labor rate for additional work or unscheduled service calls is \$ 55.00 per hour; the service trip charge for an unscheduled service call is \$ 110.00(Sub.to change).

No additional service will be performed without prior customer approval on a separate Work Order. The customer shall have the option of canceling this agreement by providing a 30-day written notice.

Accepted by
Sign: _____ Date: _____
Duly Authorized Representative

Print: _____ Date: _____

Grayson Fitness Ted Graybill Date: 7-8-15
Duly Authorized Representative

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

Interval October, January, April & July (Renew contract October 2016)

Grayson Fitness Repair & Maintenance, Inc.
P.O. Box 42446
Charlotte, NC 28215

Approved as to form
Armita M. Dula
City of Hickory - Legal Dept.

Michael Miller
City of Hickory
Finance Officer
Phone: 704-400-5502
Fax: 704-569-1019
Email: graysonfitness@bellsouth.net



PREVENTATIVE MAINTENANCE PROGRAM

Effective 10/ 01 / 15, a preventative maintenance program exists between Grayson Fitness Repair & Maintenance, Inc. and City of Hickory(Fire Dept. Station 6)-3036 N. Center St., NE, Hickory, NC 28601 (Work Site)

(Billing Address)

Tax exempt: _____ P.O. # _____ Email: _____

For a period of 12 month(s), Grayson Fitness will provide preventative maintenance for your fitness equipment. The program will include 4 visit(s) over term, at an interval of 1 visit(s) per 3 month(s).

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Accepted by
Sign: _____ Date: _____
Duly Authorized Representative

Print: _____ Date: _____

Grayson Fitness Tom Grayson Date: 7-8-15
Duly Authorized Representative

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

Interval October, January, April & July (Renew contract October 2016)

Grayson Fitness Repair & Maintenance, Inc.
P.O. Box 42446
Charlotte, NC 28215

Approved as to form
Auruth M. Deula
City of Hickory - Legal Dept.

William Miller
City of Hickory
Finance Officer

Phone: 704-400-5502
Fax: 704-569-1019
Email: graysonfitness@bellsouth.net



PREVENTATIVE MAINTENANCE PROGRAM

Effective 10/ 01 / 15, a preventative maintenance program exists between Grayson Fitness Repair & Maintenance, Inc. and City of Hickory(Fire Dept. Station 5)-1425 21st St. Drive, SE, Hickory, NC 28602 (Work Site)

(Billing Address)

Tax exempt: _____ P.O. # _____ Email: _____

For a period of 12 month(s), Grayson Fitness will provide preventative maintenance for your fitness equipment. The program will include 4 visit(s) over term, at an interval of 1 visit(s) per 3 month(s).

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No additional service will be performed without prior customer approval on a separate Work Order. The customer shall have the option of canceling this agreement by providing a 30-day written notice.

Accepted by

Sign: _____ Date: _____
Duly Authorized Representative

Print: _____ Date: _____

Grayson Fitness *Tom Gray* Date: 7-8-15
Duly Authorized Representative

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

Interval October, January, April & July (Renew contract October 2016)

Grayson Fitness Repair & Maintenance, Inc.
P.O. Box 42446
Charlotte, NC 28215

Approved as to form

Amrita M. Jula
City of Hickory - Legal Dept.

Julia Hill
City of Hickory
Finance Officer

Phone: 704-400-5502

Fax: 704-569-1019

Email: graysonfitness@bellsouth.net



PREVENTATIVE MAINTENANCE PROGRAM

Effective 10/ 01 / 15, a preventative maintenance program exists between Grayson Fitness Repair & Maintenance, Inc. and City of Hickory(Fire Dept. Station 4)-9th Ave. Drive, NW, Hickory, NC 28601 (Work Site)

(Billing Address)

Tax exempt: _____ P.O. # _____ Email: _____

For a period of 12 month(s), Grayson Fitness will provide preventative maintenance for your fitness equipment. The program will include 4 visit(s) over term, at an interval of 1 visit(s) per 3 month(s).

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Accepted by
Sign: _____ Date: _____
Duly Authorized Representative

Print: _____ Date: _____

Grayson Fitness Tom Graybill Date: 7-8-15
Duly Authorized Representative

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

Interval October, January, April & July (Renew contract October 2016)

Justin Miller
City of Hickory
Finance Officer

Grayson Fitness Repair & Maintenance, Inc.
P.O. Box 42446
Charlotte, NC 28215
Approved as to form
Armita M. Dula
City of Hickory - Legal Dept.

Phone: 704-400-5502
Fax: 704-569-1019
Email: graysonfitness@bellsouth.net



PREVENTATIVE MAINTENANCE PROGRAM

Effective 10/01/15, a preventative maintenance program exists between Grayson Fitness Repair & Maintenance, Inc. and City of Hickory (Fire Dept. Station 3)-135 11th St., NW, Hickory, NC 28601 (Work Site)

(Billing Address)

Tax exempt: _____ P.O. # _____ Email: _____

For a period of 12 month(s), Grayson Fitness will provide preventative maintenance for your fitness equipment. The program will include 4 visit(s) over term, at an interval of 1 visit(s) per 3 month(s).

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This rate does not include the (non-warranty) Service Trip Charge or Labor and Parts Cost for any service that may be required but is not specific in this agreement. These additional services will be billed on a separate invoice. The labor rate for additional work or unscheduled service calls is \$ 55.00 per hour; the service trip charge for an unscheduled service call is \$ 110.00 (Sub.to change).

No additional service will be performed without prior customer approval on a separate Work Order. The customer shall have the option of canceling this agreement by providing a 30-day written notice.

Accepted by
Sign: _____ Date: _____
Duly Authorized Representative

Print: _____ Date: _____

Grayson Fitness Tom Graybill Date: 7-8-15
Duly Authorized Representative

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

Interval October, January, April & July (Renew contract October 2016)

Justin Miller
City of Hickory
Finance Officer

Grayson Fitness Repair & Maintenance, Inc.
P.O. Box 42446
Charlotte, NC 28215

Approved as to form
Amrita M. Dula
City of Hickory - Legal Dept.

Phone: 704-400-5502
Fax: 704-569-1019
Email: graysonfitness@bellsouth.net



PREVENTATIVE MAINTENANCE PROGRAM

Effective 10/ 01 / 15 , a preventative maintenance program exists between Grayson Fitness Repair & Maintenance, Inc. and City of Hickory(Fire Dept. Station 2)-1325 9th Ave. NE,Hickory NC 28601 (Work Site)

(Billing Address)

Tax exempt: _____ P.O. # _____ Email: _____

For a period of 12 month(s), Grayson Fitness will provide preventative maintenance for your fitness equipment. The program will include 4 visit(s) over term, at an interval of 1 visit(s) per 3 month(s).

Each visit will consist of all preventative maintenance suggested by the manufacturer, diagnostic evaluation for wear and tear and pro-active service.

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No additional service will be performed without prior customer approval on a separate Work Order. The customer shall have the option of canceling this agreement by providing a 30-day written notice.

Accepted by
Sign: _____ Date: _____
Duly Authorized Representative

Print: _____ Date: _____

Grayson Fitness *Tom Gravel* Date: 7-8-15 Instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.
Duly Authorized Representative

Interval October, January, April & July (Renew contract October 2016)
William Miller
City of Hickory
Finance Officer

Grayson Fitness Repair & Maintenance, Inc.
P.O. Box 42446
Charlotte, NC 28215
Approved as to form
Annita M. Dulka
City of Hickory - Legal Dept.
Phone: 704-400-5502
Fax: 704-569-1019
Email: graysonfitness@bellsouth.net



PREVENTATIVE MAINTENANCE PROGRAM

Effective 10/01/15, a preventative maintenance program exists between Grayson Fitness Repair & Maintenance, Inc. and City of Hickory (Fire Dept. Station 1)-19 2nd St. Drive, NE, Hickory, NC 28601 (Work Site)

(Billing Address)

Tax exempt: _____ P.O. # _____ Email: _____

For a period of 12 month(s), Grayson Fitness will provide preventative maintenance for your fitness equipment. The program will include 4 visit(s) over term, at an interval of 1 visit(s) per 3 month(s).

Each visit will consist of all preventative maintenance suggested by the manufacturer, diagnostic evaluation for wear and tear and pro-active service.

The rate for this program is \$ 580.00 for the term, billed at \$ 145.00 per visit. Invoicing for the program will be done at the completion of each visit and net 30 days. Payment in full is to be sent to Grayson Fitness Repair & Maintenance, Inc., at P.O. Box 42446, Charlotte, NC 28215.

This rate does not include the (non-warranty) Service Trip Charge or Labor and Parts Cost for any service that may be required but is not specific in this agreement. These additional services will be billed on a separate invoice. The labor rate for additional work or unscheduled service calls is \$ 55.00 per hour; the service trip charge for an unscheduled service call is \$ 110.00 (Sub.to change).

No additional service will be performed without prior customer approval on a separate Work Order. The customer shall have the option of canceling this agreement by providing a 30-day written notice.

Accepted by
Sign: _____ Date: _____
Duly Authorized Representative

Print: _____ Date: _____

Grayson Fitness Tom Gusefello Date: 7-8-15
Duly Authorized Representative

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

Interval October, January, April & July (Renew contract October 2016)

Grayson Fitness Repair & Maintenance, Inc.
P.O. Box 42446
Charlotte, NC 28215

Approved as to form
Annita M. Della
City of Hickory - Legal Dept.
Email: graysonfitness@bellsouth.net

Melvin Dillard
City of Hickory
Finance Officer

Phone: 704-400-5502
Fax: 704-569-1019

To: City Manager's Office
From: Kevin B. Greer, PE, Assistant Public Services Director-Public Utilities
Contact Person: Kevin B. Greer, PE
Date: August 4, 2015
Re: Sherwood Forest Subdivision Sanitary Sewer Easement

REQUEST

Staff requests acceptance of a 25-ft temporary construction and 25-ft permanent sanitary sewer line easement for the property of Josephine B. Hambrick, Wells Fargo NA, Margaret H. Glaze and Wilson E. Glaze II described as PIN: 3723-15-63-5314 for installation of a sanitary sewer line.

BACKGROUND

This temporary and permanent easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012 in the amount of \$2.946 Million.

ANALYSIS

This easement is necessary for the construction of the infrastructure required to serve this area with sanitary sewer and will not increase the cost of this construction project. The easement was negotiated for the value of five thousand and 00/100 dollars (\$5,000.00) in exchange for the easement.

RECOMMENDATION

Staff recommends approval of this 25-ft temporary construction and 25-ft permanent sanitary sewer easement across the property of Josephine B. Hambrick, Wells Fargo NA, Margaret H. Glaze and Wilson E. Glaze II described as PIN: 3723-15-63-5314.

Revised: June 5, 2015

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Chuck Hansen *CH* 7/09/2015
Initiating Department Head Date

Anita M. Dula *AM Dula* 7-28-15
Deputy City Attorney, A. Dula Date

Rodney Miller *RM* 7-28-15
Asst. City Manager Rodney Miller Date

Asst. City Manager, A. Surratt Date

Melissa Miller *MM* 7-28-15
Finance Officer, Melissa Miller Date

Bo Weichel *BW* 7-28-15
Purchasing Manager, Bo Weichel Date

Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

DRAWN BY: Arnita M. Dula, Deputy City Attorney, City of Hickory
P.O. Box 398, Hickory, NC 28603

STATE OF NORTH CAROLINA

**DEED OF EASEMENT
(Sewer)**

COUNTY OF CATAWBA

THIS DEED OF EASEMENT, made this 13th day of May, 2015, by and between **JOSEPHINE BONNIWELL HAMBRICK**, as owner of an undivided one-half (1/2) interest; **WELLS FARGO BANK, N.A, AS SUCCESSOR TRUSTEE UNDER TRUST AGREEMENT EXECUTED BY JOSEPHINE LYERLY HAMBRICK DATED DECEMBER 29,1998 F/B/O SUZANNE HAFER HAMBRICK**, as owner of an undivided ten percent (10%) interest; and **MARGARET H. GLAZE** and husband, **WILSON EUGENE GLAZE II**, as owner of an undivided forty percent (40%) interest, c/o Wells Fargo Bank, N.A., having a mailing address of **868 Church Street North 2nd Floor, Concord, North Carolina 28025** (hereinafter referred to as "Grantor", whether singular or plural), and the **CITY OF HICKORY**, a North Carolina Municipal Corporation duly organized and existing under the laws of the State of North Carolina, having a mailing address of **Post Office Box 398, Hickory, North Carolina 28603**, and being situated in Catawba County, (hereinafter referred to as "Grantee");

THAT WHEREAS, said Grantor owns a certain tract of land located in Hickory Township, Catawba County, State of North Carolina, the same being the land conveyed to them pursuant to deeds recorded in Book 2920 at Page 1237, Book 2920 at Page 1241 and Book 3289 at Page 861 in the Office of the Register of Deeds of Catawba County, State of North Carolina; which deeds are hereby referred to for greater certainty of description; and

WHEREAS, the City Council of the City of Hickory has determined that it is in the public interest to install, construct and maintain a sanitary sewer to serve the public in the vicinity of the described property, as well as throughout the City of Hickory.

**JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT**

NOW, THEREFORE, said Grantor, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other valuable consideration paid to the Grantor by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said Grantee, its successors and assigns, a perpetual right and easement to install, construct and maintain a sanitary sewer, together with the attendant customary uses, including drainage and utilities, over, under, through, across, along and upon all that certain lot, tract, or parcel of land of the Grantor situated in Hickory Township, Catawba County, North Carolina, and more particularly described as follows, to-wit:

Temporary Easement:

Being all of that temporary right of way sewer easement across the Grantor's property in the City of Hickory, shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the properties of: Josephine B. Hambrick & Robert T. Hambrick Jr Trust", prepared by Christopher F. Jordan, Professional Land Surveyor L-4956, dated May 1, 2013 to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Book 2920 at Page 1237, Book 2920 at Page 1241 and Book ____ at Page ____ of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-15-63-5314.

Permanent Easement:

Being all that permanent right of way sewer easement across the Grantor's property in the City of Hickory, shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the properties of: Josephine B. Hambrick & Robert T. Hambrick Jr Trust", prepared by Christopher F. Jordan, Professional Land Surveyor L-4956, dated May 1, 2013 to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Book 2920 at Page 1237, Book 2920 at Page 1241 and Book ____ at Page ____ of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-15-63-5314.

TO HAVE AND TO HOLD the said grant of right and easement unto it, the said Grantor, its successors and assigns forever.

The Grantor acknowledges that the City is acquiring this easement for the purpose of erecting, constructing and installing a sanitary sewer within the described easement, and specifically grants unto the Grantee the right to construct such structures or make the improvements on that grade according to such plans and specifications, as

**JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT**

will, in the Grantee's opinion, best serve the public purpose. The payment of the purchase price for the easement conveyed shall be considered full compensation for the easement, and for any diminution in value that may result to the remaining property by virtue of proximity to the project, grade alignment, utility installation, or the alteration of drainage patterns and facilities.

The said grant shall include the right of ingress and egress over the easement on the land of the Grantor for the purpose of constructing, maintaining, repairing and enlarging said sewer line or removing any obstruction interfering with the enjoyment of this line and, in general, any rights and privileges which may be necessary for the permanent maintenance of said sewer line; provided, however, that nothing herein contained shall directly or indirectly be construed as authorizing the City of Hickory or its successors or assigns to injure, damage or remove any structure upon said land, and the Grantor herein expressly retains for himself, his heirs and assigns, the right to construct and maintain any and all buildings he may desire upon the said premises, provided the sewer line is protected in the manner required by the City Engineer.

The Grantor retains the right to use and cultivate said land along and upon said right-of-way.

Grantee shall use its best efforts to minimize the removal of grass, shrubbery, plants, or other vegetation occasioned by the Grantee in constructing, maintaining, or altering said sewer line.

Grantee agrees to plant grass seed on and/or mulch the area disturbed during the sewer line construction process or after any maintenance or repair to the sewer line.

The temporary easement will expire upon final completion of the project, including final certification and DENR acceptance.

**JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT**

Should one or more of the Grantors be natural persons not joined by their respective spouses, it is conclusively presumed that the land conveyed is not the residence or business homestead of such Grantor. Should one or more of the Grantors be a legal entity other than a natural person, it shall be conclusively presumed that the person signing on behalf of that party has been duly and legally authorized to so sign and there shall be no necessity for a seal or attestation.

TO HAVE AND TO HOLD the same, together with all the rights and appurtenances belonging thereto, unto the City of Hickory, its successors and assigns forever, and Grantor is hereby bound, together with all heirs, executors, administrators, or successors, to warrant and forever defend the easement granted herein unto the City of Hickory, its successors and assigns, against every person lawfully claiming the easement or any part thereof.

[SIGNATURES ON FOLLOWING PAGES.]

**JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT**

- 4 -

IN TESTIMONY WHEREOF, the said Grantor has hereunto set his hand and seal the day and year first above written.

Josephine Bonniwell Hambrick (SEAL)
JOSEPHINE BONNIWELL HAMBRICK

STATE OF NORTH CAROLINA
COUNTY OF Catawba

I, a Notary Public of Catawba County, North Carolina, do hereby certify that Josephine Bonniwell Hambrick, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and seal this 15th day of May, 2015.

Shirley G. Therrell
NOTARY PUBLIC
Catawba County, NC

(SEAL)

Shirley G Therrell
Notary Public

Shirley G Therrell
Printed Name of Notary Public

My Commission Expires: 10-05-2019

**JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT**

WELLS FARGO BANK, N.A.,
SUCCESSOR TRUSTEE UNDER
THE REVOCABLE TRUST AGREEMENT
WITH JOSEPHINE LYERLY HAMBRICK
F/B/O SUZANNE HAFER HAMBRICK

Donna M. Smith (SEAL)
Donna M. Smith
VICE PRESIDENT

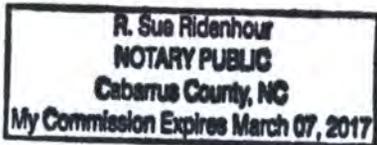
STATE OF NORTH CAROLINA
COUNTY OF Cabarrus

I, a Notary Public for Cabarrus County, North Carolina, do hereby certify that Donna M. Smith, personally came before me this day, acknowledged that (s)he is Vice President of Wells Fargo Bank, N.A., Successor Trustee under the Revocable Trust Agreement with Josephine Lyerly Hambrick f/b/o Suzanne Hafer Hambrick, and that (s)he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and seal this 13th day of May, 2015.

R. Sue Ridenhour
Notary Public

R. Sue Ridenhour
Printed Name of Notary Public



(SEAL)

My commission Expires: March 7, 2017

JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT

MARGARET H. GLAZE *EXC* (SEAL)

WILSON EUGENE GLAZE, II *EXC* (SEAL)

STATE OF NORTH CAROLINA
COUNTY OF Catawba

I, a Notary Public for Catawba County, North Carolina, do hereby certify that Margaret H. Glaze and husband, Wilson Eugene Glaze II, personally appeared before me this day, acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 13th day of May, 2015.

My Commission Expires:

Pamela E. Cody
Notary Public

Pamela E. Cody
Printed Name of Notary Public

(SEAL)

My commission Expires: 09/08/2015



JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT

THE CITY OF HICKORY,
A North Carolina Municipal Corporation

ATTEST:

(SEAL)

Mick Berry, City Manager

Debbie D. Miller, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, a Notary Public of said County and State, certify that Mick Berry personally appeared before me this day and acknowledged that he is the City Manager of the City of Hickory, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City Council of the City of Hickory, the foregoing instrument was signed in its name by the City Manager, sealed with its corporate seal and attested by her as its City Clerk.

Witness my hand and seal this _____ day of _____, 2015.

Notary Public

Printed Name of Notary Public

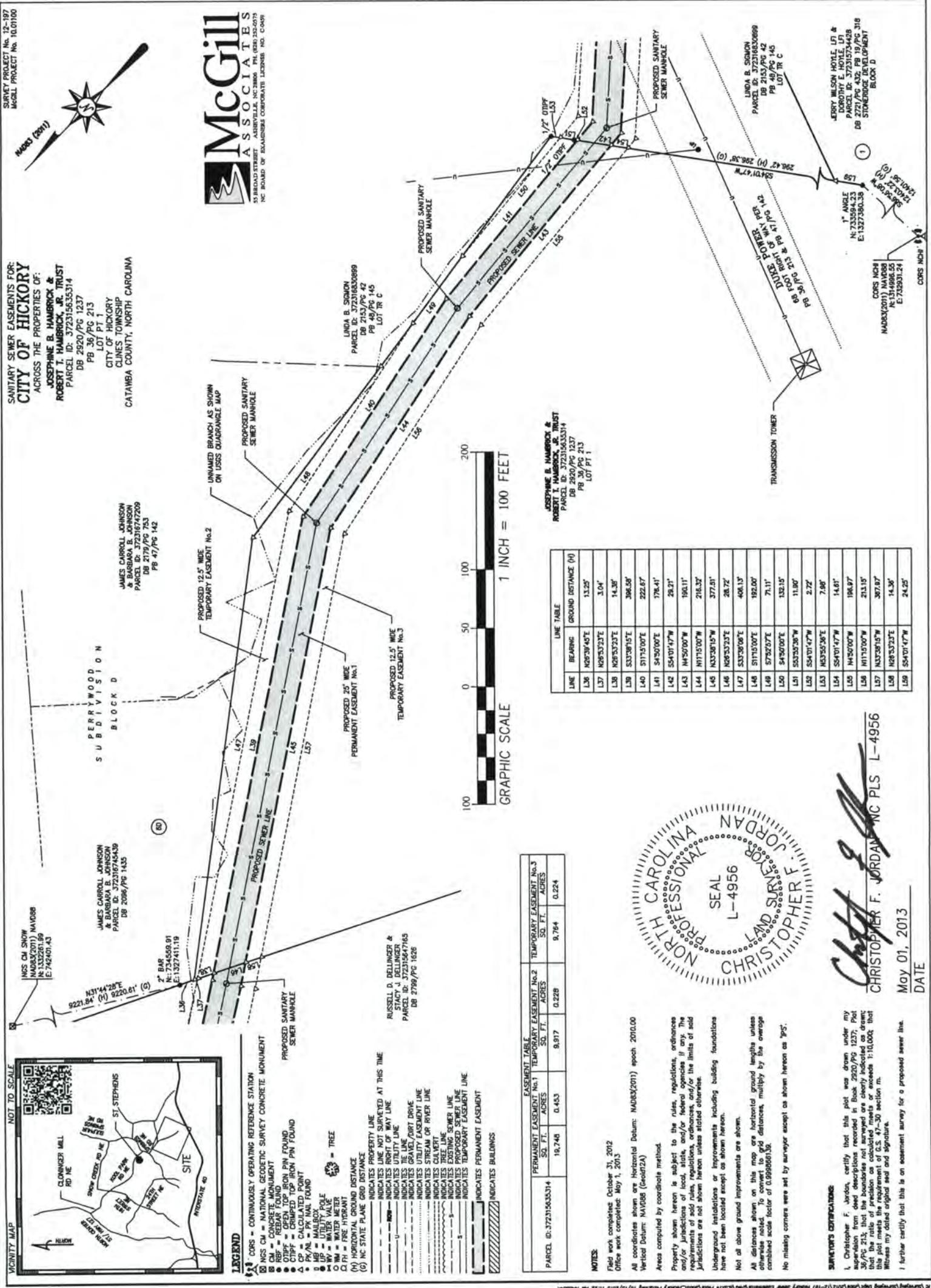
(SEAL)

My Commission Expires: _____

**JOSEPHINE BONNIWELL HAMBRICK, SUZANNE HAFFER HAMBRICK TRUST AND
MARGARET GLAZE
TO CITY OF HICKORY
DEED OF EASEMENT**

EXHIBIT A

I, Cal Overby, Review Officer of Catawba County certifies the map or plat to which this certification is affixed meets all statutory requirements for recording.
 Date: 12-5-2014
 Review Officer: *[Signature]*



4

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Kevin B. Greer, PE, Assistant Public Services Director-Public Utilities
Contact Person: Kevin B. Greer, PE
Date: August 4, 2015
Re: Sherwood Forest Subdivision Sanitary Sewer Easement

REQUEST

Staff requests acceptance of a 25-ft temporary construction and 25-ft permanent sanitary sewer line easement for the property of Linda Bumgarner Sigmon described as PIN: 3723-16-83-0899 for installation of a sanitary sewer line.

BACKGROUND

This temporary and permanent easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012 in the amount of \$2.946 Million.

ANALYSIS

This easement is necessary for the construction of the infrastructure required to serve this area with sanitary sewer and will not increase the cost of this construction project. The easement was negotiated for a total sum of eight thousand and 00/100 dollars (\$8,000.00) in exchange for the easement.

RECOMMENDATION

Staff recommends approval of this 25-ft temporary construction and 25-ft permanent sanitary sewer easement across the property of Linda Bumgarner Sigmon described as PIN: 3723-16-83-0899.

Revised: June 5, 2015

DRAWN BY: Arnita M. Dula, Deputy City Attorney, City of Hickory
P.O. Box 398, Hickory, NC 28603

STATE OF NORTH CAROLINA

**DEED OF EASEMENT
(Sewer)**

COUNTY OF CATAWBA

THIS DEED OF EASEMENT, made this ____ day of _____, 2014, by and between **LINDA BUMGARNER SIGMON**, having a mailing address of **4135 Section House Road, Hickory, North Carolina 28601** (hereinafter referred to as "Grantor", whether singular or plural), and the **City of Hickory**, a North Carolina Municipal Corporation duly organized and existing under the laws of the State of North Carolina, having a mailing address of **Post Office Box 398, Hickory, North Carolina 28603**, and being situated in Catawba County, (hereinafter referred to as "Grantee");

THAT WHEREAS, said Grantor owns a certain tract of land located in Hickory Township, Catawba County, State of North Carolina, the same being the land conveyed to them pursuant to deed recorded in Book 2153 at Page 0042 in the Office of the Register of Deeds of Catawba County, State of North Carolina; which deed is hereby referred to for greater certainty of description; and

WHEREAS, the City Council of the City of Hickory has determined that it is in the public interest to install, construct and maintain a sanitary sewer to serve the public in the vicinity of the described property, as well as throughout the City of Hickory.

**LINDA BUMGARNER SIGMON TO CITY OF HICKORY
DEED OF EASEMENT**

- 1 -

NOW, THEREFORE, said Grantor, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other valuable consideration paid to the Grantor by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said Grantee, its successors and assigns, a perpetual right and easement to install, construct and maintain a sanitary sewer, together with the attendant customary uses, including drainage and utilities, over, under, through, across, along and upon all that certain lot, tract, or parcel of land of the Grantor situated in Hickory Township, Catawba County, North Carolina, and more particularly described as follows, to-wit:

Temporary Easement:

Being all that temporary right of way sewer easement across the Grantor's property in the City of Hickory, shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the properties of: Linda Bumgarner Sigmon, Professional Land Surveyor L-4956, dated May 1, 2013 to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Deed Book 2153 at Page 0042 of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-16-83-0899.

Permanent Easement:

Being all that permanent right of way sewer easement across the Grantor's property in the City of Hickory, shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the properties of: Linda Bumgarner Sigmon, Professional Land Surveyor L-4956, dated May 1, 2013 to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Deed Book 2153 at Page 0042 of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-16-83-0899.

TO HAVE AND TO HOLD the said grant of right and easement unto it, the said Grantor, its successors and assigns forever.

The Grantor acknowledges that the City is acquiring this easement for the purpose of erecting, constructing and installing a sanitary sewer within the described easement, and specifically grants unto the Grantee the right to construct such structures or make the improvements on that grade according to such plans and specifications, as will, in the Grantee's opinion, best serve the public purpose. The Grantor further grants unto the Grantee or its agents the right to exceed this easement to cut and fill slopes, construct drainage structures and erosion control structures beyond the described easement. The payment of the purchase price for the easement conveyed shall be considered full compensation for the easement, and for any diminution in value that may result to the remaining property by virtue of proximity to the project, grade alignment, utility installation, or the alteration of drainage patterns and facilities.

LINDA BUMGARNER SIGMON TO CITY OF HICKORY
DEED OF EASEMENT

- 2 -

The said grant shall include the right of ingress and egress over the easement on the land of the Grantor for the purpose of constructing, maintaining, repairing and enlarging said sewer line or removing any obstruction interfering with the enjoyment of this line and, in general, any rights and privileges which may be necessary for the permanent maintenance of said sewer line; provided, however, that nothing herein contained shall directly or indirectly be construed as authorizing the City of Hickory or its successors or assigns to injure, damage or remove any structure upon said land, and the Grantor herein expressly retains for himself, his heirs and assigns, the right to construct and maintain any and all buildings he may desire upon the said premises, provided the sewer line is protected in the manner required by the City Engineer.

The Grantor retains the right to use and cultivate said land along and upon said right-of-way.

Grantee shall use its best efforts to minimize the removal of grass, shrubbery, plants, or other vegetation occasioned by the Grantee in constructing, maintaining, or altering said sewer line.

Grantee agrees to plant grass seed on and/or mulch the area disturbed during the sewer line construction process or after any maintenance or repair to the sewer line.

The temporary easement will expire upon final completion of the project, including final certification and DENR acceptance.

Should one or more of the Grantors be natural persons not joined by their respective spouses, it is conclusively presumed that the land conveyed is not the residence or business homestead of such Grantor. Should one or more of the Grantors be a legal entity other than a natural person, it shall be conclusively presumed that the person signing on behalf of that party has been duly and legally authorized to so sign and there shall be no necessity for a seal or attestation.

TO HAVE AND TO HOLD the same, together with all the rights and appurtenances belonging thereto, unto the City of Hickory, its successors and assigns forever, and Grantor is hereby bound, together with all heirs, executors, administrators, or successors, to warrant and forever defend the easement granted herein unto the City of Hickory, its successors and assigns, against every person lawfully claiming the easement or any part thereof.

IN TESTIMONY WHEREOF, the said Grantor has hereunto set his hand and seal the day and year first above written.

**LINDA BUMGARNER SIGMON TO CITY OF HICKORY
DEED OF EASEMENT**

- 3 -

Linda Bumgarner Sigmon (SEAL)
LINDA BUMGARNER SIGMON

STATE OF NORTH CAROLINA
COUNTY OF Catawba

I, Kimberly D Johnson, a Notary Public of Caldwell County, North Carolina, do hereby certify that **Linda Bumgarner Sigmon**, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and seal this 30 day of January, 2015.



Kimberly D Johnson
Notary Public

My Commission Expires: 5-19-2019

LINDA BUMGARNER SIGMON TO CITY OF HICKORY
DEED OF EASEMENT

THE CITY OF HICKORY,
A North Carolina Municipal Corporation

ATTEST:

(SEAL)

Mick Berry, City Manager

Debbie D. Miller, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, _____, a Notary Public of said County and State, certify that **Mick Berry** personally appeared before me this day and acknowledged that he is the City Manager of the City of Hickory, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City Council of the City of Hickory, the foregoing instrument was signed in its name by the City Manager, sealed with its corporate seal and attested by her as its City Clerk.

Witness my hand and seal this _____ day of _____, 2014.

Notary Public

(SEAL)

My Commission Expires: _____

LINDA BUMGARNER SIGMON TO CITY OF HICKORY
DEED OF EASEMENT

To: City Manager's Office
From: Kevin B. Greer, PE, Assistant Public Services Director-Public Utilities
Contact Person: Kevin B. Greer, PE
Date: August 4, 2015
Re: Sherwood Forest Subdivision Sanitary Sewer Easement

REQUEST

Staff requests acceptance of a 25-ft temporary construction and 25-ft permanent sanitary sewer line easement for the property of Russell D. Dellinger and wife Stacy J. Dellinger described as PIN: 3723-15-64-7165 for installation of a sanitary sewer line.

BACKGROUND

This temporary and permanent easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012 in the amount of \$2.946 Million.

ANALYSIS

This easement is necessary for the construction of the infrastructure required to serve this area with sanitary sewer and will not increase the cost of this construction project. The easement was negotiated for the value of two thousand, six hundred and Ninety-Four and 00/100 dollars (\$2,694.00) in exchange for the easement.

RECOMMENDATION

Staff recommends approval of this 25-ft temporary construction and 25-ft permanent sanitary sewer easement across the property of Russell D. Dellinger and wife Stacy J. Dellinger described as PIN: 3723-15-64-7165.

Revised: June 5, 2015

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Chuck Hansen *CHH*
Initiating Department Head
7/09/2015
Date

Amy M. Dula
Deputy City Attorney, A. Dula

7-27-15
Date

Rodney Miller
Asst. City Manager Rodney Miller
7-28-15
Date

Asst. City Manager, A. Surratt

Date

Melissa Miller
Finance Officer, Melissa Miller
7-28-15
Date

Bo Weichel
Purchasing Manager, Bo Weichel

7-28-15
Date

Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

DRAWN BY: Arnita M. Dula, Deputy City Attorney, City of Hickory
P.O. Box 398, Hickory, NC 28603

STATE OF NORTH CAROLINA

DEED OF EASEMENT

COUNTY OF CATAWBA

(Sewer)

THIS DEED OF EASEMENT, made this ____ day of _____, 2015, by and between **RUSSELL D. DELLINGER AND WIFE, STACY J. DELLINGER**, having a mailing address of **1833 Summerfield Circle, Conover, North Carolina 28613** (hereinafter referred to as "Grantor", whether singular or plural), and the **City of Hickory**, a North Carolina Municipal Corporation duly organized and existing under the laws of the State of North Carolina, having a mailing address of **Post Office Box 398, Hickory, North Carolina 28603**, and being situated in Catawba County, (hereinafter referred to as "Grantee");

THAT WHEREAS, said Grantor owns a certain tract of land located in Hickory Township, Catawba County, State of North Carolina, the same being the land conveyed to them pursuant to deed recorded in Book 2799 at Page 1626 in the Office of the Register of Deeds of Catawba County, State of North Carolina; which deed is hereby referred to for greater certainty of description; and

WHEREAS, the City Council of the City of Hickory has determined that it is in the public interest to install, construct and maintain a sanitary sewer to serve the public in the vicinity of the described property, as well as throughout the City of Hickory.

**RUSSELL D. DELLINGER AND WIFE, STACY J. DELLINGER TO CITY OF HICKORY
DEED OF EASEMENT**

- 1 -

NOW, THEREFORE, said Grantor, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other valuable consideration paid to the Grantor by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said Grantee, its successors and assigns, a perpetual right and easement to install, construct and maintain a sanitary sewer, together with the attendant customary uses, including drainage and utilities, over, under, through, across, along and upon all that certain lot, tract, or parcel of land of the Grantor situated in Hickory Township, Catawba County, North Carolina, and more particularly described as follows, to-wit:

Temporary Easement:

Being all that temporary right of way sewer easement across the Grantor's property in the City of Hickory, as shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the properties of: Donald L. McClain & Renae H. McClain and Russell D. Dellinger & Stacy J. Dellinger", prepared by Christopher F. Jordan, Professional Land Surveyor L-4956, dated May 1, 2013 to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Deed Book 2799 at Page 1626 of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-15-64-7165.

Permanent Easement:

Being all that permanent right of way sewer easement across the Grantor's property in the City of Hickory, shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the properties of: Donald L. McClain & Renae H. McClain and Russell D. Dellinger & Stacy J. Dellinger", prepared by Christopher F. Jordan, Professional Land Surveyor L-4956, dated May 1, 2013 to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Deed Book 2799 at Page 1626 of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-15-64-7165.

TO HAVE AND TO HOLD the said grant of right and easement unto it, the said Grantor, its successors and assigns forever.

The Grantor acknowledges that the City is acquiring this easement for the purpose of erecting, constructing and installing a sanitary sewer within the described easement, and specifically grants unto the Grantee the right to construct such structures or make the improvements on that grade according to such plans and specifications, as will, in the Grantee's opinion, best serve the public purpose. The Grantor further grants unto the Grantee or its agents the right to exceed this easement to cut and fill slopes,

**RUSSELL D. DELLINGER AND WIFE, STACY J. DELLINGER TO CITY OF HICKORY
DEED OF EASEMENT**

construct drainage structures and erosion control structures beyond the described easement. The payment of the purchase price for the easement conveyed shall be considered full compensation for the easement, and for any diminution in value that may result to the remaining property by virtue of proximity to the project, grade alignment, utility installation, or the alteration of drainage patterns and facilities.

The said grant shall include the right of ingress and egress over the easement on the land of the Grantor for the purpose of constructing, maintaining, repairing and enlarging said sewer line or removing any obstruction interfering with the enjoyment of this line and, in general, any rights and privileges which may be necessary for the permanent maintenance of said sewer line; provided, however, that nothing herein contained shall directly or indirectly be construed as authorizing the City of Hickory or its successors or assigns to injure, damage or remove any structure upon said land, and the Grantor herein expressly retains for himself, his heirs and assigns, the right to construct and maintain any and all buildings he may desire upon the said premises, provided the sewer line is protected in the manner required by the City Engineer.

The Grantor retains the right to use and cultivate said land along and upon said right-of-way.

Grantee shall use its best efforts to minimize the removal of grass, shrubbery, plants, or other vegetation occasioned by the Grantee in constructing, maintaining, or altering said sewer line.

Grantee agrees to plant grass seed on and/or mulch the area disturbed during the sewer line construction process or after any maintenance or repair to the sewer line.

The temporary easement will expire upon final completion of the project, including final certification and DENR acceptance.

Should one or more of the Grantors be natural persons not joined by their respective spouses, it is conclusively presumed that the land conveyed is not the residence or business homestead of such Grantor. Should one or more of the Grantors be a legal entity other than a natural person, it shall be conclusively presumed that the person signing on behalf of that party has been duly and legally authorized to so sign and there shall be no necessity for a seal or attestation.

TO HAVE AND TO HOLD the same, together with all the rights and appurtenances belonging thereto, unto the City of Hickory, its successors and assigns forever, and Grantor is hereby bound, together with all heirs, executors, administrators, or successors, to warrant and forever defend the easement granted herein unto the City of Hickory, its successors and assigns, against every person lawfully claiming the easement or any part thereof.

**RUSSELL D. DELLINGER AND WIFE, STACY J. DELLINGER TO CITY OF HICKORY
DEED OF EASEMENT**

- 3 -

IN TESTIMONY WHEREOF, the said Grantor has hereunto set his hand and seal the day and year first above written.

Russell D. Dellinger (SEAL)
RUSSELL D. DELLINGER

Stacy J. Dellinger (SEAL)
STACY J. DELLINGER

STATE OF NORTH CAROLINA
COUNTY OF Catawba

I, Kimberly D Johnson, a Notary Public of Caldwell County, North Carolina, do hereby certify that **Russell D. Dellinger and Stacy J. Dellinger**, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and seal this 13 day of March, 2015.

Kimberly D Johnson
Notary Public



My Commission Expires: 5-19-2019

RUSSELL D. DELLINGER AND WIFE, STACY J. DELLINGER TO CITY OF HICKORY
DEED OF EASEMENT

THE CITY OF HICKORY,
A North Carolina Municipal Corporation

ATTEST:

(SEAL)

Mick Berry, City Manager

Debbie D. Miller, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, _____, a Notary Public of said County and State, certify that **Mick Berry** personally appeared before me this day and acknowledged that he is the City Manager of the City of Hickory, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City Council of the City of Hickory, the foregoing instrument was signed in its name by the City Manager, sealed with its corporate seal and attested by her as its City Clerk.

Witness my hand and seal this _____ day of _____, 2015.

Notary Public

(SEAL)

My Commission Expires: _____

RUSSELL D. DELLINGER AND WIFE, STACY J. DELLINGER TO CITY OF HICKORY
DEED OF EASEMENT

6

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Kevin B. Greer, PE, Assistant Public Services Director-Public Utilities
Contact Person: Kevin B. Greer, PE
Date: August 4, 2015
Re: Sherwood Forest Subdivision Sanitary Sewer Easement

REQUEST

Staff requests acceptance of a 25-ft temporary construction and 25-ft permanent sanitary sewer line easement for the property of Chris Albert Bumgarner and wife Lisa H. Bumgarner described as PIN: 3723-11-75-1017 for installation of a sanitary sewer line.

BACKGROUND

This temporary and permanent easement is necessary for completion of the Sherwood Forest Subdivision Sanitary Sewer Project. This project was awarded to the City as a State Revolving Grant by NCDENR-DWQ in 2012 in the amount of \$2.946 Million.

ANALYSIS

This easement is necessary for the construction of the infrastructure required to serve this area with sanitary sewer and will not increase the cost of this construction project. The easement was negotiated for one free sanitary sewer service connection in exchange for the easement.

RECOMMENDATION

Staff recommends approval of this 25-ft temporary construction and 25-ft permanent sanitary sewer easement across the property of Chris Albert Bumgarner and wife Lisa H. Bumgarner described as PIN: 3723-11-75-1017.

Revised: June 5, 2015

DRAWN BY:

STATE OF NORTH CAROLINA

**DEED OF EASEMENT
(Sewer)**

COUNTY OF CATAWBA

THIS DEED OF EASEMENT, made this ____ day of _____, 2014, by and between **CHRISTOPHER ALBERT BUMGARNER AND WIFE LISA H BUMGARNER**, having a mailing address of **4580 Lee Cline Road, Conover, NC 28613** (hereinafter referred to as "Grantor", whether singular or plural), and the **City of Hickory**, a North Carolina Municipal Corporation duly organized and existing under the laws of the State of North Carolina, having a mailing address of **Post Office Box 398, Hickory, North Carolina 28603**, and being situated in Catawba County, (hereinafter referred to as "Grantee");

THAT WHEREAS, said Grantor owns a certain tract of land located in Hickory Township, Catawba County, State of North Carolina, the same being the land conveyed to them pursuant to deed recorded in Book 1342 at Page 0067 in the Office of the Register of Deeds of Catawba County, State of North Carolina; which deed is hereby referred to for greater certainty of description; and

WHEREAS, the City Council of the City of Hickory has determined that it is in the public interest to install, construct and maintain a sanitary sewer to serve the public in the vicinity of the described property, as well as throughout the City of Hickory.

**CHRISTOPHER ALBERT BUMGARNER AND WIFE LISA H. BUMGARNER
TO CITY OF HICKORY
DEED OF EASEMENT**

NOW, THEREFORE, said Grantor, for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other valuable consideration paid to the Grantor by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said Grantee, its successors and assigns, a perpetual right and easement to install, construct and maintain a sanitary sewer, together with the attendant customary uses, including drainage and utilities, over, under, through, across, along and upon all that certain lot, tract, or parcel of land of the Grantor situated in Hickory Township, Catawba County, North Carolina, and more particularly described as follows, to-wit:

Temporary Easement:

Being all of that temporary right of way sewer easement across the Grantor's property in the City of Hickory, shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the property of Christopher A. Bumgarner & Lisa H. Bumgarner", prepared by Christopher F. Jordan, Professional Land Surveyor L-4956, to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Deed Book 1342 at Page 0067 of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-11-75-1017.

Permanent Easement:

Being all of that permanent right of way sewer easement across the Grantor's property in the City of Hickory, shown on the attached Exhibit "A" entitled "Sanitary Sewer Easements for: City of Hickory across the property of Christopher A. Bumgarner & Lisa H. Bumgarner", prepared by Christopher F. Jordan, Professional Land Surveyor L-4956, to which reference is hereby made for greater certainty of description. And being a portion of that certain property described in Deed Book 1342 at Page 0067 of the Catawba County Registry. The subject property's North Carolina Parcel Identification Number is 3723-11-75-1017.

TO HAVE AND TO HOLD the said grant of right and easement unto it, the said Grantor, its successors and assigns forever.

The Grantor acknowledges that the City is acquiring this easement for the purpose of erecting, constructing and installing a sanitary sewer within the described easement, and specifically grants unto the Grantee the right to construct such structures or make the improvements on that grade according to such plans and specifications, as will, in the Grantee's opinion, best serve the public purpose. The Grantor further grants unto the Grantee or its agents the right to exceed this easement to cut and fill slopes,

**CHRISTOPHER ALBERT BUMGARNER AND WIFE LISA H. BUMGARNER
TO CITY OF HICKORY
DEED OF EASEMENT**

construct drainage structures and erosion control structures beyond the described easement. The payment of the purchase price for the easement conveyed shall be considered full compensation for the easement, and for any diminution in value that may result to the remaining property by virtue of proximity to the project, grade alignment, utility installation, or the alteration of drainage patterns and facilities.

The said grant shall include the right of ingress and egress over the easement on the land of the Grantor for the purpose of constructing, maintaining, repairing and enlarging said sewer line or removing any obstruction interfering with the enjoyment of this line and, in general, any rights and privileges which may be necessary for the permanent maintenance of said sewer line; provided, however, that nothing herein contained shall directly or indirectly be construed as authorizing the City of Hickory or its successors or assigns to injure, damage or remove any structure upon said land, and the Grantor herein expressly retains for himself, his heirs and assigns, the right to construct and maintain any and all buildings he may desire upon the said premises, provided the sewer line is protected in the manner required by the City Engineer.

The Grantor retains the right to use and cultivate said land along and upon said right-of-way.

Grantee shall use its best efforts to minimize the removal of grass, shrubbery, plants, or other vegetation occasioned by the Grantee in constructing, maintaining, or altering said sewer line.

Grantee agrees to plant grass seed on and/or mulch the area disturbed during the sewer line construction process or after any maintenance or repair to the sewer line.

The temporary easement will expire upon final completion of the project, including final certification and DENR acceptance.

Should one or more of the Grantors be natural persons not joined by their respective spouses, it is conclusively presumed that the land conveyed is not the residence or business homestead of such Grantor. Should one or more of the Grantors be a legal entity other than a natural person, it shall be conclusively presumed that the person signing on behalf of that party has been duly and legally authorized to so sign and there shall be no necessity for a seal or attestation.

TO HAVE AND TO HOLD the same, together with all the rights and appurtenances belonging thereto, unto the City of Hickory, its successors and assigns forever, and Grantor is hereby bound, together with all heirs, executors, administrators, or successors, to warrant and forever defend the easement granted herein unto the City of Hickory, its successors and assigns, against every person lawfully claiming the easement or any part thereof.

**CHRISTOPHER ALBERT BUMGARNER AND WIFE LISA H. BUMGARNER
TO CITY OF HICKORY
DEED OF EASEMENT**

- 3 -

IN TESTIMONY WHEREOF, the said Grantor has hereunto set his hand and seal the day and year first above written.

Chris Albert Bumgarner (SEAL)
CHRISTOPHER ALBERT BUMGARNER

Lisa H. Bumgarner (SEAL)
LISA H. BUMGARNER

STATE OF NORTH CAROLINA
COUNTY OF Catawba

I, Kimberly D Johnson, a Notary Public of Caldwell County, North Carolina, do hereby certify that ~~Christopher~~^{CAB} Albert and wife Lisa H. Bumgarner, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and seal this 23 day of January, 2015.



Kimberly D Johnson
Notary Public

My Commission Expires: 5-19-2019

~~CHRISTOPHER~~^{CAB} ALBERT BUMGARNER AND WIFE LISA H. BUMGARNER
TO CITY OF HICKORY
DEED OF EASEMENT

THE CITY OF HICKORY,
A North Carolina Municipal Corporation

ATTEST:

(SEAL)

Mick Berry, City Manager

Debbie D. Miller, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, _____, a Notary Public of said County and State, certify that **Mick Berry** personally appeared before me this day and acknowledged that he is the City Manager of the City of Hickory, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the City Council of the City of Hickory, the foregoing instrument was signed in its name by the City Manager, sealed with its corporate seal and attested by her as its City Clerk.

Witness my hand and seal this _____ day of _____, 2014.

Notary Public

(SEAL)

My Commission Expires: _____

CHRISTOPHER ALBERT BUMGARNER AND WIFE LISA H. BUMGARNER
TO CITY OF HICKORY
DEED OF EASEMENT

7

COUNCIL AGENDA MEMOS

Exhibit VIII.H.

To: City Manager's Office
From: Claudia Main, Human Resources
Contact Person: Claudia Main/Maxine Honeycutt
Date: 10 July 2015
Re: Vacation Days Request for the United Way Campaign

REQUEST

The United Way Campaign Committee is requesting six days of vacation time to be used as prizes for participation in our annual United Way Campaign, which will be held in August 2015.

BACKGROUND

Each year the City of Hickory conducts a United Way campaign, providing an opportunity for coworkers to support United Way and its member organizations. To encourage participation, we'd like to offer participants a chance to win some vacation time. Based on the level of participation, coworkers would be eligible to enter a drawing to win one of three vacation time prizes of one day, two days, or three days.

ANALYSIS

The City is a strong supporter of United Way since they play an important and critical role in our community. We use our campaign to educate our workforce about the various programs and services United Way provides and also to provide an easy way to make a donation. The opportunity to win some vacation time will provide an incentive for participation and contribute to the success of our campaign.

RECOMMENDATION

Please approve six days of vacation time to be used as incentive prizes for our United Way Campaign.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

xx

LIST THE EXPENDITURE CODE:

Reviewed by:

C Main 7.10.15
Initiating Department Head Date

Amita M Dula 7-27-15
Deputy City Attorney, A. Dula Date

Rodney Miller 7-28-15
Asst. City Manager Rodney Miller Date

Asst. City Manager, A. Surratt Date

Melissa Miller 7-28-15
Finance Officer, Melissa Miller Date

B. Weichel 7-28-15
Purchasing Manager, Bo Weichel Date

Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Kevin B. Greer, PE, Assistant Public Services Director - Public Utilities
Contact Person: Kevin B. Greer, PE
Date: August 4, 2015
Re: NC Hwy 64-90 Waterline Project (COH-PUD 16-001).

REQUEST

Staff requests Council acceptance of bid and award of construction contract with the responsible low bidder Hickory Sand Company, Inc. for the construction of the NC Hwy 64-90 Waterline Project (COH-PUD 16-001) in the amount of \$154,500.00.

BACKGROUND

The Public Utilities Department contract operates, manages and maintains the Distribution System for Alexander County in this area. Annually, Alexander County funds projects that the Public Utilities Department will assist with design, permitting and construction of these following the Infrastructure Extension Procedure. These projects are constructed under a reimbursable materials line item in the Public Utilities operating budget where funds from Alexander County are placed for the purpose of constructing projects.

The NC Hwy 64-90 Waterline project consists of installing approximately 5,200-lft of new 8-inch PVC waterlines, 5 new Fire Hydrants and other customary appurtenances in a previously unserved area. This project is intended to provide improved Fire Protection for Ellendale Elementary School and provide water service to customers along the line.

ANALYSIS

The waterlines proposed are intended to provide improved fire protection to Ellendale Elementary School and customers along the line that are previously unserved. Alexander County approved the project to be constructed and has funded the project through a budget amendment approving money that has been paid to the City of Hickory for construction. The money paid to the City of Hickory has been received through Miscellaneous Revenues and is in the process of being deposited in the Reimbursable Materials line through City Council action first reading July 14, 2015 and second reading August 4, 2015.

The NC Hwy 64-90 Waterline project consists of installing approximately 5,200-lft of new 8-inch PVC waterlines, 5 new Fire Hydrants and other customary appurtenances in a previously unserved area.

The City of Hickory Public Utilities Department was responsible for design and bidding of the project. Construction Bids were received from four (4) perspective bidders as follows:

Table with 2 columns: Bidder Name and Bid Amount. Includes Hickory Sand Company, Inc. (\$154,500.00), Caldwell Grading and Utilities, LLC (\$159,000.00), Neill Grading & Construction Co., Inc. (\$189,535.00), and Two Brothers Utilities, Inc. (\$279,202.00).

City of Hickory Public Utilities Department Engineering staff has evaluated the bid packages and found Hickory Sand Company, Inc. to be the lowest responsible bidder and has recommended acceptance and award of the project to Hickory Sand Company, Inc.

This is proposed to be funded as a component of the Public Utilities Department operating budget in the Reimbursable Materials line with funds already received from Alexander County Government.

RECOMMENDATION

Staff recommends Council acceptance of bid and award of construction contract with the responsible low bidder Hickory Sand Company, Inc. for the construction of the NC Hwy 64-90 Waterline Project (COH-PUD 16-001) in the amount of \$154,500.00.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Chuck Hansen *CHH* 7/22/2015
Initiating Department Head Date

Annita M. Dula 7-27-15
Deputy City Attorney, A. Dula Date

Rodney Miller 7-28-15
Asst. City Manager Rodney Miller Date

Asst. City Manager, A. Surratt Date

Melissa Miller 7-28-15
Finance Officer, Melissa Miller Date

Bo Weichel 7-28-15
Purchasing Manager, Bo Weichel Date

Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

**CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)**

Exhibit VIII.I.

MAIL BIDS TO: City of Hickory, Purchasing Agent 1441 9 th Ave NE, Zip 28601 PO Box 398 Hickory NC 28603	DIRECT INQUIRIES TO: Kevin B. Greer, PE Phone (828) 323-7427
Date: 7/10/2015	No Bids Received After: 7/16/2015 @ 2 pm
Vendor Name and Point of Contact: <p align="center">HICKORY SAND COMPANY, INC. ATTN: ROBERT A. SPIRES</p>	
Mailing Address: 1490 SOUTH CENTER STREET P.O. BOX 2007 HICKORY, N.C. 28602 HICKORY, N.C. 28603	
City:	State:
Area Code and Phone Number: 828.328.1846	FAX Area Code and Phone Number: 828.328.1329
Federal Employer Identification Number or Social Security Number: 561660116	Contractor Number and Class NC 2648

THIS BID INVALID IF NOT SIGNED AND NOTARIZED

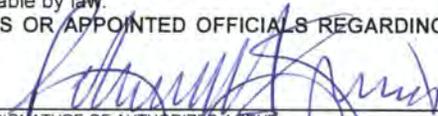
AFFIDAVIT:

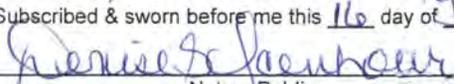
STATE OF North Carolina COUNTY OF CATAWBA, of lawful age, being first duly sworn, on oath says that:

1. Affiant is the duly authorized agent of the bidder/vendor and/or contractor submitting the competitive bid and executing the contract which is attached to this statement, and that as such agent, Affiant has the authority to bind the bidder/vendor, whether an individual, partnership, or corporation, for the purpose of negotiating and entering into said agreement, and for certifying the facts pertaining to the existence of collusion among bidders and between bidders and City officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;
2. Affiant is fully aware of the facts and circumstances surrounding the making of the bid and/or the procurement of the contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bids;
3. Neither the bidder/vendor nor anyone subject to the bidder/vendor's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;
 - b. to any collusion with any municipal official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract;
 - c. in any discussions between bidders and any municipal official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to paying, giving or donating or agreeing to pay, give or donate to any officer or employee of the City of Hickory any money or other thing of value, either directly or indirectly, in procuring the contract to which his statement is attached.
4. Affiant further agrees to be held personally liable in the event that Affiant has misrepresented the scope or extent of Affiant's authority to bind the bidder herein, and to indemnify and hold harmless the City of Hickory, its departments, boards, commissions, agencies, institutions, and all employees of the aforementioned from all damages based upon such misrepresentation, including, but not limited to, all costs and attorney fees incurred, in addition to any other remedies available by law.

BIDDERS SHALL HAVE NO CONTACT WITH ELECTED OFFICIALS OR APPOINTED OFFICIALS REGARDING THIS BID DURING THE BID PROCESS.

HICKORY SAND COMPANY, INC.
FIRM
1490 SOUTH CENTER STREET
ADDRESS
HICKORY, N.C. 28602
ADDRESS
828.328.1846
PHONE


SIGNATURE OF AUTHORIZED AGENT
ROBERT A. SPIRES
PRINT/TYPE NAME/TITLE

Subscribed & sworn before me this 16 day of July, 2015.

Notary Public

My Commission Expires: 7-29-2017

**CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)**

The bidder agrees that if this bid is accepted, to furnish all necessary management, supervision, equipment, tools, materials, means of transportation and labor necessary to complete the contract in full and in complete accordance with these contract documents, to the full and entire satisfaction of the City, at the prices and amounts shown. Contractor shall be responsible for coordinating with City Staff to conduct a site visit to sufficiently familiarize themselves with existing conditions and the extent of work being contracted. Owner shall supply specific pieces of equipment, as indicated below, with contractor being responsible for installation, testing and certification.

Highway 64-90 Waterline Project in Alexander County:

This project will consist of the installation of:

- 5,200-lft of 8-inch C900 DR 18 PVC water line
- 7 Fire Hydrant Assemblies complete
- 12 Gate Valves
- Other Customary Appurtenances as appropriate.

Construction shall be completed as depicted on the attached plans and specifications sealed by Kevin B. Greer, PE.

All materials and workmanship shall be the City of Hickory Public Utilities Standards and Specification.

BIDDER AGREES TO COMPLETE WORK ON THIS PROJECT WITHIN 60 DAYS OF NOTICE TO PROCEED AND TO COMPLETE THIS PROJECT AS SPECIFIED FOR THE SUM OF \$ 154,500.00



SIGNATURE OF AUTHORIZED AGENT

Exhibit VIII.I.

CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)

GENERAL CONDITIONS FOR BIDDING REQUIREMENTS CONTRACTS
WITH THE CITY OF HICKORY, NORTH CAROLINA
BIDDER – TO INSURE ACCEPTANCE OF THE BID, CAREFULLY FOLLOW THESE INSTRUCTIONS.
FAILURE TO DO SO MAY RESULT IN THE REJECTION OF YOUR BID WITHOUT FURTHER
CONSIDERATION OR NOTICE TO YOU.

Bids not submitted on this bid form or as otherwise requested shall be rejected. All bids are subject to the conditions specified herein. **Those that do not comply with these conditions are subject to rejection.**

1. **EXECUTION OF BID AND CONTRACT:** Bid and contract documents must contain an original signature of authorized representative in the space provided. Bid must be typed or printed in ink. Use of erasable ink is not permitted. **ALL CORRECTIONS MADE BY BIDDER/VENDOR TO BID PRICE MUST BE INITIALED.** Do not use white out, correction tape or some other method of masking a correction.
2. **NO BID:** If not submitting a bid, respond by returning page one (1), marking it "NO BID," and explain the reason. Failure to respond three (3) times in succession may be cause for removal of the supplier's name from the bid mailing list, without further notice. NOTE: To qualify as having responded, bidder/vendor must submit either a bid or a written "NO BID," and it must be received no later than the stated bid opening date and hour.
3. **OBJECTIONS/CHALLENGE:** Should a bidder/vendor have an objection to or challenge the specifications, the bidder/vendor is responsible for making this known in writing so as to reach the Purchasing Agent no later than seven (7) calendar days prior to the bid opening date. The envelope shall be marked in such a way so as to alert the Purchasing Agent of the urgency of the communication. The envelope must be marked indicating that the content is a challenge to a specified Invitation to Bid. For all challenges considered valid by the Purchasing Agent, all vendors on the original mailing list will be provided an addendum which addresses the challenge. Challenges/objections not considered valid will be so stated to the objecting party.
4. **BID OPENING:** Bids are due at the time specified on the bid form. It is the Bidder/Vendor's responsibility to assure that the bid is delivered at the proper time and place. Bids, which for any reason are not delivered, will not be considered. Offers by facsimile are NOT acceptable. NOTE: After award, bid files may be examined during normal working hours by appointment. Bid and contract documents are the property of the City and are subject to the provisions of the North Carolina Open Records Act.
5. **WITHDRAWAL OF BID:** Bids may be withdrawn at any time prior to the bid opening date and time. After bids are opened, all bids will be considered firm and valid until award of contract is made.
6. **AWARDS:**
 - a. As the best interest of the City may require, the right is reserved to:
 1. Award by individual item or project, group of items or projects, all or none, or a combination thereof.
 2. Award based upon a geographical district basis with one or more vendors.
 3. To reject any and all bids or waive any minor irregularity or technicality in bids received.
 - b. Bidders/Vendors are cautioned to make no assumptions regarding their success on the awarding of any contract unless their bid has been evaluated as being responsive, the contract awarded by the City and appropriate documents executed. The City of Hickory

CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)

reserves the right to add or delete any item from this contract when deemed to be in the best interests of the City.

7. **ACCEPTANCE OF CONTRACT:** This document constitutes only the Bidder/Vendor's offer until it is accepted on behalf of the City of Hickory and is executed by the Mayor or Manager on behalf of the City of Hickory.
8. **WAIVER:** The City of Hickory reserves the right to waive any general provisions, special provision or minor specification deviation when considered to be in the best interest of the City.
9. **CHANGES TO SPECIFICATIONS:** Bids are to be submitted in accordance with the specifications provided. Any exceptions to the specifications must be indicated in the place provided on the specification page(s) or by separate letter from the Bidder/Vendor, if a place is not provided in the specifications. Changes in specification reducing the quality, versatility or applicability of the product or service may cause the rejection of the bid. The City shall make the final determination. Failure to notice the City of any deviation from the specification may cause the bid to be rejected at the discretion of the City.
10. **MISTAKES:** Bidders/Vendors are expected to examine the specifications, delivery schedule, bid prices and all instructions pertaining to supplies and services. Failure to do so will be at Bidder/Vendor's risk.
11. **INFORMATION:** The Bidder/Vendor must provide information pertinent to items you are bidding
12. **MANUFACTURERS' NAMES AND APPROVED EQUIVALENTS:** Any manufacturers' names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. The Bidder/Vendor may offer any brand for which he is an authorized representative, which meets or exceeds the specification for any item(s). If bids are based on equivalent products, indicate on the bid form the manufacturer's name and model number. Bidder/Vendor shall submit with his proposal sketches, descriptive literature and/or complete specifications. References to literature submitted with a previous bid will not satisfy this provision. The Bidder/Vendor shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids which do not comply with these requirements are subject to rejection. Bids lacking any written indication of intent to quote an alternate brand will be received and considered to be in complete compliance with the specifications as listed on the bid form.
13. **SAMPLES:** Samples of items, when called for, must be furnished free of charge and at no expense to the City. Each individual sample must be labeled with Bidder/Vendor's name, manufacturer's brand name and number, contract number and item reference, or as specified in the attached special conditions. **Samples will not be returned.**
14. **TESTING:** When testing is required to determine if a sample or an awarded product meets specifications and it is determined that the product fails to meet specifications, the cost of testing shall be borne by the Vendor, both on samples and delivered products.
15. **NONCONFORMANCE TO CONTRACT CONDITIONS:** Materials may be tested for compliance with specifications by appropriate testing laboratories or by the City. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with North Carolina Statutes. Materials delivered not conforming to specifications will be rejected and returned to the Bidder/Vendor at the Bidder/Vendor's expense. Any violation of these stipulations may result in supplier's name being removed from the City of Hickory Purchasing Bidder/Vendor mailing list, and the City may pursue any and all other remedies available either in equity or by law.

CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)

16. **SAFETY STANDARDS:** Unless otherwise stipulated in the bid, all work performed pursuant to this Agreement shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder.
17. **REMEDIES:** Failure to make delivery or to meet specifications authorizes the City to seek replacement goods or services elsewhere and to seek legal remedies against the defaulting Bidder/Vendor. If any of the goods and/or work performed fails to meet the warranties contained herein, Bidder/Vendor upon notice thereof from the City shall promptly correct or replace the same at Bidder/Vendor's expense. If Bidder/Vendor shall fail to do so, the City may cancel this order as to all such goods or services and in addition, may cancel the remaining balance of this order and pursue all other remedies available.
18. **LIABILITY:** The Bidder/Vendor shall hold and save the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned harmless against the claims by third parties resulting from the Bidder/Vendor's breach of this contract or the Bidder/Vendor's negligence.
19. **INDEPENDENT CONTRACTOR:** The parties agree that Bidder/Vendor and each subcontractor is acting in the capacity of an independent contractor with respect to the City of Hickory, and shall not at any time be or represent itself as an agent or employee of the City of Hickory.
20. **PRICES AND TERMS:** Unless otherwise provided in the bid specifications, firm fixed prices shall be F.O.B. Hickory, North Carolina and include packing, handling and shipping charges fully prepaid by the Vendor. Bid prices shall be valid for a minimum of sixty (60) days from the date of bid opening.
21. **PRICE ADJUSTMENTS:** Not allowed
22. **PAYMENT:**
- a. **INVOICING:** The Bidder/Vendor shall be paid within a reasonable time after submission of proper certified invoices to the City at the prices stipulated on the contract. Invoices shall contain the contract number. Failure to follow these instructions may result in delay of processing invoices for payment. The company or corporation bidding shall be the only office authorized to receive orders, do the billing and invoicing and receive payment. If the Bidder/Vendor wishes to ship or service from a point other than the home office, he will furnish a list of these locations. **HOWEVER, NO ORDERS WILL BE PRESENTED TO, BILLING WILL NOT BE DONE FROM, NOR WILL PAYMENT BE MADE TO THESE LOCATIONS.**
23. **CONFLICT OF INTEREST:** The Invitation to Bid hereunder is subject to the provisions of City of Hickory Charter and City Code. All Bidders/Vendors must disclose with the bid, the name of any officer, director or agent who is also an employee of the City of Hickory or any of its agencies or subdivisions. Further, all Bidders/Vendors must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Bidder/Vendor's firm or any of its branches.
24. **PATENTS AND ROYALTIES:** The Bidder/Vendor, without exception, shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the City of Hickory. If the Bidder/Vendor uses any design, device or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost rising from the use of such design, device or materials in any way involved in the work.

CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)

Exhibit VIII.I.

25. **FACILITIES AND EQUIPMENT:** The City reserves the right to inspect the Bidder/Vendor's facilities or equipment at any time with reasonable prior notice.
26. **BANKRUPTCY:** If the Bidder/Vendor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Bidder/Vendor, or if a receiver is appointed for the Bidder/Vendor, the City shall have the right to terminate this contract upon written notice to the Bidder/Vendor without prejudice to any claim for damages or any other right of the City under this contract to the time of such termination.
27. **ASSIGNMENT:** This contract shall not be assigned by the Bidder/Vendor without written consent of the City.
28. **ACCESS TO RECORDS:** The Bidder/vendor agrees to provide upon request audit materials to an auditor designated by the City.
29. **RETENTION OF RECORDS:** The Bidder/vendor will retain all records pertaining to this contract for a period of three (3) years after final payment and all other pending matters are closed.
30. **INSURANCE:** If insurance is required in the specifications to this Agreement, unless otherwise specifically stated, proof of the following types and amounts shall be furnished to the City showing the City as an additional insured thereunder without cost to the City of Hickory prior to the awarding of the contract:
- a. **General Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, a policy or policies under a comprehensive form as required by state law. In addition, the Bidder/Vendor shall have, during the term of the Contract, insurance in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) property damages, arising from a single occurrence, One Million Dollars (\$1,000,000.00) for personal injuries arising from a single occurrence, and One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident. This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned. A current certificate showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.
 - b. **Automobile Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, vehicle liability coverage in the amounts specified in Subparagraph a. of this section. In addition, the Bidder/Vendor shall have, during the term of the Contract, vehicle liability coverage as outlined in the attached specifications. If higher coverage is required by any regulatory entity with oversight of the Bidder/Vendor's business, the City Code, or other authority, then proof of the higher coverage must be provided. This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned. A current certificate showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.
 - c. **Worker's Compensation:** The Bidder/Vendor shall procure and maintain in full force and effect for the period of the Contract, full workers' compensation insurance in accordance with the laws of the State of North Carolina to protect it and the City against liability under the workers' compensation and occupational disease statutes of the State of North Carolina. A current certificate showing that the Bidder/Vendor has in force and effect the aforesaid insurance of a current certificate showing exemption from the requirement shall be maintained on file with the City Clerk of the City.

CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)

31. **TIME OF ESSENCE:** Unless otherwise stated, time shall be considered of the essence to this Agreement.
- Bidder/Vendor specifically agrees that it shall be liable for failure to deliver or delay in delivery occasioned by and including, without limitations, strikes, lock-outs, inability of obtaining material or shipping space, breakdowns, delays of carriers or suppliers, and pre-existing governmental regulations of the federal and state government or any subdivisions thereof, unless governmental acts and regulations affecting delivery could not be found, recognized or discovered by due diligence on the part of the Bidder/Vendor prior to submission of the bid and the City Council's acceptance thereof.
32. **LIQUIDATED DAMAGES:** **\$200 plus direct cost of all outside contractors necessary.**
33. **DISCRIMINATION:** Bidder/Vendor agrees, in connection with the performance of work under this contract, as follows:
- a. Bidder/Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. The Bidder/Vendor shall take affirmative action to insure that employees are treated without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry or physical or mental impairment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Bidder/Vendor agrees to post in a conspicuous place available to employees and applicants for employment, notices setting forth provisions of this section.
 - b. The Bidder/Vendor agrees to include this non-discrimination clause in any subcontract connected with the performance under this contract.
 - c. In the event of the Bidder/Vendor's non-compliance with the above non-discrimination clause, this contract may be terminated by the City. The Bidder/Vendor may be declared by the City ineligible for further contracts with the City until satisfactory proof of intent to comply is made by the Bidder/Vendor.
34. **DISTRIBUTION OF CONTRACT:** One (1) copy of the contract or award letter shall be furnished to each successful Bidder/Vendor as a result of this bid. It shall be the Bidder/Vendor's responsibility to reproduce and distribute copies of the contract to all distribution points listed in this bid that will accept orders and complete deliveries. No additions, deletions or changes of any kind shall be made to this contract by the Bidder/Vendor.
35. **ADVERTISING:** In submitting a proposal, Bidder/Vendor agrees not to use the results therefrom as a part of any commercial advertising.
36. **TERMINATION FOR CONVENIENCE OF THE CITY:**
- a. The performance of work and/or delivery of ordered materials, supplies, equipment and/or services under this contract may be terminated by the City, in whole or in part, whenever it is determined to be in the best interest of the City.
 - b. Any such termination shall be effected by the delivery to the Bidder/Vendor of a notice of termination specifying the extent to which performance of work and/or delivery of ordered materials, supplies, equipment and/or services are terminated, and the date upon which such termination becomes effective.

CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)

c. After receipt of a notice of termination, the Bidder/Vendor shall stop work and/or place no further orders under the contract on the date and to the extent specified in the Notice of Termination.

37. **VENUE:** This contract shall be governed by the laws of the State of North Carolina.

38. **INTEGRATED AGREEMENT:** This writing, with the attachments hereto constitute the entire agreement of the parties. No separate promises or agreements have been made other than those contained herein. This Agreement may not be modified except in writing signed by both parties.

39. **DELIVERY OF NOTICES:** Any notices required or permitted by this Agreement will be considered sufficient if hand delivered or sent by certified mail to the party entitled to receive the notice at the address of that party set forth above. If a notice is sent by certified mail, it shall be deemed to have been given on the second business day after it is deposited in the United States mail, whether actually received by the addressee on that date or not.

40. **DOCUMENTS CONTAINING AGREEMENT:** This Agreement, in addition to this document, consists of:

Painting Specification for floors, walls and piping; City of Hickory Standards and Manual Practice; Sketch of equipment and panels to be removed.

41. **SEVERABILITY:** If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this Agreement or its application that can be given effect without the invalid provision or application.

CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)

SPECIAL CONDITIONS:

Compliance with Laws: The bidder, at his own expense, shall obtain and maintain all licenses, permits, liability insurance, worker's compensation insurance and shall comply with any and all other standards or regulations required by federal, state and local statute, ordinance, executive order and rules during the performance of any contract between the bidder and the City. Any such requirement specifically set forth in any contract document between the bidder and the City shall be supplementary to this section and not in substitution thereof.

Specifications: Any obvious error or omission in specifications shall not inure to the benefit of the bidder but shall put the bidder on notice to inquire of or identify the same from the City.

Guarantee: Unless otherwise specified by the City the bidder shall unconditionally guarantee the materials and workmanship on all material, construction, and/or services to be free from defect at the time of delivery and acceptance (to be determined by usage) by the City. If any defects are present which are due to faulty material, workmanship and/or services, the bidder at his expense, shall repair or adjust the condition, or replace the material and/or services to the complete satisfaction of the City. These repairs or replacements or adjustments shall be made only at such time as will be designated by the City as least detrimental to the operation of the City. Standard Manufacturer's warranties and other warranties normally offered by the bidder shall be in effect for all deliveries and shall be in addition to specific warranties or guarantees contained in this Bid. Statement of terms of standard warranty should be included with the bid.

License: All bidders must have proper license governing services provided.

**CITY OF HICKORY
INVITATION TO BID AND CONTRACT
NC Hwy 64-90 Waterline Project (COH- 16-001)**

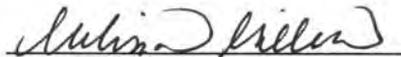
Exhibit VIII.I.

Acceptance and entry into this Agreement by and on behalf of the City of Hickory is made this _____ day of _____, 2015.

**CITY OF HICKORY,
A North Carolina Municipal Corporation**

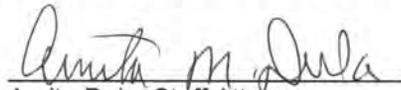
Mick W. Berry, City Manager

This document has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.



Melissa Miller, Finance Officer

Approved as to form on behalf of the City of Hickory only:



Arnita Dula, Staff Attorney

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we Hickory Sand Company, Inc.,
Post Office Box 2007 Hickory, NC 28603, as Principal,
and Western Surety Company, a corporation
organized under the laws of the State of SD,
as Surety, who is duly licensed to act as Surety in North Carolina, are held and firmly bound unto Coty of Hickory,
as Obligee,
in the penal sum of Five Percent of Amount Bid (5%) DOLLARS,
lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED, sealed and dated July 16, 2015

WHEREAS, the said Principal is herewith submitting proposal for

Hwy 64-90 Waterline Extension

and the principal desires to file this Bid Bond in lieu of making the cash deposit as required by G.S. 143-129.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the principal shall be awarded the contract for which the bid is submitted and shall execute the contract and give bond for the faithful performance thereof within ten days after the award of same to the principal, then this obligation shall be null and void; but if the principal fails to so execute such contract and give performance bond as required by G.S. 143-129, the Surety shall, upon demand, forthwith pay to the Obligee the amount set forth in the first paragraph hereof.



Hickory Sand Company, Inc. (Seal)
By: [Signature] (Seal)
Western Surety Company
By: Ronda W. Bush (Seal)
Ronda W. Bush Attorney-in-fact

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Ronda W. Bush , Individually

of Charlotte, NC its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

Surety Bond No.: Bid Bond
Principal: Hickory Sand Company, Inc.
obligee: Coty of Hickory

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 22nd day of May, 2015.



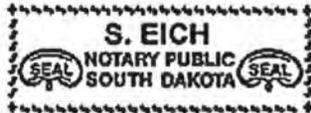
WESTERN SURETY COMPANY

Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 22nd day of May, 2015, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
February 12, 2021



S. Eich
S. Eich, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 16th day of July, 2015.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

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COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Terry L. Watts, Civil Engineer
Contact Person: Terry L. Watts
Date: July 1, 2015

Re: Renewal of Agreement between the Western Piedmont Council of Governments and the City of Hickory to Support the Western Piedmont Stormwater Partnership for Phase II Public Education

REQUEST

City Staff requests that City Council approve the twelve month renewal contract (July 1, 2015 through June 30, 2016) with the Western Piedmont Council of Governments (WPCOG) to implement the National Pollutant Discharge Elimination System (NPDES) Phase II Public Education program through the Western Piedmont Stormwater Partnership. This agreement is for an amount that shall not exceed \$11,033.00 (eleven thousand thirty-three dollars).

BACKGROUND

The City was issued an NPDES Phase II Stormwater Permit by the North Carolina Department of Environment and Natural Resources on July 1, 2005. One of the requirements of the permit in the Public Education and Outreach Minimum Measure is that the City develop and implement a public education and outreach program to raise public awareness on the causes and impacts of stormwater pollution.

This renewal agreement is the result of the establishment of a regionally focused and municipally supported Phase II public education and outreach coalition, the Western Piedmont Stormwater Partnership, which is administered by the WPCOG. The current members of the Western Piedmont Stormwater Partnership are Conover, Hickory, Maiden, Morganton, and Valdese. At least four Phase II stormwater regional public education and outreach coalitions administered by councils of governments have been formed in the state. The activities in this agreement will meet the public education and outreach minimum measures of this section of the NPDES Phase II permit.

ANALYSIS

This contract is necessary as the city staff's major priority has been working on the Post-Construction Minimum Measure, which is one of several other requirements of the Phase II Stormwater Permit.

This agreement would be for the period July 1, 2015 through June 30, 2016. Payment would be in quarterly installments of \$2,758.25 (two thousand seven hundred fifty-eight dollars and twenty-five cents). Funding for this agreement is available from the current Stormwater budget.

RECOMMENDATION

City Staff recommends that City Council approve the renewal agreement with the WPCOG for assistance in implementation of the NPDES Phase II public education and outreach program for an amount not to exceed \$11,033.00.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE: 032-8210-543.046-07

Reviewed by:

Initiating Department Head

Date

Rodney Miller
Asst. City Manager Rodney Miller

7-28-15
Date

Melissa Miller
Finance Officer, Melissa Miller

7-28-15
Date

Date

Date

Amanda M. Dula
Deputy City Attorney, A. Dula

7-27-15
Date

Asst. City Manager, A. Surratt

Date

Bo Weichel
Purchasing Manager, Bo Weichel

7-28-15
Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

AGREEMENT BETWEEN THE
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS AND
THE CITY OF HICKORY
FOR ASSISTANCE IN SUPPORTING THE WESTERN PIEDMONT
STORMWATER PARTNERSHIP
JULY 1, 2015 – JUNE 30, 2016

This AGREEMENT, to be effective on the 1st day of July, 2015, by and between the Western Piedmont Council of Governments (hereinafter referred to as the "Planning Agency") and the City of Hickory, North Carolina (hereinafter referred to as the "Local Government");

WITNESSETH THAT:

WHEREAS, the Local Government is required to provide adequate staffing and funding to support the NPDES Phase II six minimum measures, including Stormwater Public Education and Outreach Program ("Stormwater Partnership" hereinafter) ; and

WHEREAS, the Planning Agency is empowered to provide technical assistance to local governments by the North Carolina General Statutes and by resolution passed by the Planning Agency on April 17, 1972; and

WHEREAS, the Local Government has requested the Planning Agency to provide such technical assistance to support the Stormwater Education and Outreach Program through a Stormwater Partnership and;

WHEREAS, the Planning Agency desires to cooperate with the Local Government in providing technical assistance and services and that the proposed assistance and services are carried out in an efficient and professional manner.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. **Scope of Services.** The Planning Agency will provide technical assistance to the Western Piedmont Stormwater Partnership. Technical assistance shall consist of the services described in EXHIBIT A, which is incorporated more fully by reference herein.
2. **Personnel.** The Planning Agency will furnish the necessary trained personnel to the Local Government.
3. **Office/Equipment.** The Planning Agency will provide office space, miscellaneous office supplies, office equipment, software, and hardware necessary to perform the work described in this contract.
4. **Compensation.** The Local Government will pay the Planning Agency a regional

Stormwater Partnership fee for services provided as part of the Agreement as outlined in Exhibit B. Fees are determined by two factors: a flat participation fee of \$1,000 and a proportional fee based on latest population numbers. The City of Hickory's calculated Stormwater Partnership fee for the period beginning July 1, 2015 and ending June 30, 2016 is not to exceed **Eleven Thousand and Thirty-three Dollars (\$11,033)**. The Planning Agency will bill the Local Government for the full amount. However, quarterly payments are optional at the request of local governments. Payment will be due from the Local Government within thirty (30) days of receipt of the invoice.

5. **Non-salary Expenses.** (a) The Planning Agency personnel's local travel mileage will be considered to be a part of the Scope of Work as outlined in Exhibit A.

(b) The Stormwater Partnership will pay for personnel's travel expenses related to attendance of conferences, conventions, and seminars if the events are related to the development of the Stormwater Partnership's education program and if the Stormwater Partnership's has requested or pre-approved Planning Agency personnel's request to attend the events. Travel expenses shall include registration fees, hotel expenses, meals, and mileage. The Stormwater Partnership will pay for hotel, meals, and mileage costs at the prevailing local government rate. In the event the Planning Agency and the Stormwater Partnership determine that it is beneficial to both parties for personnel to attend a particular conference, convention or seminar, travel expenses will be compensated out of non-salary program budget.
6. **Termination.** The Local Government may terminate the Contract by giving the Planning Agency a thirty-day written notice.
7. **Modifications.** This Agreement represents the entire understanding of the parties and may not be amended, altered, or modified in any manner without the mutual written consent of both parties.
8. **Time of Performance.** The Planning Agency shall ensure that all services required herein shall be completed during the period beginning July 1, 2015 and ending June 30, 2016.
9. **Interest of Members, Officers, or Employees of the Planning Agency, Members of the Local Government, or Other Public Officials.** No member, officer, or employee of the Planning Agency or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and

officials are similarly barred from having any financial interest in the program. The Planning Agency shall incorporate or cause to be incorporated in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

10. **Nondiscrimination Clause.** No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination with any program or activity funded in whole or in part with funds available under the Housing and Community Development Act of 1974, Section 109.
11. **Age Discrimination Act of 1975, as amended.** No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.
12. **Section 504, Rehabilitation Act of 1973, as amended.** No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.
13. **Workers Compensation Insurance.** The Planning Agency shall furnish workers compensation insurance for Agency personnel in accordance with North Carolina state statutes.
14. **Automobiles.** The Planning Agency does not provide automobiles or auto insurance to employees. All Agency personnel are required to have a valid driver's license, insurance, and a vehicle that can be used for Agency purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LOCAL GOVERNMENT:
CITY OF HICKORY

PLANNING AGENCY:
WESTERN PIEDMONT COUNCIL OF
GOVERNMENTS

By: _____
City Manager

By: *[Signature]*
Executive Director

Attest: _____

Planning Agency:

By: _____
City Clerk

By: *[Signature]*
Chairman

Preaudit statement:

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

By: *[Signature]*
Local Government Finance Officer

Approved as to form

[Signature]
City of Hickory – Legal Dept.

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Chuck Hansen, Public Services Director
Contact Person: Steve Miller, Assistant Public Work Director
Date: July 20, 2015
Re: Pavement Condition Study

REQUEST

Request approval and award contract to Kercher Engineering, Inc., in the amount of \$57,375.00 for pavement management study to prioritize the condition of streets in the City of Hickory to better optimize the resurfacing schedule and maintenance operations.

BACKGROUND

The City requested qualifications from firm for a pavement condition group, Kercher Engineering was interviewed and selected as the most qualified firm to meet our pavement condition needs. The City of Hickory periodically conducts pavement condition assessments. The last pavement condition assessment was done in 2007. This condition study is a vital tool that not only rates the streets with a numerical value, but also allows for the Street Department to plan needed maintenance for several years.

ANALYSIS

The benefits of this study will provide the City with an outside professional source to provide data that will give us the tools to provide our citizens with the best use of our resurfacing funds and maximize the results of our street maintenance program.

RECOMMENDATION

Recommend award to the qualified firm of Kercher Engineering, Inc., in the amount of \$57,375.00.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Charles Hansen, PE
Initiating Department Head

6/16/15
Date

Amita M. Dula
Deputy City Attorney, A. Dula

7-27-15
Date

Bob Miller
Asst. City Manager, W. Wood

7-28-15
Date

Asst. City Manager, A. Surratt

Date

Melissa Miller
Finance Officer, Melissa Miller

7-28-15
Date

Administrative Services Director
M. Bennett

Date

Bob Weichel
Purchasing Manager, Bob Weichel

7-28-15
Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date



**KERCHER
ENGINEERING
INC.**

- Asset Management
- Pavement Management
- Civil Engineers
- Municipal Engineers
- Pavement Engineers
- Traffic Engineers
- Planners
- Construction Services
- GIS/GPS
- Surveyors
- CCR Reviews

MAIN OFFICE:

254 Chapman Road
Suite 202
Newark, DE 19702
Phone: 302.894.1098
Fax: 302.894.1099

BRANCH OFFICES:

413 E. Market Street
Georgetown, DE 19971
Phone: 302.854.9062
Fax: 302.854.9064

2345 York Road
Suite B11
Timonium, MD 21093
Phone: 410.252.8333
Fax: 410.252.8388

8310 Quail Creek Drive
Collfax, NC 27235
Phone: 336.215.5521

www.kercherei.com

August 27, 2014

Mr. Charles Hansen, P.E.
Public Services Directory/City Engineer
City of Hickory
P.O. Box 398
Hickory, NC 28603

Reference: Professional Services – Pavement Condition Survey, Optimization Analysis, and Reporting
Request Number 15-007
City of Hickory, North Carolina
KEI Proposal No.: 14-0706P

Dear Mr. Hansen:

Pursuant to your request, I have prepared this Scope of Work for the above-referenced project. Kercher Engineering, Inc. (KEI) hereby proposes to provide the professional services outlined herein, necessary for the City of Hickory’s Pavement Condition Survey (PCS), Optimization Analysis, and Reporting.

Kercher Engineering, Inc. proposes to provide the following services:

I. BASIC SERVICES

- A. Pavement Condition Survey (PCS)
- B. Optimization Analysis and Reporting

The above Basic Services shall be understood to include the following:

A. Pavement Condition Survey (PCS)

KEI will perform a PCS which is linked to the City’s GIS centerline database of all asphalt pavement street segments within the City of Hickory owned or maintained by the City (approximately 238 centerline miles). This will involve riding each segment and observing and quantifying the severity and extend of each pavement distress. The LTPP pavement condition survey method recommended by the Federal Highway Administration will be used to collect the following distresses: structural (alligator) cracking, environmental (transverse and block) cracking, reflective cracking, rutting, raveling, bleeding, patching and potholes. This data will be recorded on the street centerline segment data provided by the City. Other services provided include:

- Identifying road segments with utility cuts having an area greater or equal to approximately 50% of the overall road segment area.
- Identify road segments requiring milling prior to resurfacing based on the City’s criteria. This criteria includes road segments that have steep crowns, gutter pans that are paved, and roadways with approximately one inch or more of asphalt buildup at

Mr. Charles Hansen, P.E.
 RE: Pavement Condition Survey, Optimization Analysis, and Reporting
 KEI Proposal No. 14-0706P
 August 27, 2014

the gutter pan. The collection of these attributes is based upon visual observation and the City will need to field verify the actual conditions for project-level design.

B. Optimization Analysis and Reporting

KEI will perform an analysis of the pavement condition data to determine the type and cost of repair for each pavement segment, as well as, budget optimization. Analysis and reporting will be performed using AgileAssets' web-based pavement management software, *Pavement Analyst (Municipal Edition)* (Software). The Software utilizes true optimization across all possible projects within the roadway network based on any number of constraints. It is the only software currently available to local agencies that can perform multi-constraint integer optimization analysis. This allows the user to easily determine the greatest amount of benefit for any fixed budget or conversely determine the lowest level of funding needed over time to meet user-specified performance goals. This leads to the most cost-effective project selection for any given budget scenario the City requires. This ensures that the least amount of money is being spent to provide the highest possible level of service.

For the Analysis and Reporting services, KEI will provide the following:

- Importation of pavement condition survey data into the Software.
- Multi-Constraint Optimization Analysis for four different levels of funding over a 10-Year Period.
- Three copies of a report containing the analysis. This report will provide summary tables containing:
 - Street Inventory
 - Recommended maintenance activities and associated estimated costs for the current year
 - Budget scenario graphs and charts. By utilizing the Software, KEI will generate four multi-year budget scenarios based on revenue to determine the funding necessary to meet desired pavement condition index (PCI) goals. Because the Software uses optimization, KEI will have the ability to reduce the City's maintenance backlog and increase the PCI in the most cost-effective manner. This software proves to be of great benefit for justifying the pavement management plan funding to Council. The budget scenario graphs and charts from the software analysis provided over a 10-Year Period will include:
 - Change in Pavement Condition (PCI)
 - Change in Backlog – By Maintenance Cost (Sorted by Condition State)
 - Change in Backlog – By Mileage (Sorted by Condition State)

Notes:

1. Backlog by Cost graphs show the amount of unfunded pavement repair needs. It is a method to "monetize" the amount of pavement deterioration that is occurring over time throughout the pavement network.
 2. Backlog by Mileage graphs show the miles of pavements that are in the different condition states.
- Upon determination of an acceptable level of funding by the City, KEI will generate the optimized work plan for the selected funding level. This work plan will become the basis for determining which projects will be constructed each year.

Mr. Charles Hansen, P.E.
RE: Pavement Condition Survey, Optimization Analysis, and Reporting
KEI Proposal No. 14-0706P
August 27, 2014

Page 3 of 5

- A digital copy of the final GIS shape file in ESRI compatible format containing completed pavement condition inventory data, PCIs, recommended maintenance activities and cost information for your records, along with an electronic copy of the written report.

Kercher Engineering, Inc. shall provide the basic services outlined above subject to the following conditions:

II. CONDITIONS OF BASIC SERVICES

- A. Pavement management is not intended to be an engineering program that provides "final design, all-inclusive scope-of-work" recommendations for every street nor the preparation of contracts and specifications. When considering that only a small percentage of streets are repaired each year, such a detailed study would be a very costly and time-consuming activity. This amount of detailed information is simply not needed at the "network-level" planning stage. Therefore, a detailed project-level analysis is not included in this Proposal. If such work is desired, an additional Fee would be required.
- B. KEI will use average construction costs (ballpark prices) to provide approximate repair costs. Actual construction costs can vary greatly depending upon many factors such the size and scope of work including composition of types of repairs (patching, crack sealing, rotomilling, utility adjustments, etc.), number of bidders, time of year, cost of raw materials, etc. Additionally, as stated in Item II A, a detailed project-level investigation is not warranted at this time. Once a project-level investigation including field measures is performed, a more accurate scope-of-work can be developed which will help to improve the accuracy of the estimated costs.
- C. A visual windshield survey with up-close inspection of the pavement surface, when needed, will be used to determine the severity and extent levels of existing pavement distresses at the surface only. As stated in Item IIA, this is a "network-level" planning exercise. Therefore, no destructive or non-destructive material testing procedures are included in this Proposal.
- D. If additional work is required that is not included in this proposal, it will be charged on a Time and Materials basis, based on standard corporate billing rates unless otherwise agreed upon by the City and addressed in a Change Order issued by KEI.
- E. KEI will supply a two man rating crew and vehicle for the field data collection. We have found that a greater level of accuracy can be achieved with the ratings when a two-person KEI rating crew is used. This is because our rater drives the vehicle, which is the best position to view the distresses, and the person inputting the data is also observing the distresses and openly discusses with the rater what they have observed. This open dialog provides the necessary checks and balances for obtaining the most accurate data.
- F. The City of Hickory will supply KEI with a current GIS centerline database (including street centerline, parcel data, City limits, and street ownership [i.e. City or State]) for the GIS-linked survey, a listing of the high and low volume streets, and a copy of the most recent Powell Bill map. If modifications are needed to the GIS centerline database, an additional fee may be required.

Mr. Charles Hansen, P.E.
RE: Pavement Condition Survey, Optimization Analysis, and Reporting
KEI Proposal No. 14-0706P
August 27, 2014

Page 4 of 5

- G. The City of Hickory maintains approximately 238 miles of streets within its corporate limits. This Proposal does not include any evaluation of NCDOT or privately maintained streets within the City limits.
- H. If the City would like access to and training in the Software, an additional fee would be required.
- I. Pavement performance models will not be specifically developed for the pavements within the City of Hickory. The development of performance models is a very expensive endeavor and requires vast amounts of quality pavement condition data and construction history records. The software system will utilize performance models developed by the NCDOT. This will generate much better results than what can be provided by canned software programs such as MicroPaver or Cartegraph.

III. TIME FOR COMPLETION

- A. KEI expects to complete the project within 3 months of receipt of an executed Proposal/Contract.

IV. FEES AND METHOD OF PAYMENT

- A. The Fee for providing the basic services as set forth herein shall be Fifty Seven Thousand, Three Hundred Seventy Five Dollars and Zero Cents (**\$57,375.00**). Said Fee is based upon acceptance of this Proposal/Contract within the next 90 days. KEI reserves the right after 90 days to adjust the cost of these services in accordance with increases in company rates.
- B. Method of Payment - Invoices shall be submitted on a monthly basis. Invoices shall be based upon an estimate of the percentage of work completed, and will be compensated for that portion of the task, less any prior payments made by the City. Payment is required within 30 days of the invoice date, after which a 1.5% per month service charge may be added. Failure to receive payment within the required 30 day period shall result in the ceasing of all services with regard to this Contract until said balance with interest is paid in full.
- C. Fees for providing any additional services over and above those set forth in Item I and II of this proposal shall be negotiated between the City and KEI, and agreed upon in writing as a task order amendment prior to commencement of said work.

We look forward to working with you as we continue on this very worthwhile endeavor. Should you have any questions or require additional information, please contact me at your earliest convenience. I may be reached at (336) 215-5521 and my email address is slander@kercherei.com. Should the City of Hickory find this Proposal/Contract acceptable, please have a legally authorized representative of the City sign both copies and return one copy for KEI's files.

Sincerely,

KERCHER ENGINEERING, INC.



Steve Lander, P.E.
Director of Operations

Mr. Charles Hansen, P.E.
RE: Pavement Condition Survey, Optimization Analysis, and Reporting
KEI Proposal No. 14-0706P
August 27, 2014

ACCEPTANCE:

I, _____, _____
(Name - Printed) (Title - Printed)

(Name of Company/Organization)

hereby agree to the terms contained herein and accept obligation for payment of same. As such, I hereby authorize Kercher Engineering, Inc. to proceed with the services outlined herein, on this the _____ day of _____, 2014.

City of Hickory Date

For billing purposes, please provide the following information:

Legal Billing Entity: City of Hickory

Billing Contact: Steve Miller

Mailing Address: PO Box 398

Hickory, NC 28603

Billing Contact's Telephone: 828-323-7500

Billing Contact's Facsimile: 828-323-7403

Billing Contact's E-Mail: smiller@hickorync.gov

Project Contact: Steve Miller

Project Contact's Telephone: _____

Project Contact's Cell Phone: _____

Project Contact's Facsimile: _____

Project Contact's E-mail: _____

Should the above information change during the course of this project, please contact KEI as soon as possible.

Approved as to form

Armita M. Dula
City of Hickory - Legal Dept.

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

Melina Trull
City of Hickory 104
Finance Officer

14

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Chuck Hansen
Contact Person: Miles Champion
Date: July 22, 2015
Re: Award of Contract for Pavement Resurfacing with FY 2015-2016 Federal Funds, Bid 16-003

REQUEST

Request to award the resurfacing contract utilizing federal funds to the responsible responsive low bidder, Maymead, Inc., for asphalt resurfacing in the amount of \$52.00 per ton for S9.5A asphalt surface, \$52.00 per ton for S9.5B asphalt surface, \$52.00 per ton for S4.75A asphalt surface, \$595.00 per ton for binder and \$4.75 per sq. yd. for asphalt milling.

BACKGROUND

The Engineering Division staff prepared formal bid documents for an estimated 2660 tons of asphalt surface course in place and 4,000 square yards of asphalt milling. The asphalt binder unit price will be adjusted according to NCDOT standard procedures. All work will be paid on an in-place unit price basis as the Community Development Block Grant (CDBG) budget allows. Resurfacing under this contract will be performed in the CDBG eligible funding areas.

ANALYSIS

A detailed scope of work included in the complete set of specifications and an invitation to bid package (Bid No. 16-003) were developed by the City's Engineering Department. The project was advertised on the City's web site and bid documents were available electronically. Three (3) bidders submitted sealed bids: J.T. Russell & Sons, Inc., Maymead, Inc. and Midstate Contractors, Inc. The bids were opened on July 21, 2015. The bid tabulation is attached. Maymead, Inc. was the lowest bidder with a total bid amount of \$244,200. Contractor's prices are firm until June 30, 2016. Project will be coordinated and overseen by the City's Engineering Division and Street Division staff for the duration and completion of the resurfacing. Currently, there is \$75,000 in the CDBG Public Infrastructure line item, additional unbudgeted program income may be added if it becomes available over the FY 15-16 year.

RECOMMENDATION

Staff recommends that the resurfacing contract utilizing federal funds be awarded to the responsible responsive low bidder, Maymead, Inc., at the unit price of \$52.00 per ton for S9.5A asphalt surface, \$52.00 per ton for S9.5B asphalt surface, \$52.00 per ton for S4.75A asphalt surface, \$595.00 per ton for binder and \$4.75 per sq. yd. for asphalt milling for the pavement resurfacing project.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Chuck Hansen 8/12/2014
Initiating Department Head Date

Rodney Miller 7-28-15
Asst. City Manager, Rodney Miller Date

Melissa Miller 7-28-15
Finance Officer, Melissa Miller Date

Bo Weichel 7-28-15
Purchasing Manager, Bo Weichel Date

Amita M Dula 7-27-15
Deputy City Attorney, A. Dula Date

Asst. City Manager, A. Surratt Date

Administrative Services Director M. Bennett Date

Recommended for approval and placement on _____ Council agenda (as Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

CITY OF HICKORY
 Bid Tabulation
 16-003 Pavement Resurfacing with Federal Funds 2015-16

Item	Unit	Est. Qty.	J.T. Russell & Sons, Inc		Maymead, Inc		Midstate Contractors	
			Unit Price	Total	Unit Price	Total	Unit Price	Total
1) Asphalt Surface, S 9.5A	Ton	1500	\$56.00	\$84,000.00	\$52.00	\$78,000.00	\$54.00	\$81,000.00
2) Asphalt Surface, S 9.5B	Ton	500	\$55.00	\$27,500.00	\$52.00	\$26,000.00	\$56.00	\$28,000.00
3) Asphalt Surface, S 4.75A	Ton	500	\$64.00	\$32,000.00	\$52.00	\$26,000.00	\$70.00	\$35,000.00
4) Binder, Grade PG 64-22	Ton	160	\$536.00	\$85,760.00	\$595.00	\$95,200.00	\$525.00	\$84,000.00
5) Asphalt Milling	SY	4000	\$14.00	\$56,000.00	\$4.75	\$19,000.00	\$5.00	\$20,000.00
BID TOTAL:				\$285,260.00		\$244,200.00		\$248,000.00

5% Bid Bond
 Addendum #1



Exhibit VIII.L.
CITY of HICKORY
Invitation to Bid and Contract

Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16

16-003

SUBMIT SEALED BIDS TO: Bo Weichel, Purchasing Manager PO Box 398 Hickory NC 28603 bweichel@hickorync.gov 828.323.7472	DIRECT INQUIRIES TO: Miles Champion, Senior Civil Engineer mchampion@hickorync.gov 828-302-3757
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------

Deadline for Written Questions: Monday July 20 th , 2015 at 5:00 PM	No Bids Received After Public Bid Opening: 2:00 pm July 21, 2015
------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------

<u>Vendor Name:</u> <i>Maymead, Inc.</i>	<u>Point of Contact:</u> <i>W.B. Roark</i>
<u>Mailing Address:</u> <i>P.O. Box 911</i>	
<u>City:</u> <i>Mountain City, TN</i>	<u>State:</u> <i>TN</i>
<u>Zip:</u> <i>37683</i>	
<u>Area Code and Phone Number:</u> <i>(423) 727-2000</i>	<u>Email Address:</u> <i>wbr@maymead.com</i>
<u>Federal Employer Identification Number or Social Security Number:</u> <i>62-028 4410</i>	

THIS BID INVALID IF NOT SIGNED AND NOTARIZED

AFFIDAVIT:
STATE OF Tennessee COUNTY OF Johnson, of lawful age, being first duly sworn, on oath says that:

- Affiant is the duly authorized agent of the bidder/vendor and/or contractor submitting the competitive bid and executing the contract which is attached to this statement, and that as such agent, Affiant has the authority to bind the bidder/vendor, whether an individual, partnership, or corporation, for the purpose of negotiating and entering into said agreement, and for certifying the facts pertaining to the existence of collusion among bidders and between bidders and City officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;
- Affiant is fully aware of the facts and circumstances surrounding the making of the bid and/or the procurement of the contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bids;
- Neither the bidder/vendor nor anyone subject to the bidder/vendor's direction or control has been a party:
 - to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;
 - to any collusion with any municipal official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract;
 - in any discussions between bidders and any municipal official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - to paying, giving or donating or agreeing to pay, give or donate to any officer or employee of the City of Hickory any money or other thing of value, either directly or indirectly, in procuring the contract to which his statement is attached.
- Affiant further agrees to be held personally liable in the event that Affiant has misrepresented the scope or extent of Affiant's authority to bind the bidder herein, and to indemnify and hold harmless the City of Hickory, its departments, boards, commissions, agencies, institutions, and all employees of the aforementioned from all damages based upon such misrepresentation, including, but not limited to, all costs and attorney fees incurred, in addition to any other remedies available by law.

W.B. Roark

FIRM: Maymead, Inc.

SIGNATURE OF AUTHORIZED AGENT
W.B. Roark President
PRINT/TYPE NAME/TITLE

ADDRESS: P.O. Box 911 Mountain City, TN 37683
(City, State, Zip)

Subscribed & sworn before me this 21 day of July, 2015.

PHONE: (423) 727-2000

Amy O. Daniels
Notary Public of

My Commission Expires: 01/29/17



Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16

16-003

IMPORTANT INFORMATION AND INSTRUCTIONS

1. **DOCUMENTS WITHIN THIS AGREEMENT:** The pages of this agreement consist of:
 - a. [Invitation and Bidder Information](#)
 - b. [Important Information and Instructions](#)
 - c. [General Conditions](#)
 - d. [Supplemental General Conditions](#)
 - e. [Special Conditions](#)
 - f. [Affidavit of Prime Contractor](#)
 - g. [Release and Waiver of Claims](#)
 - h. [Specifications/Description of Work to be Performed](#)
 - i. [Bid Form, Bonding, & General Contract](#)
 - j. [E-Verify Compliance Form](#)

1. **SUBMIT ALL PAGES:** All pages of this document will be used as the contract. Bidders shall submit ALL pages of this document with completed information.

2. **BIDDER SHALL WRITE ON THE OUTSIDE OF SEALED SUBMITTAL ENVELOPE:**
 - a. The name of the General Contractor
 - b. The Project Title and Project Number

3. **BIDS SHALL NOT BE QUALIFIED WITH ANY STATEMENTS ON THE BID FORMS OR BY SEPARATE ATTACHMENT.**

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

GENERAL CONDITIONS

**CITY of HICKORY**
Invitation to Bid and Contract

Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16**16-003**

BIDDER – TO INSURE ACCEPTANCE OF THE BID, CAREFULLY FOLLOW THESE INSTRUCTIONS. FAILURE TO DO SO MAY RESULT IN THE REJECTION OF YOUR BID WITHOUT FURTHER CONSIDERATION OR NOTICE TO YOU.

1. **SEALED BIDS:** All bid sheets and this form must be executed and submitted in a sealed envelope. DO NOT INCLUDE MORE THAN ONE BID PER ENVELOPE. The face of the envelope shall contain, in addition to the address on page one (1) of this document, the date and time of the bid opening and the contract number. Bids not submitted on this bid form shall be rejected. All bids are subject to the conditions specified herein. **Those that do not comply with these conditions are subject to rejection.** Bids will be considered only on first quality products.
2. **EXECUTION OF BID AND CONTRACT:** Bid and contract documents must contain an original signature of authorized representative in the space provided. Bid must be typed or printed in ink. Use of erasable ink is not permitted. **ALL CORRECTIONS MADE BY BIDDER/VENDOR TO BID PRICE MUST BE INITIALED.** Do not use white out, correction tape or some other method of masking a correction.
3. **NO BID:** If not submitting a bid, respond by returning page one (1), marking it "NO BID," and explain the reason in the space provided thereon. Failure to respond three (3) times in succession may be cause for removal of the supplier's name from the bid mailing list, without further notice. NOTE: To qualify as having responded, bidder/vendor must submit either a bid or a written "NO BID," and it must be received no later than the stated bid opening date and hour.
4. **OBJECTIONS/CHALLENGE:** Should a bidder/vendor have an objection to or challenge the specifications, the bidder/vendor is responsible for making this known in writing so as to reach the Purchasing Agent no later than seven (7) calendar days prior to the bid opening date. The envelope shall be marked in such a way so as to alert the Purchasing Agent of the urgency of the communication. The envelope must be marked indicating that the content is a challenge to a specified Invitation to Bid. For all challenges considered valid by the Purchasing Agent, all vendors on the original mailing list will be provided an addendum which addresses the challenge. Challenges/objections not considered valid will be so stated to the objecting party.
5. **BID OPENING:** Bid opening, if applicable, occurs at the time specified on the bid form. It is the Bidder/Vendor's responsibility to assure that the bid is delivered at the proper time and place of the bid opening. Bids, which for any reason are not delivered, will not be considered. Offers by telegram, facsimile, email, or telephone are not acceptable. NOTE: Bid files may be examined during normal working hours by appointment, after the date and time of bid opening. Bid tabulations WILL NOT be provided by telephone or facsimile. Bid tabulations will be provided by email at the written request of the bidder/vendor. Bid and contract documents are the property of the City and are subject to the provisions of the North Carolina Open Records Act.
6. **WITHDRAWAL OF BID:** Bids may be withdrawn at any time prior to the bid opening date and time. After bids are opened, all bids will be considered firm and valid until award of contract is made.
7. **AWARDS:**
 - a. As the best interest of the City may require, the right is reserved to:
 1. Award by individual item or project, group of items or projects, all or none, or a combination thereof.
 2. Award based upon a geographical district basis with one or more vendors.
 3. To reject any and all bids or waive any minor irregularity or technicality in bids received.
 - b. Bidders/Vendors are cautioned to make no assumptions regarding their success on the awarding of any contract unless their bid has been evaluated as being responsive, the contract awarded by the City and appropriate documents executed. The City of Hickory

CITY of HICKORY
Invitation to Bid and Contract

Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16

16-003

reserves the right to add or delete any item from this contract when deemed to be in the best interests of the City.

8. **ACCEPTANCE OF CONTRACT:** This document constitutes only the Bidder/Vendor's offer until it is accepted on behalf of the City of Hickory and is fully executed by both parties.
9. **WAIVER:** The City of Hickory reserves the right to waive any general provisions, special provision or minor specification deviation when considered to be in the best interest of the City.
10. **CHANGES TO SPECIFICATIONS:** Bids are to be submitted in accordance with the specifications provided. Any exceptions to the specifications must be indicated in the place provided on the specification page(s) or by separate letter from the Bidder/Vendor, if a place is not provided in the specifications. Changes in specification reducing the quality, versatility or applicability of the product or service shall cause the rejection of the bid. The City shall make the final determination. Failure to notify the City in writing of any deviation from the specifications within 7 calendar days may cause the agreement to be rejected and/or terminated without further compensation at the discretion of the City.
11. **MISTAKES:** Bidders/Vendors are expected to examine the specifications, delivery schedule, bid prices and all instructions pertaining to supplies and services. Failure to do so will be at Bidder/Vendor's risk.
12. **INFORMATION:** The Bidder/Vendor must provide information pertinent to items you are bidding. Complete catalogues are not necessary. If furnished, however, the Bidder/Vendor must identify the exact location in the catalogue and circle or identify clearly the item being bid.
13. **MANUFACTURERS' NAMES AND APPROVED EQUIVALENTS:** Any manufacturers' names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. The Bidder/Vendor may offer any brand for which he is an authorized representative, which meets or exceeds the specification for any item(s). If bids are based on equivalent products, indicate on the bid form the manufacturer's name and model number. Bidder/Vendor shall submit with his proposal sketches, descriptive literature and/or complete specifications. References to literature submitted with a previous bid will not satisfy this provision. The Bidder/Vendor shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids which do not comply with these requirements are subject to rejection. Bids lacking any written indication of intent to quote an alternate brand will be received and considered to be in complete compliance with the specifications as listed on the bid form.
14. **SAMPLES:** Samples of items, when called for, must be furnished free of charge and at no expense to the City. Each individual sample must be labeled with Bidder/Vendor's name, manufacturer's brand name and number, contract number and item reference, or as specified in the attached special conditions. **Samples will not be returned.**
15. **TESTING:** When testing is required to determine if a sample or an awarded product meets specifications and it is determined that the product fails to meet specifications, the cost of testing shall be borne by the Vendor, both on samples and delivered products.
16. **NONCONFORMANCE TO CONTRACT CONDITIONS:** Items may be tested for compliance with specifications by appropriate testing laboratories or by the City. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with North Carolina Statutes. Items delivered not conforming to specifications will be rejected and returned to the Bidder/Vendor at the Bidder/Vendor's expense. Any violation of these stipulations may result in supplier's name being removed from the City of Hickory Purchasing Bidder/Vendor mailing list, and the City may pursue any and all other remedies available either in equity or by law.
17. **CONDITION AND PACKAGING:** It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current model at the time of the bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

CITY of HICKORY
Invitation to Bid and Contract

Project Title:

Bid Number:

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18. **INSPECTION, ACCEPTANCE, AND TITLE:** Inspection and acceptance will be at destination unless otherwise provided. "Destination" shall mean delivered to the receiving dock, department stockroom, or other point specified. The City accepts no responsibility for goods until accepted at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the Bidder/Vendor until accepted by the ordering agency. The Bidder/Vendor shall be responsible for filing, processing and collecting all damage claims. However, to assist him in the expeditious handling of damage claims, the ordering department will:
- Record any evidence of visible damage on all copies of the delivering carrier's bill of lading.
 - Report damage (whether visible or concealed) to the carrier and Bidder/Vendor, confirming such reports, in writing, within fifteen (15) days of delivery, requesting that the carrier inspects the damaged merchandise.
 - Retain the item and its shipping container, including inner packaging material, until inspection is performed by the carrier, and disposition given by the Bidder/Vendor, or for a reasonable time after notification to the Bidder/Vendor.
 - Provide the Bidder/Vendor with a copy of the carrier's bill of lading and damage inspection report.
19. **SAFETY STANDARDS:** Unless otherwise stipulated in the bid, all work performed pursuant to this Agreement shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder.
20. **SERVICE AND WARRANTY:** Unless otherwise specified, the Bidder/Vendor shall define any warranty service and replacements that will be provided during and subsequent to this contract. Bidder/Vendors must explain on an attached sheet to what extent warranty and service facilities are provided. Unless otherwise indicated in this agreement, upon acceptance of this contract by the City, Bidder/Vendor expressly warrants that all articles, materials, supplies, equipment, and/or services covered in this contract will conform to the specification attached hereto and made a part hereof; and further warrants that same shall be of good material and workmanship and free from defects.
21. **REMEDIES:** Failure to make delivery or to meet specifications authorizes the City to seek replacement goods or services elsewhere and to seek legal remedies against the defaulting Bidder/Vendor. If any of the goods and/or work performed fails to meet the warranties contained herein, Bidder/Vendor upon notice thereof from the City shall promptly correct or replace the same at Bidder/Vendor's expense. If Bidder/Vendor shall fail to do so, the City may cancel this order as to all such goods and in addition, may cancel the remaining balance of this order and pursue all other remedies available. After notice to the Bidder/Vendor, all such goods will be held at Bidder/Vendor's risk. The City may, and at the Bidder/Vendor's direction shall, return such goods to Bidder/Vendor at Bidder/Vendor's risk, and all transportation charges, both to and from original destination, shall be paid by Bidder/Vendor. Any payment for such goods shall be refunded by Bidder/Vendor unless Bidder/Vendor promptly corrects or replaces the same at its expense.
22. **AUTHORIZED USERS:** Bids shall cover requirements during the specified period for all municipal departments, boards, commissions, agencies and institutions.
23. **LIABILITY:** The Bidder/Vendor shall hold and save the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned harmless against the claims by third parties resulting from the Bidder/Vendor's breach of this contract or the Bidder/Vendor's negligence.
24. **INDEPENDENT CONTRACTOR:** The parties agree that Bidder/Vendor and each subcontractor is acting in the capacity of an independent contractor with respect to the City of Hickory, and shall not at any time be or represent itself as an agent or employee of the City of Hickory.



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- 25. **PRICES AND TERMS:** Unless otherwise provided in the bid specifications, firm fixed prices shall be F.O.B. Hickory, North Carolina at the indicated department's address and include packing, handling and shipping charges fully prepaid by the Vendor. Bid prices shall be valid for a minimum of sixty (60) days from the date of bid opening.
- 26. **ACCEPTANCE OF PURCHASE ORDERS:** Bidder/Vendors are to accept only those purchase orders issued by the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned, prepared on Finance Department forms, unless instructed otherwise in the Invitation to Bid or executed Contract Agreement.
- 27. **PRICE ADJUSTMENTS:** Manufacturer's price increases, or other increases in the cost of doing business MAY NOT be passed on to the City of Hickory, its departments, boards, commissions, agencies, institutions, and all employees, nor may the Bidder/Vendor withdraw or cancel the contract, or any part of the contract for these reasons. Bidders/Vendors may only cancel the contract pursuant to the cancellation clause, if one is included as a part of the Invitation to Bid, and then only if the contractual obligation has been fulfilled by the Bidder/Vendor in accordance with the terms stated. Bids which reflect that the price of an item is based upon the "market price" or is "subject to increase" based upon some event, or otherwise indicates that prices reflected are infirm or subject to change will be deemed non-conforming unless the bid specifications specifically provide for price escalation.
- 28. **SUMMARY OF TOTAL SALES:** The Bidder/Vendor agrees to furnish the City of Hickory Purchasing Division a summary of sales, including total dollar amount made under the contract at the end of each quarter; or as stipulated in the attached special conditions.
- 29. **PAYMENT:**
 - a. **INVOICING:** The Bidder/Vendor shall be paid within a reasonable time, not to exceed 45 calendar days, after submission of proper certified invoices to the City at the prices stipulated on the contract. Invoices shall contain the contract number and purchase order number. Failure to follow these instructions may result in delay or processing invoices for payment. The company or corporation bidding shall be the only office authorized to receive orders, do the billing and invoicing, and receive payment. If the Bidder/Vendor wishes to ship or service from a point other than the home office, he will furnish a list of these locations. **HOWEVER, NO ORDERS WILL BE PRESENTED TO, BILLING WILL NOT BE DONE FROM, NOR WILL PAYMENT BE MADE TO THESE LOCATIONS.**
 - b. **REQUIREMENTS ONLY PURCHASES:** The proposed contract shall be for the quantities actually ordered during the life of the contract only. **UNLESS OTHERWISE SPECIFIED, ALL CONTRACTS ARE REQUIREMENTS-TYPE CONTRACTS,** meaning that quantities indicated are only estimates of those actually needed, and actual quantities may be greater or less than those indicated. Billing shall be made in accordance with instructions by department or division issuing the purchase order, and only for quantities actually ordered and delivered. The City does not promise to purchase the quantity shown. The City reserves the right to purchase none of the product or more than shown at the unit price stated in the bid.
 - c. **DISCOUNTS:** Bidders/Vendors may offer a cash discount for prompt payment; however, such discounts shall not be considered in determining the lowest net cost for bid evaluation purposes. Bidders/Vendors are encouraged to reflect cash discounts in the unit prices quoted. Discount time will be computed from the date of satisfactory delivery at place of acceptance or from receipt of correct invoice at the office specified, whichever is later.
 - d. **UNIFORM COMMERCIAL CODE:** All provisions of the Uniform Commercial Code shall be adhered to.
- 30. **EXTENSION:** At the end of the contract period, or upon the conclusion of a maximum of one (1) extension thereof, the contract may be extended for a period not to exceed twelve (12) months at the same price



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and conditions as in the original contract, by mutual agreement between the City and the Bidder/Vendor. The extended contract shall, upon the signing by both parties, become a binding agreement and shall remain in force and effect until terminated by either party, provided that either party to the contract shall have the option to terminate said extended contract upon thirty days' prior written notice of termination by one party to the other.

- 31. **CONFLICT OF INTEREST:** The Invitation to Bid hereunder is subject to the provisions of City of Hickory's Ethics and Conflict of Interest Policy. All Bidders/Vendors must disclose with the bid, the name of any officer, director or agent who is also an employee of the City of Hickory or any of its agencies or subdivisions. Further, all Bidders/Vendors must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Bidder/Vendor's firm or any of its branches.
- 32. **PATENTS AND ROYALTIES:** The Bidder/Vendor, without exception, shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the City of Hickory. If the Bidder/Vendor uses any design, device or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost rising from the use of such design, device or materials in any way involved in the work.
- 33. **RELEASE OF PATENTS AND COPYRIGHTS:** The Contractor will relinquish ownership and exclusive rights to the Department of Housing and Urban Development and the City of Hickory for any patents and/or copyrights for any process, discovery, or invention which arise or is developed in the course of this contract.
- 34. **FACILITIES AND EQUIPMENT:** The City reserves the right to inspect the Bidder/Vendor's facilities or equipment at any time with reasonable prior notice.
- 35. **BANKRUPTCY:** If the Bidder/Vendor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Bidder/Vendor, or if a receiver is appointed for the Bidder/Vendor, the City shall have the right to terminate this contract upon written notice to the Bidder/Vendor without prejudice to any claim for damages or any other right of the City under this contract to the time of such termination.
- 36. **ASSIGNMENT:** This contract shall not be assigned by the Bidder/Vendor without written consent of the City.
- 37. **ACCESS TO RECORDS:** The Bidder/vendor agrees to provide upon request audit materials to an auditor designated by the City. In addition, the Bidder/Vendor will retain all records pertaining to this contract for a period of three (3) years after final payment and all other pending matters are closed.
- 38. **INSURANCE:** If insurance is required in the specifications to this Agreement, unless otherwise specifically stated, proof of the following types and amounts shall be furnished to the City showing the City as an additional insured thereunder without cost to the City of Hickory prior to the awarding of the contract. This shall be accomplished by including a Certificate of Insurance with the bid package with the Certificate Holder being: *City of Hickory, PO Box 398, Hickory NC 28603.*
 - a. **General Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, a policy or policies under a comprehensive form as required by state law. In addition, the Bidder/Vendor shall have, during the term of the contract, insurance in the minimum amount of one hundred thousand dollars (\$100,000.00) property damages, arising from a single occurrence, one million dollars (\$1,000,000.00) for personal injuries arising from a single occurrence, and one million dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident. This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned. A current certificate

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showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.

- b. **Automobile Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, vehicle liability coverage in the amounts specified in Subparagraph a. of this section. In addition, the Bidder/Vendor shall have, during the term of the Contract, vehicle liability coverage as outlined in the attached specifications. If higher coverage is required by any regulatory entity with oversight of the Bidder/Vendor's business, the City Code, or other authority, then proof of the higher coverage must be provided. This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned. A current certificate showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.
 - c. **Worker's Compensation:** The Bidder/Vendor shall procure and maintain in full force and effect for the period of the Contract, full workers' compensation insurance in accordance with the laws of the State of North Carolina to protect it and the City against liability under the workers' compensation and occupational disease statutes of the State of North Carolina. A current certificate showing that the Bidder/Vendor has in force and effect the aforesaid insurance of a current certificate showing exemption from the requirement shall be maintained on file with the City Clerk of the City.
39. **TIME OF ESSENCE:** Unless otherwise stated, time shall be considered of the essence to this contract. Bidder/Vendor specifically agrees that it shall be liable for failure to deliver or delay in delivery. This includes without limitations: strikes, lockouts, inability to obtaining material, lack of shipping space, breakdowns, delays of carriers or suppliers, and pre-existing governmental regulations of the federal and state government or any subdivisions thereof; unless governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of the Bidder/Vendor prior to submission of the bid and the City Council's acceptance.
40. **LIQUIDATED DAMAGES:** If the Contractor shall neglect, fail, or refuse to complete the work within the time herein specified, then the Contractor does hereby agree, as a part of the consideration for the awarding of this contract to pay to the City the sum of **\$0.00** per day, not as a penalty, but as compensation to the City for delays, damages, and additional expenses for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain.
It is further agreed that time is of the essence to each and every portion of this contract and to the specifications wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where, under the contract, any additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this contract.
41. **BONDS:** Bidder's bonds and Performance bonds, if required, are set forth in the specifications attached hereto. If bonds are required, the same shall be held under the following requirements and specifications unless otherwise indicated:
- a. **Bidder's bonds:** If required as a part of the specifications of this contract, bids filed with the Purchasing Agent must be accompanied by a Bidder's Bond, certified check or cashier's check in the amount stated made payable to the City of Hickory. This amount will be retained by the City as damages in the event the successful Bidder/Vendor fails to comply with the terms of this Agreement, but shall in no way act as a remedy or limitation on damages available to the City, which may pursue any and all other remedies available either in equity or at law. All deposits and bonds will be returned to the unsuccessful Bidders/Vendors within a reasonable time after the contract has been awarded, and to the successful Bidder/Vendor upon full performance of the contract. Bonds or funds deposited do not accrue interest while held.
 - b. **Performance Bonds:** If a Performance Bond is required under the specifications of this agreement, the successful Bidder/Vendor must, prior to the award of the Contract, post the bond, certified check

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or cashier's check in the amount stated made payable to the City of Hickory. The Bidder's Bond posted will be returned to the successful Bidder/Vendor upon posting of the Performance Bond and completion of any additional requirements for execution of the contract by the Bidder/Vendor. The Performance Bond will be released or returned to the Bidder/Vendor, as appropriate, after satisfactory completion of the contract and the performance period as stated in the specifications attached or any amendments thereto.

42. **DISCRIMINATION:** Bidder/Vendor agrees, in connection with the performance of work under this contract, as follows:
- Bidder/Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. The Bidder/Vendor shall take affirmative action to insure that employees are treated without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry or physical or mental impairment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Bidder/Vendor agrees to post in a conspicuous place available to employees and applicants for employment, notices setting forth provisions of this section.
 - The Bidder/Vendor agrees to include this non-discrimination clause in any subcontract connected with the performance under this contract.
 - In the event of the Bidder/Vendor's non-compliance with the above non-discrimination clause, this contract may be terminated by the City. The Bidder/Vendor may be declared by the City ineligible for further contracts with the City until satisfactory proof of intent to comply is made by the Bidder/Vendor.
43. **DISTRIBUTION OF CONTRACT:** One (1) copy of the contract or award letter shall be furnished to each successful Bidder/Vendor as a result of this bid. It shall be the Bidder/Vendor's responsibility to reproduce and distribute copies of the contract to all distribution points listed in this bid that will accept orders and complete deliveries. No additions, deletions or changes of any kind shall be made to this contract by the Bidder/Vendor.
44. **ANTI-KICKBACK PROVISIONS:** Contractor shall comply with the applicable regulations (herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so called "Anti-Kickback Act" of June 13, 1934) 48 Stat. 948; 62 Stat. 862; Title 18 U.S.C., Section 874 and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirement thereof.
45. **CONTRACT WORK HOURS AND SAFETY STANDARDS:** Overtime Compensation Required by Contract Work Hours and Safety Standards Act (76 Stat. 357-360; Title 40 U.S.C., Sections 327-332).
- Overtime Requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, which he has employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week.
 - Violation/Liability for Unpaid Wages Liquidated Damages:** In the event of any violation of the clause set forth in Paragraph (1) of this section, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States or other appropriate governing or regulatory

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body for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in Paragraph (1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in Paragraph (1).

- c. **Withholding for Liquidated Damages:** The Owner shall withhold or cause to be withheld, from any monies payment on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in Paragraph (2) of this Section.
 - d. **Subcontracts:** The contractor shall insert in any subcontracts the clauses set forth in Paragraphs (1), (2) and (3) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts, which may be entered into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
 - e. **Questions Concerning Certain Federal Statutes and Regulations:** All questions arising under this contract which related to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said acts, or (d) the labor standards provisions of any other pertinent federal statute shall be referred through the Owner and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this contract.
46. **APPLICABILITY OF FEDERAL REGULATIONS TO FEDERALLY FUNDED PROJECTS:** If it is indicated in the specifications to this Agreement that federal funding is used in the completion of this project, the following provisions shall apply in compliance with the regulations of the United States Department of Housing and Urban Development.
- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them for complying with the Part 135 Regulations.
 - c. The contractor agrees to send each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization of workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
 - d. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

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- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
 - f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD-assisted contracts.
47. **REPORTING REQUIREMENTS:** The Contractor will provide such reports as required for submission to the Department of Housing and Urban Development pertaining to racial, gender, age and ethnic status of its employees for carrying out the work under this contract.
48. **ADVERTISING:** In submitting a proposal, Bidder/Vendor agrees not to use the results therefrom as a part of any commercial advertising.
49. **TERMINATION FOR CONVENIENCE OF THE CITY:**
- a. The performance of work and/or delivery of ordered materials, supplies, equipment and/or services under this contract may be terminated by the City, in whole or in part, whenever it is determined to be in the best interest of the City.
 - b. Any such termination shall be effected by the delivery to the Bidder/Vendor of a notice of termination specifying the extent to which performance of work and/or delivery of ordered materials, supplies, equipment and/or services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a notice of termination, the Bidder/Vendor shall stop work and/or place no further orders under the contract on the date and to the extent specified in the Notice of Termination.
50. **VENUE:** This contract shall be governed by the laws of the State of North Carolina.
51. **INTEGRATED AGREEMENT:** This writing, with the attachments hereto, and any associated purchase orders constitute the entire agreement of the parties. No separate promises or agreements have been made other than those contained herein. This Agreement may not be modified except in writing signed by both parties.
52. **DELIVERY OF NOTICES:** Any notices required or permitted by this Agreement will be considered sufficient if hand delivered or sent by certified mail to the party entitled to receive the notice at the address of that party set forth above. If a notice is sent by certified mail, it shall be deemed to have been given on the second business day after it is deposited in the United States mail, whether actually received by the addressee on that date or not.
53. **SEVERABILITY:** If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this Agreement or its application that can be given effect without the invalid provision or application.
54. **PARTIAL PAYMENTS:** Partial payments will be made once each month as the work progresses. Said payments will be based upon estimates prepared by the Contractor and approved by the Engineer for the value of the work performed and materials complete in place in accordance with the Contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with this contract.

From the total of the amount determined to be payable on a partial payment, 5% of such total will be deducted and retained by the OWNER until the final payment is made. The balance 95% of the amount payable, less all previous payments, shall be certified for payment.

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The Contractor shall not receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders, except when such excess quantities have been determined by the ENGINEER to be a part of the final quantity for the item of work in question.

No partial payment shall bind the OWNER to the acceptance of any materials or work in place as to quality or quantity. CONTRACTOR shall submit partial payment request for work completed by the 25th of the month. OWNER will make payment to the Contractor on or about the 25th of the following month.

55. **PAYMENT FOR MATERIALS ON HAND (IF APPLICABLE UNDER THE CONTRACT):** Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the Contract, plans, specifications, and are delivered to sites acceptable to the ENGINEER. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the ENGINEER at or on an approved site.
- b. The Contractor has furnished the ENGINEER with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the ENGINEER with satisfactory evidence that the material and transportation costs have been paid.
- d. The Contractor has furnished the OWNER legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- e. The Contractor has furnished the OWNER evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

The transfer of title and the OWNER's payment for such stored or stockpiled materials shall in no way relieve the Contractor of the responsibility for furnishing and placing such materials in accordance with the requirements of the Contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the Contract price for such materials or the Contract price for the Contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this contract.

SUPPLEMENTAL GENERAL CONDITIONS



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1. **Builder's Risk-Installation Floater:** Contractor shall purchase Builder's Risk-Installation Floater in form acceptable to Owner covering property of Project for full cost of replacement as of time of any loss which shall include, as named insured, (1) Contractor, (2) all subcontractors, (3) Owner and Architect/Engineer, as their respective interests may prove to be at time of loss, covering insurable property which is subject of this Contract, whether in place, stored at job site, stored elsewhere, or in transit at risk of insured(s). Coverage shall be effected on "All Risk" form including, but not limited to, perils of fire, wind, vandalism, collapse, theft, and earthquake, with exclusions normal to cover. Contractor may arrange for such deductibles as it deems to be within its ability to self-assume, but it will be held solely responsible for amount of such deductible and for any coinsurance penalties. Any insured loss shall be adjusted with Owner and Contractor and paid to Owner and Contractor as Trustee for other insured.
2. In the event of a conflict between plans and specifications, the more stringent shall apply at no additional cost to the Owner. The ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly.
3. **Rejecting Defective Work:** ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
4. **Decisions on Requirements of Contract Documents and Acceptability of Work:** ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision.
5. When functioning as interpreter and judge, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.
6. **Limitations on ENGINEER's Authority and Responsibilities:** ENGINEER will not supervise, direct, contract, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
7. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.



CITY of HICKORY
Invitation to Bid and Contract

Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16

16-003

SPECIAL CONDITIONS

1. **COMPLIANCE WITH LAWS:** The bidder, at his own expense, shall obtain and maintain all licenses, permits, liability insurance, worker's compensation insurance and shall comply with any and all other standards or regulations required by federal, state and local statute, ordinance, executive order and rules during the performance of any contract between the bidder and the City. Any such requirement specifically set forth in any contract document between the bidder and the City shall be supplementary to this section and not in substitution thereof.
2. **SPECIFICATIONS:** Any obvious error or omission in specifications shall not inure to the benefit of the bidder but shall put the bidder on notice to inquire of or identify the same from the City. All construction and materials shall conform to the City of Hickory's Manual of Practice which includes the standard specifications and details.
3. **GUARANTEE:** Unless otherwise specified by the City the bidder shall unconditionally guarantee the materials and workmanship on all material, construction, and/or services to be free from defect at the time of delivery and acceptance (to be determined by usage) by the City. If any defects are present which are due to faulty material, workmanship and/or services, the bidder at his expense, shall repair or adjust the condition, or replace the material and/or services to the complete satisfaction of the City. These repairs or replacements or adjustments shall be made only at such time as will be designated by the City as least detrimental to the operation of the City. Standard Manufacturer's warranties and other warranties normally offered by the bidder shall be in effect for all deliveries and shall be in addition to specific warranties or guarantees contained in this Bid. Statement of terms of standard warranty should be included with the bid.
4. **LICENSE:** All bidders must have proper license governing services provided.
5. **E-VERIFY COMPLIANCE:** Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with North Carolina Session Law 2013-418's E-Verify requirements to contract with local governments. E-Verify is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. A completed E-Verify affidavit is required to enter any contract with the City of Hickory.

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CITY of HICKORY
Invitation to Bid and Contract

Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16

16-003

AFFIDAVIT OF PRIME CONTRACTOR
(STATUS OF SUBCONTRACTORS AND MATERIAL SUPPLIERS)

We, _____, certify that to the best of our knowledge and belief, no claims or liens exist against any material suppliers or subcontractors who will furnish materials or labor on the above mentioned Project, or if any appear afterwards, we (as Contractor) shall save the Owner harmless on account thereof. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable Attorney's fee.

Sworn to and subscribed before me this _____ day of _____, 20_____.

Signature

Printed Name

Title

Date

Notary Public

SEAL:

Date



**CITY of HICKORY
Invitation to Bid and Contract**

Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16

16-003

*RELEASE AND WAIVER OF CLAIMS AND CONSENT OF SURETY
PRIME CONTRACTOR*

On _____, 20__ there personally appeared before me the undersigned authority in and for said County _____ (County) and State of _____ (State) by the name of _____ (Name), who is the _____ (Title), for _____ (Company).

Who being duly sworn by me, states that all payrolls, material bills, sales tax, privilege tax or license, old age benefits tax, state and federal unemployment insurance and other liabilities have been paid in full, incurred for use in the performance the above mentioned Project and waives any claims and releases the City of Hickory from any rights or claims for debts due and owing by virtue of the furnishing of any material or supplies of any lien thereon.

Sworn to and subscribed before me this _____ day of _____, 20 _____.

Signature

Printed Name

Title

Date

Notary Public

Date

SEAL:



CITY of HICKORY
Invitation to Bid and Contract

Project Title:

Bid Number:

Pavement Resurfacing with Federal Funds for 2015-16

16-003

SPECIFICATIONS/DESCRIPTION OF WORK TO BE PERFORMED

The bidder agrees that if this bid is accepted, to furnish all necessary management, supervision, equipment, tools, means of transportation, safety and labor necessary to complete the contract in full and in complete accordance with the specifications and instructions, to the full and entire satisfaction of the City and the manufacturer representative, at the prices and amounts shown.

SCOPE

Pavement resurfacing including approximately 2500 tons of asphalt and approximately 4000 sq. yds. of asphalt milling, utilizing federal funds.

The project includes resurfacing of various asphalt streets within the City of Hickory corporate limits and other City related properties in Catawba County (i.e. wastewater treatment plant in Catawba) in accordance with the plans and specifications. Owner shall provide a list of streets to be resurfaced by the Contractor and shall reserve the right to add or deduct from the list and adjust termination points on selected streets. List of streets shall be provided after award of contract.

Exact pavement depth shall be established on a case-by-case basis by the Owner. The asphalt overlay shall consist of S 4.75 A, S 9.5 A or S 9.5 B surface course as chosen by the Owner. The Owner shall determine asphalt mix and compacted thickness for each project location. Asphalt materials and installation shall be according to NCDOT standards. Some minor wedging may be required as directed by the Engineer and will be paid at the per ton price in the bid.

Full width shall be construed to include the entire area covered by asphalt pavement, which includes the gutter in some sections. At the intersections of the various roads, the overlay shall extend onto the intersecting roadway a sufficient distance to provide a smooth transition onto the existing asphalt pavement of the intersecting roadway. The milled section shall extend approximately 20 feet away from the edge of the intersecting street with the milling depth tapering from 1 1/2" to zero to ensure a smooth transition. Tack shall be placed only on one (1) lane at a time unless approved by the City representative. Paving and rolling operations shall be completed on the first lane before tack is applied to the second lane to allow traffic to be diverted to the resurfaced lane. The paving machine shall not be placed on the newly resurfaced lane.

At the drive entrances adjacent to the street, asphalt shall be placed on the concrete drive entrance aprons beyond the existing edge of asphalt to provide a smooth transition onto the drive entrances. In parking lots, the existing asphalt may be milled to provide a smooth transition with existing concrete driveway/sidewalk aprons.

Retainage in the amount of ten percent (10%) shall be deducted from each payment request. Owner shall not pay final ten percent (10%) retainage until all punch list items are completed and all work accepted by Owner.

Project Schedule:

FALL 2015 SCHEDULE

September 15, 2015: Notice to Proceed

November 15, 2015: Contract completed on or before 5:00 p.m.

The City reserves the right to adjust the time line established above, reject any and all Bids, and reject any Bid Items that best meets the needs of the City.

There are no liquidated damages for this contract.

The Owner and Contractor shall discuss and agree upon specific start and finish date to perform each phase of the work. A phase of work shall consist of one or more specific streets or parking lots designated for milling and/or resurfacing. The Contractor shall meet these mutually agreed-upon dates in order to minimize confusion of the

CITY of HICKORY
Invitation to Bid and Contract

Project Title:

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affected residents, landowners and travelling public. If the Contractor fails to begin work on the agreed-upon date for any reason other than inclement weather, then the Owner will give written notice to the Contractor that the Contract may be terminated after the second time the Contractor fails to begin a phase of work as scheduled. The Owner shall not be penalized in any way for termination of the Contract.

If the Contractor fails to complete all phases of work within the Schedules listed above, then the Owner reserves the right to terminate the contract immediately.

The schedule(s) and conditions in this Invitation To Bid and Contract shall not be affected by any other contracts entered into by the Bidder with the Owner.

Contractor's Responsibilities:

1. Visit the project site prior to submitting his bid and becoming familiar with site constraints, existing structures and project scope.
2. Attend a Pre-construction Conference with the Owner before any work begins.
3. After award of contract, visit the selected site(s) with City personnel to discuss traffic control, site constraints and project scope.
4. Comply with all requirements for **Federally funded** projects including but not limited to Certified Payroll and Davis-Bacon wage determinations.
5. Attend pre-paving meeting with the Owner prior to each phase of work to verify project conditions, project expectations, mix formulas and traffic control.
6. **Contractor shall perform resurfacing work on selected streets and /or parking lots within the Fall Schedule and Spring Schedule listed above. There are no liquidated damages. Refer to Project Schedule above for special contract conditions.**
7. All work shall be performed Monday through Friday during daylight hours unless night-time and/or weekend work is pre-approved by the Owner in writing.
8. Coordinate all work with Streets Department Personnel and Engineer. **Contractor shall notify Engineer at least 72 hours before work begins on street resurfacing. Contractor shall notify Engineer at least 7 calendar days before work begins on parking lot resurfacing.**
9. Obtain and pay for all contractors' permits.
10. Contractor shall provide temporary toilet facilities to the work zone at all times.
11. Provide work with respect to Contractor's trade in accordance with the plans and specifications. **Any and all sub-contractors proposed to be used by the Prime Contractor must be approved by the City before Notice to Proceed is issued.**
12. Provide all materials, labor and equipment necessary to provide a finished asphalt resurfacing in accordance with NCDOT standards. The Owner reserves the right to test finished work to verify quality.
13. Provide, pay for and maintain traffic control, temporary barricades, construction signs and warning devices as necessary in accordance with the most current Manual on Uniform Traffic Control Devices (MUTCD) and NCDOT standards.
14. Provide and pay for certified flaggers at all locations where two-way traffic cannot be maintained and at all intersections where motorists may approach an active work zone. All flaggers shall carry proof of certification while on duty or they will be required to be replaced with flaggers with proof of certification.
15. An NCDOT certified quality control representative of the Contractor shall be on site at all times during paving operations.
16. Remove all debris generated by the Contractor. Remove safety fences, barricades and all other temporary safety measures installed by General Contractor after all work is complete.
17. Properly dispose of all debris and materials removed during construction. Remove all excess plant mix, dirt and grass from curb/gutters, sidewalks, driveways, lawns and medians generated from resurfacing operations the same day that paving operations occurred.
18. Requests for payment shall be submitted on standard forms approved by the City on or before the 25th day of the month. Requests for payment shall include notarized, original tax statements. Certified Payroll forms (Federally funded projects only) shall be submitted with payment request. Unit quantities must be clearly stated on the payment requests. Failure to provide all required documentation with the payment request may delay payment to Contractor.
19. Adjust utilities including manholes and valves to correct elevation to match proposed pavement. Contractor is to provide all labor and equipment necessary to raise manholes covers and valves boxes to proposed



Project Title:

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Pavement Resurfacing with Federal Funds for 2015-16

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pavement elevation. All materials used for adjustments are to be provided to the job site by City of Hickory prior to work beginning.

20. Where applicable, colored and stamped concrete crosswalks are to be protected from damage and discoloration including tracking of asphalt during paving operations.
21. Contractor shall provide at least one (1) copy of each delivery ticket to the City personnel on site during paving operations. Contractor shall retain at least one copy of all delivery tickets. Each delivery ticket must state the street name, date, time, product description and origin of the material.
22. Contractor is responsible for any and all damage to private and public property.

The City of Hickory's Responsibilities:

1. Hold a pre-construction conference with Contractor and City of Hickory personnel.
2. Hold a pre-paving meeting with the Contractor and his job foreman prior to each phase of work to verify project conditions, project expectations, mix formulas and traffic control.
3. Review and approve any and all sub-contractors if utilized by Contractor.
4. Provide one (1) or more representative on site at all times to monitor progress and receive delivery tickets.
5. Furnish manhole adjustment rings and water valve adjustment rings to Contractor for installation by Contractor.
6. Provide all temporary and permanent pavement striping.
7. Promptly respond to Contractor's questions and concerns.
8. Process Contractor's payment request(s).



CITY of HICKORY
Invitation to Bid and Contract

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BID FORM & GENERAL CONTRACT

The undersigned, as bidder, hereby declares that the only person(s) interested in the proposal as principal(s) is, are, named herein, and that no other person has any interest in this proposal, or in the contract to be entered into; that this proposal is made without connection with any other person, company, or parties making a bid proposal, and that it is in all respects, fair and in good faith, without collusion or fraud.

The bidder further declares that he has informed himself fully about all conditions regarding this bid, that the **BIDDER HAS EXAMINED DESCRIPTION OF WORK, SPECIFICATIONS AND ALL RELATED DOCUMENTS** for the above mentioned Project and that he has satisfied himself about performance required by this bid.

The bidder agrees that if this bid is accepted, to contract with the City of Hickory in the form of contract specified, to furnish all necessary management, supervision, equipment, tools, materials, apparatus, means of transportation, and labor necessary to complete the contract in full and in complete accordance with the specifications and contract documents, to the full and entire satisfaction of the City, at the prices and amounts shown.

By submitting this bid, Contractor agrees to coordinate his schedule with the City of Hickory forces working on this project to the fullest extent possible.

The City of Hickory reserves the right to deduct items above as deemed in the best interest of the City. The Bidder further proposed and agrees hereby to commence work under his contract on a date to be specified in a written order of the Designer.

BONDING

- A. BID BOND: REQUIRED TO BE IN THE AMOUNT OF FIVE (5) PERCENT OF THE TOTAL BID AMOUNT.** Bond may be in the form of cash, cashier's check, certified check, or bid bond issued by a surety licensed to do business in North Carolina and approved by the City. Bids submitted without the required Bid Bond will not be considered. The City may annul the award of contract and bid deposits or bonds shall be retained by the City if the successful bidder fails to execute a Contract or accept a Purchase Order within the (10) days after award of bid or fails to give satisfactory surety as required for this bid.
- B. PERFORMANCE BOND:** Required in the full amount of the stated Bid amount.
- C. PAYMENT BOND:** Required in the full amount of the stated Bid amount.

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CITY of HICKORY Invitation to Bid and Contract

Project Title:

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The City reserves the right to reject any and all bids; and reject any bid items that fail to meet the needs of the City.

Contractor(s) shall submit a certified Sales Tax Report (attached) along with each pay request.

Bidders should have no contact with elected or appointed officials regarding this bid during the bid process. Any such contact will subject the bidder to immediate disqualification.

The below bid amount includes all specifications and addendums.

Acknowledge Addendum # 1

Date 7/20/15

Acknowledge Addendum #

Date

Acknowledge Addendum #

Date

UNIT PRICE BID FORM ON THE FOLLOWING PAGE

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CITY of HICKORY
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Please type in the form if possible.

	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	ITEM PRICE
1	Asphalt Concrete Surface Course, Type S 9.5 A	Ton	1500	52.00	78,000.00
2	Asphalt Concrete Surface Course, Type S 9.5 B	Ton	500	52.00	26,000.00
3	Asphalt Concrete Surface Course, Type S 4.75 A	Ton	500	52.00	26,000.00
4	Asphalt Binder	Ton	160	595.00	45,200.00
5	Asphalt Milling	Sq Yd.	4000	4.75	19,000.00

Total project cost (add items 1 through 5):

\$ 244,200.00 (numeric format)

\$ Two Hundred Forty-Four (written format)
THOUSAND DOLLARS AND ZERO CENTS

Total project cost bid price above includes all work as stated in Scope of work, under Contractor's Responsibilities, and as specified. Bid price includes all management, insurance, supervision, materials, equipment, labor and State/local sales tax required for a complete paving project. The cost of items not listed shall be distributed among the various pay items.

Asphalt Binder for Plant Mix shall be paid by unit price in accordance with the attached published NCDOT Price Adjustment Procedures.

Bid shall not be qualified with any statements on the bid forms or by separate attachment



CITY of HICKORY
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To be signed by the City of Hickory:

Acceptance and entry into this Agreement by and on behalf of the City of Hickory is made this _____ day of _____, 20____.

CITY OF HICKORY,
A North Carolina Municipal Corporation

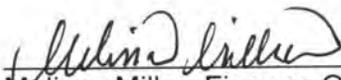
(SEAL)

Mick W. Berry, City Manager

Attest:

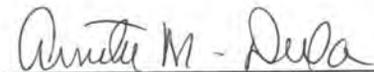
Debbie D. Miller, City Clerk

This document has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.



Melissa Miller, Finance Officer

Approved as to form on behalf of the City of Hickory only:



Arnita M. Dula, Staff Attorney

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

OVERTIME You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

ENFORCEMENT Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

David Leonetti
Community Development Manager
City of Hickory
dleonetti@hickorync.gov
(828) 261-2227

or contact the U.S. Department of Labor's Wage and Hour Division.



For additional information:

1-866-4-USWAGE

(1-866-487-9243) · TTY: 1-877-889-5627



WWW.WAGEHOUR.DOL.GOV

General Decision Number: NC150100 01/23/2015 NC100

Superseded General Decision Number: NC20140100

State: North Carolina

Construction Type: Highway

Counties: Alexander, Buncombe, Burke, Caldwell, Catawba, Haywood, Henderson and Madison Counties in North Carolina.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Executive Order (EO) 13658 establishes an hourly minimum wage of \$10.10 for 2015 that applies to all contracts subject to the Davis-Bacon Act for which the solicitation is issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.10 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/02/2015
1	01/23/2015

* SUNC2014-002 11/13/2014

	Rates	Fringes
BLASTER.....	\$ 20.93	
CARPENTER.....	\$ 13.48	
CEMENT MASON/CONCRETE FINISHER...	\$ 14.40	
ELECTRICIAN		
Electrician.....	\$ 18.79	2.62
Telecommunications		
Technician.....	\$ 14.67	1.67
IRONWORKER.....	\$ 12.48	

LABORER

Asphalt Raker and Spreader..	\$ 11.76	
Asphalt Screed/Jackman.....	\$ 15.38	.08
Carpenter Tender.....	\$ 10.50	
Cement Mason/Concrete		
Finisher Tender.....	\$ 11.04	
Common or General.....	\$ 11.90	
Guardrail/Fence Installer...\$	13.09	
Pipelayer.....	\$ 12.87	
Traffic Signal/Lighting		
Installer.....	\$ 15.33	.22

PAINTER

Bridge.....	\$ 20.67	
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POWER EQUIPMENT OPERATOR

Asphalt Broom Tractor.....	\$ 10.00	
Bulldozer Fine.....	\$ 16.28	
Bulldozer Rough.....	\$ 14.51	
Concrete Grinder/Groover...\$	19.20	
Crane Boom Trucks.....	\$ 18.19	
Crane Other.....	\$ 18.69	
Crane Rough/All-Terrain....\$	19.19	
Drill Operator Rock.....	\$ 15.00	
Drill Operator Structure...\$	21.07	
Excavator Fine.....	\$ 16.02	
Excavator Rough.....	\$ 14.67	
Grader/Blade Fine.....	\$ 19.86	
Grader/Blade Rough.....	\$ 15.12	
Loader 2 Cubic Yards or		
Less.....	\$ 12.38	
Loader Greater Than 2		
Cubic Yards.....	\$ 17.91	
Material Transfer Vehicle		
(Shuttle Buggy).....	\$ 15.44	
Mechanic.....	\$ 17.86	
Milling Machine.....	\$ 15.08	
Off-Road Hauler/Water		
Tanker.....	\$ 11.95	
Oiler/Greaser.....	\$ 15.05	
Pavement Marking Equipment..\$	11.99	
Paver Asphalt.....	\$ 17.84	.08
Paver Concrete.....	\$ 18.20	
Roller Asphalt Breakdown...\$	15.00	.08
Roller Asphalt Finish.....\$	16.08	.07
Roller Other.....	\$ 12.51	.03
Scraper Finish.....	\$ 12.86	
Scraper Rough.....	\$ 13.83	
Slip Form Machine.....	\$ 20.38	
Tack Truck/Distributor		
Operator.....	\$ 14.81	.02

TRUCK DRIVER

GVWR of 26,000 Lbs or	
Greater.....	\$ 13.65
GVWR of 26,000 or Less.....	\$ 12.48

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour

Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

December 2011

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PRICE ADJUSTMENT PROCEDURES FOR
ASPHALT BINDER FOR PLANT MIX**

Article 620-4 of the *2012 Standard Specifications* states that adjustments will be made to payments due the Contractor for each grade of asphalt binder when it has been determined that the monthly average terminal F.O.B. Selling Price of asphalt binder, Grade PG 64-22, has fluctuated from the Base Price Index for Asphalt Binder included in the Contract. The specifications also state that the methods for calculating the monthly average terminal F.O.B. selling price, for calculating a base price index, and for determining the terminals used are in accordance with procedures on file with the Department's Construction Unit (Pavement Construction Section). These methods and procedures, including procedures for determining the adjusted contract unit price, are as follows.

Determination, Addition and/or Deletion of Terminals Included in Index

All terminals supplying asphalt binder for use on state projects in North Carolina will be given an opportunity to be included in the index average. A review will be made by the Department after the end of each calendar year to determine which terminals supplied asphalt binder on a regular basis during the previous year. Based on the results of this review, adjustments will be made annually to the listing of terminals used in determining the Monthly Price Index for asphalt binder. Any adjustments will be effective beginning with the May Monthly Price Index and the Base Price Index for the July letting of each year.

**Monthly Average Terminal F.O.B. Selling Price of Asphalt Binder, Grade PG 64-22
(Monthly Price Index)**

Asphalt binder suppliers included on the listing of terminals used for the index will furnish to the Department by 12:00 noon on the 1st of the month or the next workday after the 1st of the month for each terminal F.O.B. selling price of Asphalt Binder, Grade PG 64-22 in effect on the first day of each month at each terminal. The monthly average terminal F.O.B. selling price (Monthly Price Index) will then be determined based on a procedural average of the terminal F.O.B. selling prices by omitting a single terminal with the highest price and a single terminal with the lowest price and then averaging the remainder of the prices furnished by the suppliers. The average will be rounded to the nearest penny and that number will be used as the Monthly Price Index for asphalt binder for that particular month. In the event that a supplier does not furnish a price to the Department for a specific terminal on the list, then the Monthly Price Index will be determined from the remaining terminals.

The monthly average terminal F.O.B. selling price (Monthly Price Index) will be available by the fifth day of each month on the North Carolina Department of Transportation Pavement Construction Section Web Site:

www.doh.dot.state.nc.us/operations/dp_chief_eng/constructionunit/paveconst/AsphaltMgmt/acprices/

Base Price Index for Asphalt Binder for Plant Mix (Base Price Index)

The base price index for Asphalt Binder for Plant Mix (Base Price Index) to be included in a proposal/contract along with the applicable date will be the Monthly Price Index in effect two months prior to the month in which the contract is let. For example, the Base Price Index for contracts let in April 2012 would be the Monthly Price Index determined for February 2012. The Base Price Index for a given contract will remain fixed throughout the life of the contract.

Termination of Price Adjustment - Asphalt Binder For Plant Mix

If asphalt binder suppliers do not provide F.O.B. selling prices from at least four terminals in a given month, the Contractor will be paid the contract unit price for asphalt binder used in the work during that month.

If suppliers do not provide F.O.B. selling prices from at least four terminals in a given month, the asphalt binder price adjustment provision will not be included in proposals for appropriate future letting.

Contract Unit Price Adjustment Procedures

When it is determined that the Monthly Price Index of asphalt binder on the first business day of the calendar month during which the last day of the partial payment period occurs varies either upward or downward from the Base Price Index in the contract, the contract unit price for asphalt binder for plant mix will be adjusted. The adjusted contract unit price will be determined by adding the difference between the selling price and the base price index to the contract unit bid price for asphalt binder.

The adjusted contract unit price will then be applied to the total theoretical quantity of asphalt binder authorized for use in the plant mix placed during the partial payment period involved, except that where recycled plant mix is used, the adjusted unit price will be applied only to the theoretical number of tons of additional asphalt binder materials required by the JMF.

Adjusted contract unit prices for all grades of asphalt binder, including additional asphalt binder materials in recycled mixtures, will be based on the average selling price and base price index for asphalt binder, Grade PG 64-22, regardless of the actual grade required by the JMF.

In determining the adjusted contract unit price for any material specified in this section the following formula will be used:

$$A = B + (D - C)$$

Where:

A = Adjusted Contract Unit Price

B = Contract Unit Price

C = Base Price Index

D = Monthly Average Terminal F.O.B. Selling Price

In the event the Department is unable to secure an F.O.B. selling price from at least 4 terminals in a given month, payment will be at the contract unit price for each ton of asphalt binder used in the work during that month.

Payment will be made under:

Pay Item	Pay Unit
Asphalt Binder for Plant Mix.....	Ton
Polymer Modified Asphalt Binder for Plant Mix.....	Ton

15

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Chuck Hansen
Contact Person: Miles Champion
Date: July 22, 2015
Re: Award of Contract for Pavement Resurfacing 2015-16, Bid 16-002

REQUEST

Request to award the FY 15-16 annual resurfacing contract to the responsible responsive low bidder, J.T. Russell & Sons, Inc., for asphalt resurfacing in the amount of \$50.50 per ton for S9.5A asphalt surface, \$50.00 per ton for S9.5B asphalt surface, \$56.00 per ton for S4.75A asphalt surface, \$536.00 per ton for binder and \$7.00 per sq. yd. for asphalt milling.

BACKGROUND

The Engineering Division staff prepared formal bid documents for an estimated 10,650 tons of asphalt surface course in place and 9,000 square yards of asphalt milling. The asphalt binder unit price will be adjusted according to NCDOT standard procedures. All work will be paid on an in-place unit price basis as the resurfacing budget allows. This work is budgeted in the Street Division's FY 15-16 budget.

ANALYSIS

A detailed scope of work included in the complete set of specifications and an invitation to bid package (Bid No. 16-002) were developed by the City's Engineering Department. The project was advertised on the City's web site and bid documents were available electronically. Three (3) bidders submitted sealed bids: J.T. Russell & Sons, Inc., Maymead, Inc. and Midstate Contractors, Inc. The formal bids were publicly open and read on July 23, 2015. The bid tabulation is attached. J.T. Russell & Sons, Inc. was the lowest bidder with a total bid amount of \$919,900 (\$459,950 for the Fall 2015 Schedule and \$459,950 for the Spring 2016 Schedule). Contractor's prices are firm until June 30, 2016. Project will be coordinated and overseen by the City's Engineering Division and Street Division staff for the duration and completion of the resurfacing.

RECOMMENDATION

Staff recommends that the resurfacing contract be awarded to the responsible responsive low bidder, J.T. Russell & Sons, Inc., at the unit price of \$50.50 per ton for S9.5A asphalt surface, \$50.00 per ton for S9.5B asphalt surface, \$56.00 per ton for S4.75A asphalt surface, \$536.00 per ton for binder and \$7.00 per sq. yd. for asphalt milling for the pavement resurfacing project.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Chuck Hansen
Initiating Department Head

7/22/2015
Date

Auntie M. Dula
Deputy City Attorney, A. Dula

7-27-15
Date

Rodney Miller
Asst. City Manager, Rodney Miller

7-28-15
Date

Asst. City Manager, A. Surratt

Date

Melissa Miller
Finance Officer, Melissa Miller

7-28-15
Date

Administrative Services Director
M. Bennett

Date

Bo Weichel
Purchasing Manager, Bo Weichel

7-28-15
Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

CITY OF HICKORY
 Bid Tabulation
 16-002 Pavement Resurfacing 2015-16

	J.T. Russell & Sons, Inc	Maymead, Inc	Midstate Contractors
5% Bid Bond	yes	yes	yes
Addendum #1	yes	yes	yes

FALL 2015 Schedule:

Item	Unit	Est. Qty.	Unit Price	Total	Unit Price	Total	Unit Price	Total
1) Asphalt Surface, S 9.5A	Ton	2500	\$50.50	\$126,250.00	\$52.00	\$130,000.00	\$55.50	\$138,750.00
2) Asphalt Surface, S 9.5B	Ton	2000	\$50.00	\$100,000.00	\$52.00	\$104,000.00	\$56.50	\$113,000.00
3) Asphalt Surface, S 4.75A	Ton	500	\$56.00	\$28,000.00	\$52.00	\$26,000.00	\$60.00	\$30,000.00
4) Binder, Grade PG 64-22	Ton	325	\$536.00	\$174,200.00	\$595.00	\$193,375.00	\$525.00	\$170,625.00
5) Asphalt Milling	SY	4500	\$7.00	\$31,500.00	\$3.75	\$16,875.00	\$4.50	\$20,250.00

FALL 2015 BID TOTAL:

\$459,950.00

\$470,250.00

\$472,625.00

SPRING 2016 Schedule:

Item	Unit	Est. Qty.	Unit Price	Total	Unit Price	Total	Unit Price	Total
1) Asphalt Surface, S 9.5A	Ton	2500	\$50.50	\$126,250.00	\$52.00	\$130,000.00	\$55.50	\$138,750.00
2) Asphalt Surface, S 9.5B	Ton	2000	\$50.00	\$100,000.00	\$52.00	\$104,000.00	\$56.50	\$113,000.00
3) Asphalt Surface, S 4.75A	Ton	500	\$56.00	\$28,000.00	\$52.00	\$26,000.00	\$60.00	\$30,000.00
4) Binder, Grade PG 64-22	Ton	325	\$536.00	\$174,200.00	\$595.00	\$193,375.00	\$525.00	\$170,625.00
5) Asphalt Milling	SY	4500	\$7.00	\$31,500.00	\$3.75	\$16,875.00	\$4.50	\$20,250.00

SPRING 2016 BID TOTAL:

\$459,950.00

\$470,250.00

\$472,625.00

\$919,900.00

\$940,500.00

\$945,250.00



CITY of HICKORY Invitation to Bid and Contract

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SUBMIT SEALED BIDS TO: Bo Weichel, Purchasing Manager PO Box 398 Hickory NC 28603 bweichel@hickorync.gov 828.323.7472		DIRECT INQUIRIES TO: Miles Champion, Senior Civil Engineer mchampion@hickorync.gov 828-302-3757	
Deadline for Written Questions: Wednesday July 22, 2015 at 5:00PM	No Bids Received After Public Bid Opening: 2:00 pm	July 23, 2015	
		Human Resources Conference Room 3rd Floor of City Hall (76 N. Center Street)	

Vendor Name: J.T. Russell & Sons Inc	Point of Contact: David Stamey
Mailing Address: 201 Herman Sipe Road,	
City: Conover	State: NC
Zip: 28613	
Area Code and Phone Number: 828-464-0328	Email Address: dastamey@jtrussellandsons.com
Federal Employer Identification Number or Social Security Number: 56-0858771	

THIS BID INVALID IF NOT SIGNED AND NOTARIZED

AFFIDAVIT: STATE OF North Carolina COUNTY OF Catawba, of lawful age, being first duly sworn, on oath says that:

- Affiant is the duly authorized agent of the bidder/vendor and/or contractor submitting the competitive bid and executing the contract which is attached to this statement, and that as such agent, Affiant has the authority to bind the bidder/vendor, whether an individual, partnership, or corporation, for the purpose of negotiating and entering into said agreement, and for certifying the facts pertaining to the existence of collusion among bidders and between bidders and City officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to the bid to which this statement is attached;
- Affiant is fully aware of the facts and circumstances surrounding the making of the bid and/or the procurement of the contract to which this statement is attached and has been personally and directly involved in the proceedings leading to the submission of such bids;
- Neither the bidder/vendor nor anyone subject to the bidder/vendor's direction or control has been a party:
 - to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;
 - to any collusion with any municipal official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract;
 - in any discussions between bidders and any municipal official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - to paying, giving or donating or agreeing to pay, give or donate to any officer or employee of the City of Hickory any money or other thing of value, either directly or indirectly, in procuring the contract to which his statement is attached.
- Affiant further agrees to be held personally liable in the event that Affiant has misrepresented the scope or extent of Affiant's authority to bind the bidder herein, and to indemnify and hold harmless the City of Hickory, its departments, boards, commissions, agencies, institutions, and all employees of the aforementioned from all damages based upon such misrepresentation, including, but not limited to, all costs and attorney fees incurred, in addition to any other remedies available by law.

FIRM: J.T. Russell & Sons Inc

ADDRESS: Conover, NC 28613
(City, State, Zip)

PHONE: 828-464-0328

David Alan Stamey Jr
SIGNATURE OF AUTHORIZED AGENT
David Alan Stamey Jr / Branch Manager
PRINT/TYPE NAME/TITLE

Subscribed & sworn before me this 21 day of July, 2015
James Wesley Rauld
Notary Public
My Commission Expires: JUNE 29, 2018



CITY of HICKORY
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IMPORTANT INFORMATION AND INSTRUCTIONS

1. **DOCUMENTS WITHIN THIS AGREEMENT:** The pages of this agreement consist of:
 - a. Invitation and Bidder Information
 - b. Important Information and Instructions
 - c. General Conditions
 - d. Supplemental General Conditions
 - e. Special Conditions
 - f. Affidavit of Prime Contractor
 - g. Release and Waiver of Claims
 - h. Specifications/Description of Work to be Performed
 - i. Bid Form, Bonding, & General Contract
 - j. E-Verify Compliance Form

1. **SUBMIT ALL PAGES:** All pages of this document will be used as the contract. Bidders shall submit ALL pages of this document with completed information.

2. **BIDDER SHALL WRITE ON THE OUTSIDE OF SEALED SUBMITTAL ENVELOPE:**
 - a. The name of the General Contractor
 - b. The Project Title and Project Number
 - c. Date and Location of bid opening

3. **BIDS SHALL NOT BE QUALIFIED WITH ANY STATEMENTS ON THE BID FORMS OR BY SEPARATE ATTACHMENT.**

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GENERAL CONDITIONS

BIDDER – TO INSURE ACCEPTANCE OF THE BID, CAREFULLY FOLLOW THESE INSTRUCTIONS. FAILURE TO DO SO MAY RESULT IN THE REJECTION OF YOUR BID WITHOUT FURTHER CONSIDERATION OR NOTICE TO YOU.

1. **SEALED BIDS:** All bid sheets and this form must be executed and submitted in a sealed envelope. DO NOT INCLUDE MORE THAN ONE BID PER ENVELOPE. The face of the envelope shall contain, in addition to the address on page one (1) of this document, the date and time of the bid opening and the contract number. Bids not submitted on this bid form shall be rejected. All bids are subject to the conditions specified herein. **Those that do not comply with these conditions are subject to rejection.** Bids will be considered only on first quality products.
2. **EXECUTION OF BID AND CONTRACT:** Bid and contract documents must contain an original signature of authorized representative in the space provided. Bid must be typed or printed in ink. Use of erasable ink is not permitted. **ALL CORRECTIONS MADE BY BIDDER/VENDOR TO BID PRICE MUST BE INITIALED.** Do not use white out, correction tape or some other method of masking a correction.
3. **NO BID:** If not submitting a bid, respond by returning page one (1), marking it "NO BID," and explain the reason in the space provided thereon. Failure to respond three (3) times in succession may be cause for removal of the supplier's name from the bid mailing list, without further notice. NOTE: To qualify as having responded, bidder/vendor must submit either a bid or a written "NO BID," and it must be received no later than the stated bid opening date and hour.
4. **OBJECTIONS/CHALLENGE:** Should a bidder/vendor have an objection to or challenge the specifications, the bidder/vendor is responsible for making this known in writing so as to reach the Purchasing Agent no later than seven (7) calendar days prior to the bid opening date. The envelope shall be marked in such a way so as to alert the Purchasing Agent of the urgency of the communication. The envelope must be marked indicating that the content is a challenge to a specified Invitation to Bid. For all challenges considered valid by the Purchasing Agent, all vendors on the original mailing list will be provided an addendum which addresses the challenge. Challenges/objections not considered valid will be so stated to the objecting party.
5. **BID OPENING:** Bid opening, if applicable, occurs at the time specified on the bid form. It is the Bidder/Vendor's responsibility to assure that the bid is delivered at the proper time and place of the bid opening. Bids, which for any reason are not delivered, will not be considered. Offers by telegram, facsimile, email, or telephone are not acceptable. NOTE: Bid files may be examined during normal working hours by appointment, after the date and time of bid opening. Bid tabulations WILL NOT be provided by telephone or facsimile. Bid tabulations will be provided by email at the written request of the bidder/vendor. Bid and contract documents are the property of the City and are subject to the provisions of the North Carolina Open Records Act.
6. **WITHDRAWAL OF BID:** Bids may be withdrawn at any time prior to the bid opening date and time. After bids are opened, all bids will be considered firm and valid until award of contract is made.
7. **AWARDS:**
 - a. As the best interest of the City may require, the right is reserved to:
 1. Award by individual item or project, group of items or projects, all or none, or a combination thereof.
 2. Award based upon a geographical district basis with one or more vendors.
 3. To reject any and all bids or waive any minor irregularity or technicality in bids received.

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- b. Bidders/Vendors are cautioned to make no assumptions regarding their success on the awarding of any contract unless their bid has been evaluated as being responsive, the contract awarded by the City and appropriate documents executed. The City of Hickory reserves the right to add or delete any item from this contract when deemed to be in the best interests of the City.
8. **ACCEPTANCE OF CONTRACT:** This document constitutes only the Bidder/Vendor's offer until it is accepted on behalf of the City of Hickory and is fully executed by both parties.
9. **WAIVER:** The City of Hickory reserves the right to waive any general provisions, special provision or minor specification deviation when considered to be in the best interest of the City.
10. **CHANGES TO SPECIFICATIONS:** Bids are to be submitted in accordance with the specifications provided. Any exceptions to the specifications must be indicated in the place provided on the specification page(s) or by separate letter from the Bidder/Vendor, if a place is not provided in the specifications. Changes in specification reducing the quality, versatility or applicability of the product or service shall cause the rejection of the bid. The City shall make the final determination. Failure to notify the City in writing of any deviation from the specifications within 7 calendar days may cause the agreement to be rejected and/or terminated without further compensation at the discretion of the City.
11. **MISTAKES:** Bidders/Vendors are expected to examine the specifications, delivery schedule, bid prices and all instructions pertaining to supplies and services. Failure to do so will be at Bidder/Vendor's risk.
12. **INFORMATION:** The Bidder/Vendor must provide information pertinent to items you are bidding. Complete catalogues are not necessary. If furnished, however, the Bidder/Vendor must identify the exact location in the catalogue and circle or identify clearly the item being bid.
13. **MANUFACTURERS' NAMES AND APPROVED EQUIVALENTS:** Any manufacturers' names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. The Bidder/Vendor may offer any brand for which he is an authorized representative, which meets or exceeds the specification for any item(s). If bids are based on equivalent products, indicate on the bid form the manufacturer's name and model number. Bidder/Vendor shall submit with his proposal sketches, descriptive literature and/or complete specifications. References to literature submitted with a previous bid will not satisfy this provision. The Bidder/Vendor shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and not be considered an exception thereto. Bids which do not comply with these requirements are subject to rejection. Bids lacking any written indication of intent to quote an alternate brand will be received and considered to be in complete compliance with the specifications as listed on the bid form.
14. **SAMPLES:** Samples of items, when called for, must be furnished free of charge and at no expense to the City. Each individual sample must be labeled with Bidder/Vendor's name, manufacturer's brand name and number, contract number and item reference, or as specified in the attached special conditions. **Samples will not be returned.**
15. **TESTING:** When testing is required to determine if a sample or an awarded product meets specifications and it is determined that the product fails to meet specifications, the cost of testing shall be borne by the Vendor, both on samples and delivered products.
16. **NONCONFORMANCE TO CONTRACT CONDITIONS:** Items may be tested for compliance with specifications by appropriate testing laboratories or by the City. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with North Carolina Statutes. Items delivered not conforming to specifications will be rejected and returned to the Bidder/Vendor at the Bidder/Vendor's expense. Any violation of these stipulations may result in supplier's name being removed from the City of Hickory Purchasing Bidder/Vendor mailing list, and the City may pursue any and all other remedies available either in equity or by law.

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17. **CONDITION AND PACKAGING:** It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current model at the time of the bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.
18. **INSPECTION, ACCEPTANCE, AND TITLE:** Inspection and acceptance will be at destination unless otherwise provided. "Destination" shall mean delivered to the receiving dock, department stockroom, or other point specified. The City accepts no responsibility for goods until accepted at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the Bidder/Vendor until accepted by the ordering agency. The Bidder/Vendor shall be responsible for filing, processing and collecting all damage claims. However, to assist him in the expeditious handling of damage claims, the ordering department will:
 - a. Record any evidence of visible damage on all copies of the delivering carrier's bill of lading.
 - b. Report damage (whether visible or concealed) to the carrier and Bidder/Vendor, confirming such reports, in writing, within fifteen (15) days of delivery, requesting that the carrier inspects the damaged merchandise.
 - c. Retain the item and its shipping container, including inner packaging material, until inspection is performed by the carrier, and disposition given by the Bidder/Vendor, or for a reasonable time after notification to the Bidder/Vendor.
 - d. Provide the Bidder/Vendor with a copy of the carrier's bill of lading and damage inspection report.
19. **SAFETY STANDARDS:** Unless otherwise stipulated in the bid, all work performed pursuant to this Agreement shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder.
20. **SERVICE AND WARRANTY:** Unless otherwise specified, the Bidder/Vendor shall define any warranty service and replacements that will be provided during and subsequent to this contract. Bidder/Vendors must explain on an attached sheet to what extent warranty and service facilities are provided. Unless otherwise indicated in this agreement, upon acceptance of this contract by the City, Bidder/Vendor expressly warrants that all articles, materials, supplies, equipment, and/or services covered in this contract will conform to the specification attached hereto and made a part hereof; and further warrants that same shall be of good material and workmanship and free from defects.
21. **REMEDIES:** Failure to make delivery or to meet specifications authorizes the City to seek replacement goods or services elsewhere and to seek legal remedies against the defaulting Bidder/Vendor. If any of the goods and/or work performed fails to meet the warranties contained herein, Bidder/Vendor upon notice thereof from the City shall promptly correct or replace the same at Bidder/Vendor's expense. If Bidder/Vendor shall fail to do so, the City may cancel this order as to all such goods and in addition, may cancel the remaining balance of this order and pursue all other remedies available. After notice to the Bidder/Vendor, all such goods will be held at Bidder/Vendor's risk. The City may, and at the Bidder/Vendor's direction shall, return such goods to Bidder/Vendor at Bidder/Vendor's risk, and all transportation charges, both to and from original destination, shall be paid by Bidder/Vendor. Any payment for such goods shall be refunded by Bidder/Vendor unless Bidder/Vendor promptly corrects or replaces the same at its expense.
22. **AUTHORIZED USERS:** Bids shall cover requirements during the specified period for all municipal departments, boards, commissions, agencies and institutions.
23. **LIABILITY:** The Bidder/Vendor shall hold and save the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned harmless against the claims by third parties resulting from the Bidder/Vendor's breach of this contract or the Bidder/Vendor's negligence.

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24. **INDEPENDENT CONTRACTOR:** The parties agree that Bidder/Vendor and each subcontractor is acting in the capacity of an independent contractor with respect to the City of Hickory, and shall not at any time be or represent itself as an agent or employee of the City of Hickory.
25. **PRICES AND TERMS:** Unless otherwise provided in the bid specifications, firm fixed prices shall be F.O.B. Hickory, North Carolina at the indicated department's address and include packing, handling and shipping charges fully prepaid by the Vendor. Bid prices shall be valid for a minimum of sixty (60) days from the date of bid opening.
26. **ACCEPTANCE OF PURCHASE ORDERS:** Bidder/Vendors are to accept only those purchase orders issued by the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned, prepared on Finance Department forms, unless instructed otherwise in the Invitation to Bid or executed Contract Agreement.
27. **PRICE ADJUSTMENTS:** Manufacturer's price increases, or other increases in the cost of doing business MAY NOT be passed on to the City of Hickory, its departments, boards, commissions, agencies, institutions, and all employees, nor may the Bidder/Vendor withdraw or cancel the contract, or any part of the contract for these reasons. Bidders/Vendors may only cancel the contract pursuant to the cancellation clause, if one is included as a part of the Invitation to Bid, and then only if the contractual obligation has been fulfilled by the Bidder/Vendor in accordance with the terms stated. Bids which reflect that the price of an item is based upon the "market price" or is "subject to increase" based upon some event, or otherwise indicates that prices reflected are infirm or subject to change will be deemed non-conforming unless the bid specifications specifically provide for price escalation.
28. **SUMMARY OF TOTAL SALES:** The Bidder/Vendor agrees to furnish the City of Hickory Purchasing Division a summary of sales, including total dollar amount made under the contract at the end of each quarter; or as stipulated in the attached special conditions.
29. **PAYMENT:**
- a. **INVOICING:** The Bidder/Vendor shall be paid within a reasonable time, not to exceed 45 calendar days, after submission of proper certified invoices to the City at the prices stipulated on the contract. Invoices shall contain the contract number and purchase order number. Failure to follow these instructions may result in delay or processing invoices for payment. The company or corporation bidding shall be the only office authorized to receive orders, do the billing and invoicing, and receive payment. If the Bidder/Vendor wishes to ship or service from a point other than the home office, he will furnish a list of these locations. **HOWEVER, NO ORDERS WILL BE PRESENTED TO, BILLING WILL NOT BE DONE FROM, NOR WILL PAYMENT BE MADE TO THESE LOCATIONS.**
 - b. **REQUIREMENTS ONLY PURCHASES:** The proposed contract shall be for the quantities actually ordered during the life of the contract only. **UNLESS OTHERWISE SPECIFIED, ALL CONTRACTS ARE REQUIREMENTS-TYPE CONTRACTS,** meaning that quantities indicated are only estimates of those actually needed, and actual quantities may be greater or less than those indicated. Billing shall be made in accordance with instructions by department or division issuing the purchase order, and only for quantities actually ordered and delivered. The City does not promise to purchase the quantity shown. The City reserves the right to purchase none of the product or more than shown at the unit price stated in the bid.
 - c. **DISCOUNTS:** Bidders/Vendors may offer a cash discount for prompt payment; however, such discounts shall not be considered in determining the lowest net cost for bid evaluation purposes. Bidders/Vendors are encouraged to reflect cash discounts in the unit prices quoted. Discount time will be computed from the date of satisfactory delivery at place of acceptance or from receipt of correct invoice at the office specified, whichever is later.
 - d. **UNIFORM COMMERCIAL CODE:** All provisions of the Uniform Commercial Code shall be adhered to.



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30. **EXTENSION:** At the end of the contract period, or upon the conclusion of a maximum of one (1) extension thereof, the contract may be extended for a period not to exceed twelve (12) months at the same price and conditions as in the original contract, by mutual agreement between the City and the Bidder/Vendor. The extended contract shall, upon the signing by both parties, become a binding agreement and shall remain in force and effect until terminated by either party, provided that either party to the contract shall have the option to terminate said extended contract upon thirty days' prior written notice of termination by one party to the other.
31. **CONFLICT OF INTEREST:** The Invitation to Bid hereunder is subject to the provisions of City of Hickory's Ethics and Conflict of Interest Policy. All Bidders/Vendors must disclose with the bid, the name of any officer, director or agent who is also an employee of the City of Hickory or any of its agencies or subdivisions. Further, all Bidders/Vendors must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the Bidder/Vendor's firm or any of its branches..
32. **PATENTS AND ROYALTIES:** The Bidder/Vendor, without exception, shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract including its use by the City of Hickory. If the Bidder/Vendor uses any design, device or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or cost rising from the use of such design, device or materials in any way involved in the work.
33. **RELEASE OF PATENTS AND COPYRIGHTS:** The Contractor will relinquish ownership and exclusive rights to the Department of Housing and Urban Development and the City of Hickory for any patents and/or copyrights for any process, discovery, or invention which arise or is developed in the course of this contract.
34. **FACILITIES AND EQUIPMENT:** The City reserves the right to inspect the Bidder/Vendor's facilities or equipment at any time with reasonable prior notice.
35. **BANKRUPTCY:** If the Bidder/Vendor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the Bidder/Vendor, or if a receiver is appointed for the Bidder/Vendor, the City shall have the right to terminate this contract upon written notice to the Bidder/Vendor without prejudice to any claim for damages or any other right of the City under this contract to the time of such termination.
36. **ASSIGNMENT:** This contract shall not be assigned by the Bidder/Vendor without written consent of the City.
37. **ACCESS TO RECORDS:** The Bidder/vendor agrees to provide upon request audit materials to an auditor designated by the City. In addition, the Bidder/Vendor will retain all records pertaining to this contract for a period of three (3) years after final payment and all other pending matters are closed.
38. **INSURANCE:** If insurance is required in the specifications to this Agreement, unless otherwise specifically stated, proof of the following types and amounts shall be furnished to the City showing the City as an additional insured thereunder without cost to the City of Hickory prior to the awarding of the contract. This shall be accomplished by including a Certificate of Insurance with the bid package with the Certificate Holder being: *City of Hickory, PO Box 398, Hickory NC 28603.*
 - a. **General Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, a policy or policies under a comprehensive form as required by state law. In addition, the Bidder/Vendor shall have, during the term of the contract, insurance in the minimum amount of one hundred thousand dollars (\$100,000.00) property damages, arising from a single occurrence, one million dollars (\$1,000,000.00) for personal injuries arising from a single occurrence, and one million dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

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This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned. A current certificate showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.

- b. **Automobile Liability:** The Bidder/Vendor shall procure and maintain in full force and effect, for the term of the Contract, vehicle liability coverage in the amounts specified in Subparagraph a. of this section. In addition, the Bidder/Vendor shall have, during the term of the Contract, vehicle liability coverage as outlined in the attached specifications. If higher coverage is required by any regulatory entity with oversight of the Bidder/Vendor's business, the City Code, or other authority, then proof of the higher coverage must be provided. This policy or policies shall hold harmless and indemnify the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned. A current certificate showing that the Bidder/Vendor has in force and effect such insurance shall be maintained on file with the City Clerk of the City.
- c. **Worker's Compensation:** The Bidder/Vendor shall procure and maintain in full force and effect for the period of the Contract, full workers' compensation insurance in accordance with the laws of the State of North Carolina to protect it and the City against liability under the workers' compensation and occupational disease statutes of the State of North Carolina. A current certificate showing that the Bidder/Vendor has in force and effect the aforesaid insurance of a current certificate showing exemption from the requirement shall be maintained on file with the City Clerk of the City.
39. **TIME OF ESSENCE:** Unless otherwise stated, time shall be considered of the essence to this contract. Bidder/Vendor specifically agrees that it shall be liable for failure to deliver or delay in delivery. This includes without limitations: strikes, lockouts, inability to obtaining material, lack of shipping space, breakdowns, delays of carriers or suppliers, and pre-existing governmental regulations of the federal and state government or any subdivisions thereof, unless governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of the Bidder/Vendor prior to submission of the bid and the City Council's acceptance.
40. **LIQUIDATED DAMAGES:** If the Contractor shall neglect, fail, or refuse to complete the work within the time herein specified, then the Contractor does hereby agree, as a part of the consideration for the awarding of this contract to pay to the City the sum of **\$0.00** per day, not as a penalty, but as compensation to the City for delays, damages, and additional expenses for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain.
It is further agreed that time is of the essence to each and every portion of this contract and to the specifications wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where, under the contract, any additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this contract.
41. **BONDS:** Bidder's bonds and Performance bonds, if required, are set forth in the specifications attached hereto. If bonds are required, the same shall be held under the following requirements and specifications unless otherwise indicated:
- a. **Bidder's bonds:** If required as a part of the specifications of this contract, bids filed with the Purchasing Agent must be accompanied by a Bidder's Bond, certified check or cashier's check in the amount stated made payable to the City of Hickory. This amount will be retained by the City as damages in the event the successful Bidder/Vendor fails to comply with the terms of this Agreement, but shall in no way act as a remedy or limitation on damages available to the City, which may pursue any and all other remedies available either in equity or at law. All deposits and bonds will be returned to the unsuccessful Bidders/Vendors within a reasonable time after the contract has been awarded, and to the successful Bidder/Vendor upon full performance of the contract. Bonds or funds deposited do not accrue interest while held.



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- b. **Performance Bonds:** If a Performance Bond is required under the specifications of this agreement, the successful Bidder/Vendor must, prior to the award of the Contract, post the bond, certified check or cashier's check in the amount stated made payable to the City of Hickory. The Bidder's Bond posted will be returned to the successful Bidder/Vendor upon posting of the Performance Bond and completion of any additional requirements for execution of the contract by the Bidder/Vendor. The Performance Bond will be released or returned to the Bidder/Vendor, as appropriate, after satisfactory completion of the contract and the performance period as stated in the specifications attached or any amendments thereto.
42. **DISCRIMINATION:** Bidder/Vendor agrees, in connection with the performance of work under this contract, as follows:
- a. Bidder/Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation or affection, national origin, ancestry, or physical or mental impairment. The Bidder/Vendor shall take affirmative action to insure that employees are treated without regard to their race, creed, color, sex, sexual orientation or affection, national origin, ancestry or physical or mental impairment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Bidder/Vendor agrees to post in a conspicuous place available to employees and applicants for employment, notices setting forth provisions of this section.
 - b. The Bidder/Vendor agrees to include this non-discrimination clause in any subcontract connected with the performance under this contract.
 - c. In the event of the Bidder/Vendor's non-compliance with the above non-discrimination clause, this contract may be terminated by the City. The Bidder/Vendor may be declared by the City ineligible for further contracts with the City until satisfactory proof of intent to comply is made by the Bidder/Vendor.
43. **DISTRIBUTION OF CONTRACT:** One (1) copy of the contract or award letter shall be furnished to each successful Bidder/Vendor as a result of this bid. It shall be the Bidder/Vendor's responsibility to reproduce and distribute copies of the contract to all distribution points listed in this bid that will accept orders and complete deliveries. No additions, deletions or changes of any kind shall be made to this contract by the Bidder/Vendor.
44. **ANTI-KICKBACK PROVISIONS:** Contractor shall comply with the applicable regulations (herein incorporated by reference) of the Secretary of Labor, United States Department of Labor, made pursuant to the so called "Anti-Kickback Act" of June 13, 1934) 48 Stat. 948; 62 Stat. 862; Title 18 U.S.C., Section 874 and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractors thereunder, except for the submission of affidavits required by subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirement thereof.
45. **CONTRACT WORK HOURS AND SAFETY STANDARDS:** Overtime Compensation Required by Contract Work Hours and Safety Standards Act (76 Stat. 357-360; Title 40 U.S.C., Sections 327-332).
- a. **Overtime Requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, which he has employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week.
 - b. **Violation/Liability for Unpaid Wages Liquidated Damages:** In the event of any violation of the clause set forth in Paragraph (1) of this section, the contractor and any subcontractor responsible



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therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States or other appropriate governing or regulatory body for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violations of the clause set forth in Paragraph (1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in Paragraph (1).

- c. **Withholding for Liquidated Damages:** The Owner shall withhold or cause to be withheld, from any monies payment on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for liquidated damages as provided in the clause set forth in Paragraph (2) of this Section.
 - d. **Subcontracts:** The contractor shall insert in any subcontracts the clauses set forth in Paragraphs (1), (2) and (3) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts, which may be entered into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
 - e. **Questions Concerning Certain Federal Statutes and Regulations:** All questions arising under this contract which related to the application or interpretation of (a) the aforesaid Anti-Kickback Act, (b) the Contract Work Hours and Safety Standards Act, (c) the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said acts, or (d) the labor standards provisions of any other pertinent federal statute shall be referred through the Owner and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this contract.
46. **APPLICABILITY OF FEDERAL REGULATIONS TO FEDERALLY FUNDED PROJECTS:** If it is indicated in the specifications to this Agreement that federal funding is used in the completion of this project, the following provisions shall apply in compliance with the regulations of the United States Department of Housing and Urban Development.
- a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them for complying with the Part 135 Regulations.
 - c. The contractor agrees to send each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization of workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
 - d. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other



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than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
 - f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD-assisted contracts.
47. **REPORTING REQUIREMENTS:** The Contractor will provide such reports as required for submission to the Department of Housing and Urban Development pertaining to racial, gender, age and ethnic status of its employees for carrying out the work under this contract.
48. **ADVERTISING:** In submitting a proposal, Bidder/Vendor agrees not to use the results therefrom as a part of any commercial advertising.
49. **TERMINATION FOR CONVENIENCE OF THE CITY:**
- a. The performance of work and/or delivery of ordered materials, supplies, equipment and/or services under this contract may be terminated by the City, in whole or in part, whenever it is determined to be in the best interest of the City.
 - b. Any such termination shall be effected by the delivery to the Bidder/Vendor of a notice of termination specifying the extent to which performance of work and/or delivery of ordered materials, supplies, equipment and/or services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a notice of termination, the Bidder/Vendor shall stop work and/or place no further orders under the contract on the date and to the extent specified in the Notice of Termination.
50. **VENUE:** This contract shall be governed by the laws of the State of North Carolina.
51. **INTEGRATED AGREEMENT:** This writing, with the attachments hereto, and any associated purchase orders constitute the entire agreement of the parties. No separate promises or agreements have been made other than those contained herein. This Agreement may not be modified except in writing signed by both parties.
52. **DELIVERY OF NOTICES:** Any notices required or permitted by this Agreement will be considered sufficient if hand delivered or sent by certified mail to the party entitled to receive the notice at the address of that party set forth above. If a notice is sent by certified mail, it shall be deemed to have been given on the second business day after it is deposited in the United States mail, whether actually received by the addressee on that date or not.
53. **SEVERABILITY:** If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this Agreement or its application that can be given effect without the invalid provision or application.
54. **PARTIAL PAYMENTS:** Partial payments will be made once each month as the work progresses. Said payments will be based upon estimates prepared by the Contractor and approved by the Engineer for the value of the work performed and materials complete in place in accordance with the Contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with this contract.



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From the total of the amount determined to be payable on a partial payment, 5% of such total will be deducted and retained by the OWNER until the final payment is made. The balance 95% of the amount payable, less all previous payments, shall be certified for payment.

The Contractor shall not receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders, except when such excess quantities have been determined by the ENGINEER to be a part of the final quantity for the item of work in question.

No partial payment shall bind the OWNER to the acceptance of any materials or work in place as to quality or quantity. CONTRACTOR shall submit partial payment request for work completed by the 25th of the month. OWNER will make payment to the Contractor on or about the 25th of the following month.

55. **PAYMENT FOR MATERIALS ON HAND (IF APPLICABLE UNDER THE CONTRACT):** Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the Contract, plans, specifications, and are delivered to sites acceptable to the ENGINEER. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the ENGINEER at or on an approved site.
- b. The Contractor has furnished the ENGINEER with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the ENGINEER with satisfactory evidence that the material and transportation costs have been paid.
- d. The Contractor has furnished the OWNER legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.
- e. The Contractor has furnished the OWNER evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

The transfer of title and the OWNER's payment for such stored or stockpiled materials shall in no way relieve the Contractor of the responsibility for furnishing and placing such materials in accordance with the requirements of the Contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the Contract price for such materials or the Contract price for the Contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this contract.

**CITY of HICKORY
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Pavement Resurfacing for 2015-16**16-002***SUPPLEMENTAL GENERAL CONDITIONS*

1. **Builder's Risk-Installation Floater:** Contractor shall purchase Builder's Risk-Installation Floater in form acceptable to Owner covering property of Project for full cost of replacement as of time of any loss which shall include, as named insured, (1) Contractor, (2) all subcontractors, (3) Owner and Architect/Engineer, as their respective interests may prove to be at time of loss, covering insurable property which is subject of this Contract, whether in place, stored at job site, stored elsewhere, or in transit at risk of insured(s). Coverage shall be effected on "All Risk" form including, but not limited to, perils of fire, wind, vandalism, collapse, theft, and earthquake, with exclusions normal to cover. Contractor may arrange for such deductibles as it deems to be within its ability to self-assume, but it will be held solely responsible for amount of such deductible and for any coinsurance penalties. Any insured loss shall be adjusted with Owner and Contractor and paid to Owner and Contractor as Trustee for other insured.
2. In the event of a conflict between plans and specifications, the more stringent shall apply at no additional cost to the Owner. The ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly.
3. **Rejecting Defective Work:** ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
4. **Decisions on Requirements of Contract Documents and Acceptability of Work:** ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision.
5. When functioning as interpreter and judge, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.
6. **Limitations on ENGINEER's Authority and Responsibilities:** ENGINEER will not supervise, direct, contract, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
7. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.



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SPECIAL CONDITIONS

1. **COMPLIANCE WITH LAWS:** The bidder, at his own expense, shall obtain and maintain all licenses, permits, liability insurance, worker's compensation insurance and shall comply with any and all other standards or regulations required by federal, state and local statute, ordinance, executive order and rules during the performance of any contract between the bidder and the City. Any such requirement specifically set forth in any contract document between the bidder and the City shall be supplementary to this section and not in substitution thereof.
2. **SPECIFICATIONS:** Any obvious error or omission in specifications shall not inure to the benefit of the bidder but shall put the bidder on notice to inquire of or identify the same from the City. All construction and materials shall conform to the City of Hickory's Manual of Practice which includes the standard specifications and details.
3. **GUARANTEE:** Unless otherwise specified by the City the bidder shall unconditionally guarantee the materials and workmanship on all material, construction, and/or services to be free from defect at the time of delivery and acceptance (to be determined by usage) by the City. If any defects are present which are due to faulty material, workmanship and/or services, the bidder at his expense, shall repair or adjust the condition, or replace the material and/or services to the complete satisfaction of the City. These repairs or replacements or adjustments shall be made only at such time as will be designated by the City as least detrimental to the operation of the City. Standard Manufacturer's warranties and other warranties normally offered by the bidder shall be in effect for all deliveries and shall be in addition to specific warranties or guarantees contained in this Bid. Statement of terms of standard warranty should be included with the bid.
4. **LICENSE:** All bidders must have proper license governing services provided.
5. **E-VERIFY COMPLIANCE:** Employers and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the North Carolina General Statutes must comply with North Carolina Session Law 2013-418's E-Verify requirements to contract with local governments. E-Verify is a federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. A completed E-Verify affidavit is required to enter any contract with the City of Hickory.

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AFFIDAVIT OF PRIME CONTRACTOR
(STATUS OF SUBCONTRACTORS AND MATERIAL SUPPLIERS)

We, J.T. Russell & Sons Inc, certify that to the best of our knowledge and belief, no claims or liens exist against any material suppliers or subcontractors who will furnish materials or labor on the above mentioned Project, or if any appear afterwards, we (as Contractor) shall save the Owner harmless on account thereof. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable Attorney's fee.

Sworn to and subscribed before me this 21st day of July, 20 15.

David Alan Stamey Jr
Signature

David Alan Stamey Jr
Printed Name

Branch Manager
Title

7-21-15
Date

James Wesley Rand
Notary Public

JULY 21, 2015
Date

SEAL:

Commission Expires June 29, 2018



**CITY of HICKORY
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*RELEASE AND WAIVER OF CLAIMS AND CONSENT OF SURETY
PRIME CONTRACTOR*

On _____, 20__ there personally appeared before me the undersigned authority in and for said County _____ (County) and State of _____ (State) by the name of _____ (Name), who is the _____ (Title), for _____ (Company).

Who being duly sworn by me, states that all payrolls, material bills, sales tax, privilege tax or license, old age benefits tax, state and federal unemployment insurance and other liabilities have been paid in full, incurred for use in the performance the above mentioned Project and waives any claims and releases the City of Hickory from any rights or claims for debts due and owing by virtue of the furnishing of any material or supplies of any lien thereon.

Sworn to and subscribed before me this _____ day of _____, 20 _____.

Signature

Printed Name

Title

Date

Notary Public

SEAL:

Date



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SPECIFICATIONS/DESCRIPTION OF WORK TO BE PERFORMED

The bidder agrees that if this bid is accepted, to furnish all necessary management, supervision, equipment, tools, means of transportation, safety and labor necessary to complete the contract in full and in complete accordance with the specifications and instructions, to the full and entire satisfaction of the City and the manufacturer representative, at the prices and amounts shown.

SCOPE

Street and parking lot pavement resurfacing including but not limited to approximately 10,000 tons of asphalt resurfacing and approximately 9000 sq. yds. of asphalt milling. There are no federal funds in this project.

The project includes resurfacing of various asphalt streets within the City of Hickory corporate limits and other City related properties in Catawba County (i.e. wastewater treatment plant in Catawba) in accordance with the plans and specifications. Owner shall provide a list of streets to be resurfaced by the Contractor and shall reserve the right to add or deduct from the list and adjust termination points on selected streets. List of streets shall be provided after award of contract.

Exact pavement depth shall be established on a case-by-case basis by the Owner. The asphalt overlay shall consist of S 4.75 A, S 9.5 A or S 9.5 B surface course as chosen by the Owner. The Owner shall determine asphalt mix and compacted thickness for each project location. Asphalt materials and installation shall be according to NCDOT standards. Some minor wedging may be required as directed by the Engineer and will be paid at the per ton price in the bid.

Full width shall be construed to include the entire area covered by asphalt pavement, which includes the gutter in some sections. At the intersections of the various roads, the overlay shall extend onto the intersecting roadway a sufficient distance to provide a smooth transition onto the existing asphalt pavement of the intersecting roadway. The milled section shall extend approximately 20 feet away from the edge of the intersecting street with the milling depth tapering from 1 1/2" to zero to ensure a smooth transition. Tack shall be placed only on one (1) lane at a time unless approved by the City representative. Paving and rolling operations shall be completed on the first lane before tack is applied to the second lane to allow traffic to be diverted to the resurfaced lane. The paving machine shall not be placed on the newly resurfaced lane.

At the drive entrances adjacent to the street, asphalt shall be placed on the concrete drive entrance aprons beyond the existing edge of asphalt to provide a smooth transition onto the drive entrances. In parking lots, the existing asphalt may be milled to provide a smooth transition with existing concrete driveway/sidewalk aprons.

Retainage in the amount of ten percent (10%) shall be deducted from each payment request. Owner shall not pay final ten percent (10%) retainage until all punch list items are completed and all work accepted by Owner.



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Project Schedule

FALL 2015 SCHEDULE:

September 15, 2015: Notice to Proceed
November 15, 2015: Contract completed on or before 5:00 p.m.

SPRING 2016 SCHEDULE:

March 15, 2016: Notice to Proceed
May 30, 2016: Contract completed on or before 5:00 p.m.

The City reserves the right to adjust the time line established above, reject any and all Bids, and reject any Bid Items that best meets the needs of the City.

There are no liquidated damages for this contract.

The Owner and Contractor shall discuss and agree upon specific start and finish date to perform each phase of the work. A phase of work shall consist of one or more specific streets or parking lots designated for milling and/or resurfacing. The Contractor shall meet these mutually agreed-upon dates in order to minimize confusion of the affected residents, landowners and travelling public. If the Contractor fails to begin work on the agreed-upon date for any reason other than inclement weather, then the Owner will give written notice to the Contractor that the Contract may be terminated after the second time the Contractor fails to begin a phase of work as scheduled. The Owner shall not be penalized in any way for termination of the Contract.

If the Contractor fails to complete all phases of work within the Schedules listed above, then the Owner reserves the right to terminate the contract immediately.

The schedule(s) and conditions in this Invitation To Bid and Contract shall not be affected by any other contracts entered into by the Bidder with the Owner.

Contractor's Responsibilities:

1. Visit the project site prior to submitting his bid and becoming familiar with site constraints, existing structures and project scope.
2. Attend a Pre-construction Conference with the Owner before any work begins.
3. After award of contract, visit the selected site(s) with City personnel to discuss traffic control, site constraints and project scope.
4. Attend pre-paving meeting with the Owner prior to each phase of work to verify project conditions, project expectations, mix formulas and traffic control.
5. **Contractor shall perform resurfacing work on selected streets and /or parking lots within the Fall Schedule and Spring Schedule listed above. There are no liquidated damages. Refer to Project Schedule above for special contract conditions.**
6. All work shall be performed Monday through Friday during daylight hours unless night-time and/or weekend work is pre-approved by the Owner in writing.
7. Coordinate all work with Streets Department Personnel and Engineer. **Contractor shall notify Engineer at least 72 hours before work begins on street resurfacing. Contractor shall notify Engineer at least 7 calendar days before work begins on parking lot resurfacing.**
8. Obtain and pay for all contractors' permits.
9. Contractor shall provide temporary toilet facilities to the work zone at all times.
10. Provide work with respect to Contractor's trade in accordance with the plans and specifications. **Any and all sub-contractors proposed to be used by the Prime Contractor must be approved by the City before Notice to Proceed is issued.**
11. Provide all materials, labor and equipment necessary to provide a finished asphalt resurfacing in accordance with NCDOT standards. The Owner reserves the right to test finished work to verify quality.

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12. Provide, pay for and maintain traffic control, temporary barricades, construction signs and warning devices as necessary in accordance with the most current Manual on Uniform Traffic Control Devices (MUTCD) and NCDOT standards.
13. Provide and pay for certified flaggers at all locations where two-way traffic cannot be maintained and at all intersections where motorists may approach an active work zone. All flaggers shall carry proof of certification while on duty or they will be required to be replaced with flaggers with proof of certification.
14. An NCDOT certified quality control representative of the Contractor shall be on site at all times during paving operations.
15. Remove all debris generated by the Contractor. Remove safety fences, barricades and all other temporary safety measures installed by General Contractor after all work is complete.
16. Properly dispose of all debris and materials removed during construction. Remove all excess plant mix, dirt and grass from curb/gutters, sidewalks, driveways, lawns and medians generated from resurfacing operations the same day that paving operations occurred.
17. Requests for payment shall be submitted on standard forms approved by the City on or before the 25th day of the month. Requests for payment shall include notarized, original tax statements. Certified Payroll forms (Federally funded projects only) shall be submitted with payment request. Unit quantities must be clearly stated on the payment requests. Failure to provide all required documentation with the payment request may delay payment to Contractor.
18. Adjust utilities including manholes and valves to correct elevation to match proposed pavement. Contractor is to provide all labor and equipment necessary to raise manholes covers and valves boxes to proposed pavement elevation. All materials used for adjustments are to be provided to the job site by City of Hickory prior to work beginning.
19. Where applicable, colored and stamped concrete crosswalks are to be protected from damage and discoloration including tracking of asphalt during paving operations.
20. Contractor shall provide at least one (1) copy of each delivery ticket to the City personnel on site during paving operations. Contractor shall retain at least one copy of all delivery tickets. Each delivery ticket must state the street name, date, time, product description and origin of the material.
21. Contractor is responsible for any and all damage to private and public property.

The City of Hickory's Responsibilities:

1. Hold a pre-construction conference with Contractor and City of Hickory personnel.
2. Hold a pre-paving meeting with the Contractor and his job foreman prior to each phase of work to verify project conditions, project expectations, mix formulas and traffic control.
3. Review and approve any and all sub-contractors if utilized by Contractor.
4. Provide one (1) or more representative on site at all times to monitor progress and receive delivery tickets.
5. Furnish manhole adjustment rings and water valve adjustment rings to Contractor for installation by Contractor.
6. Provide all temporary and permanent pavement striping.
7. Promptly respond to Contractor's questions and concerns.
8. Process Contractor's payment request(s).



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BID FORM & GENERAL CONTRACT

The undersigned, as bidder, hereby declares that the only person(s) interested in the proposal as principal(s) is, are, named herein, and that no other person has any interest in this proposal, or in the contract to be entered into; that this proposal is made without connection with any other person, company, or parties making a bid proposal, and that it is in all respects, fair and in good faith, without collusion or fraud.

The bidder further declares that he has informed himself fully about all conditions regarding this bid, that the **BIDDER HAS EXAMINED DESCRIPTION OF WORK, SPECIFICATIONS AND ALL RELATED DOCUMENTS** for the above mentioned Project and that he has satisfied himself about performance required by this bid.

The bidder agrees that if this bid is accepted, to contract with the City of Hickory in the form of contract specified, to furnish all necessary management, supervision, equipment, tools, materials, apparatus, means of transportation, and labor necessary to complete the contract in full and in complete accordance with the specifications and contract documents, to the full and entire satisfaction of the City, at the prices and amounts shown.

The Bidder warrants that bid prices, terms and conditions quoted in the bid will be firm for a period of sixty (60) days from opening date or other time as specified in this request.

By submitting this bid, Contractor agrees to coordinate his schedule with the City of Hickory forces working on this project to the fullest extent possible.

The City of Hickory reserves the right to deduct items above as deemed in the best interest of the City. The Bidder further proposed and agrees hereby to commence work under his contract on a date to be specified in a written order of the Designer.

BONDING

- A. BID BOND: REQUIRED TO BE IN THE AMOUNT OF FIVE (5) PERCENT OF THE TOTAL BID AMOUNT.** Bond may be in the form of cash, cashier's check, certified check, or bid bond issued by a surety licensed to do business in North Carolina and approved by the City. Bids submitted without the required Bid Bond will not be considered. The City may annul the award of contract and bid deposits or bonds shall be retained by the City if the successful bidder fails to execute a Contract or accept a Purchase Order within the (10) days after award of bid or fails to give satisfactory surety as required for this bid.
- B. PERFORMANCE BOND:** Required in the full amount of the stated Bid amount.
- C. PAYMENT BOND:** Required in the full amount of the stated Bid amount.



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The City reserves the right to reject any and all bids; and reject any bid items that fail to meet the needs of the City.

Contractor(s) shall submit a certified Sales Tax Report (attached) with each pay request.

Bidders should have no contact with elected or appointed officials regarding this bid during the bid process. Any such contact will subject the bidder to immediate disqualification.

The below bid amount includes all specifications and addendums.

Acknowledge Addendum # 1

Date 7/20/15

Acknowledge Addendum # _____

Date _____

Acknowledge Addendum # _____

Date _____

UNIT PRICE BID FORM ON THE FOLLOWING PAGE

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Please type in the form if possible.

FALL 2015 Schedule

	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	ITEM PRICE
1	Asphalt Concrete Surface Course, Type S 9.5 A	Ton	2500	50.50	126,250.00
2	Asphalt Concrete Surface Course, Type S 9.5 B	Ton	2000	50.00	100,000.00
3	Asphalt Concrete Surface Course, Type S 4.75 A	Ton	500	56.00	28,000.00
4	Asphalt Binder for Plant Mix, Grade PG 64-22 (7/1/14)	Ton	325	536.00	174,200.00
5	Asphalt Milling	Sq Yd.	4500	7.00	31,500.00

SRING 2016 Schedule

	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	ITEM PRICE
6	Asphalt Concrete Surface Course, Type S 9.5 A	Ton	2500	50.50	126,250.00
7	Asphalt Concrete Surface Course, Type S 9.5 B	Ton	2000	50.00	100,000.00
8	Asphalt Concrete Surface Course, Type S 4.75 A	Ton	500	56.00	28,000.00
9	Asphalt Binder for Plant Mix, Grade PG 64-22 (7/1/14)	Ton	325	536.00	174,200.00
10	Asphalt Milling	Sq Yd.	4500	7.00	31,500.00

Total project cost (Add Items 1 through 10):

\$ 919,900.00 (numeric format)

\$ Nine hundred nineteen thousand nine hundred ^{dollars} (written format)

Total project cost bid price above includes all work as stated in Scope of work, under Contractor's Responsibilities, and as specified Bid price includes all management, insurance, supervision, materials, equipment, labor and State/local sales tax required for a complete paving project. The cost of items not listed shall be distributed among the various pay items.

Asphalt Binder for Plant Mix shall be paid by unit price in accordance with the attached published NCDOT Price Adjustment Procedures.

Bid shall not be qualified with any statements on the bid forms or by separate attachment



CITY of HICKORY
Invitation to Bid and Contract

Project Title:

Bid Number:

Pavement Resurfacing for 2015-16

16-002

To be signed by the City of Hickory:

Acceptance and entry into this Agreement by and on behalf of the City of Hickory is made this _____ day of _____, 20__.

CITY OF HICKORY,
A North Carolina Municipal Corporation

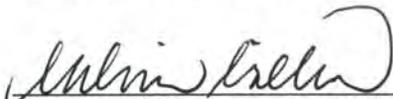
(SEAL)

Mick W. Berry, City Manager

Attest:

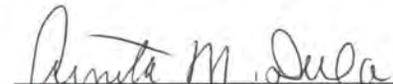
Debbie D. Miller, City Clerk

This document has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.



Melissa Miller, Finance Officer

Approved as to form on behalf of the City of Hickory only:



Arnita M. Dula, Staff Attorney

Adjusted contract unit prices for all grades of asphalt binder, including additional asphalt binder materials in recycled mixtures, will be based on the average selling price and base price index for asphalt binder, Grade PG 64-22, regardless of the actual grade required by the JMF.

In determining the adjusted contract unit price for any material specified in this section the following formula will be used:

$$A = B + (D - C)$$

Where:

A = Adjusted Contract Unit Price

B = Contract Unit Price

C = Base Price Index

D = Monthly Average Terminal F.O.B. Selling Price

In the event the Department is unable to secure an F.O.B. selling price from at least 4 terminals in a given month, payment will be at the contract unit price for each ton of asphalt binder used in the work during that month.

Payment will be made under:

Pay Item	Pay Unit
Asphalt Binder for Plant Mix.....	Ton
Polymer Modified Asphalt Binder for Plant Mix.....	Ton

The monthly average terminal F.O.B. selling price (Monthly Price Index) will be available by the fifth day of each month on the North Carolina Department of Transportation Pavement Construction Section Web Site:

www.doh.dot.state.nc.us/operations/dp_chief_eng/constructionunit/paveconst/AsphaltMgmt/acprices/

Base Price Index for Asphalt Binder for Plant Mix (Base Price Index)

The base price index for Asphalt Binder for Plant Mix (Base Price Index) to be included in a proposal/contract along with the applicable date will be the Monthly Price Index in effect two months prior to the month in which the contract is let. For example, the Base Price Index for contracts let in April 2012 would be the Monthly Price Index determined for February 2012. The Base Price Index for a given contract will remain fixed throughout the life of the contract.

Termination of Price Adjustment - Asphalt Binder For Plant Mix

If asphalt binder suppliers do not provide F.O.B. selling prices from at least four terminals in a given month, the Contractor will be paid the contract unit price for asphalt binder used in the work during that month.

If suppliers do not provide F.O.B. selling prices from at least four terminals in a given month, the asphalt binder price adjustment provision will not be included in proposals for appropriate future letting.

Contract Unit Price Adjustment Procedures

When it is determined that the Monthly Price Index of asphalt binder on the first business day of the calendar month during which the last day of the partial payment period occurs varies either upward or downward from the Base Price Index in the contract, the contract unit price for asphalt binder for plant mix will be adjusted. The adjusted contract unit price will be determined by adding the difference between the selling price and the base price index to the contract unit bid price for asphalt binder.

The adjusted contract unit price will then be applied to the total theoretical quantity of asphalt binder authorized for use in the plant mix placed during the partial payment period involved, except that where recycled plant mix is used, the adjusted unit price will be applied only to the theoretical number of tons of additional asphalt binder materials required by the JMF.

December 2011

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PRICE ADJUSTMENT PROCEDURES FOR
ASPHALT BINDER FOR PLANT MIX**

Article 620-4 of the *2012 Standard Specifications* states that adjustments will be made to payments due the Contractor for each grade of asphalt binder when it has been determined that the monthly average terminal F.O.B. Selling Price of asphalt binder, Grade PG 64-22, has fluctuated from the Base Price Index for Asphalt Binder included in the Contract. The specifications also state that the methods for calculating the monthly average terminal F.O.B. selling price, for calculating a base price index, and for determining the terminals used are in accordance with procedures on file with the Department's Construction Unit (Pavement Construction Section). These methods and procedures, including procedures for determining the adjusted contract unit price, are as follows.

Determination, Addition and/or Deletion of Terminals Included in Index

All terminals supplying asphalt binder for use on state projects in North Carolina will be given an opportunity to be included in the index average. A review will be made by the Department after the end of each calendar year to determine which terminals supplied asphalt binder on a regular basis during the previous year. Based on the results of this review, adjustments will be made annually to the listing of terminals used in determining the Monthly Price Index for asphalt binder. Any adjustments will be effective beginning with the May Monthly Price Index and the Base Price Index for the July letting of each year.

**Monthly Average Terminal F.O.B. Selling Price of Asphalt Binder, Grade PG 64-22
(Monthly Price Index)**

Asphalt binder suppliers included on the listing of terminals used for the index will furnish to the Department by 12:00 noon on the 1st of the month or the next workday after the 1st of the month for each terminal F.O.B. selling price of Asphalt Binder, Grade PG 64-22 in effect on the first day of each month at each terminal. The monthly average terminal F.O.B. selling price (Monthly Price Index) will then be determined based on a procedural average of the terminal F.O.B. selling prices by omitting a single terminal with the highest price and a single terminal with the lowest price and then averaging the remainder of the prices furnished by the suppliers. The average will be rounded to the nearest penny and that number will be used as the Monthly Price Index for asphalt binder for that particular month. In the event that a supplier does not furnish a price to the Department for a specific terminal on the list, then the Monthly Price Index will be determined from the remaining terminals.

18

COUNCIL AGENDA MEMOS

Exhibit VIII.N.

To: City Manager's Office
From: Arnita M. Dula
Contact Person: Arnita M. Dula
Date: 7-28-15
Re: Resolution to Reaffirm City Council's Support of the Deidra Lackey Memorial Garden Park Project

REQUEST

Staff requests Council to consider the Resolution Declaring the Hickory City Council's Intent to Reaffirm Their Continued Support and Approval of the Deidra Lackey Memorial Park Project

A Resolution Declaring the Hickory City Council's Intent to Reaffirm Their Continued Support and Approval of the Deidra Lackey Memorial Park Project

BACKGROUND

Robert Lackey, a citizen of Hickory, has expressed his desire to memorialize his late wife, Deidra Lackey, by constructing a waterfront memorial park, which will include certain facilities, gardens, and other amenities, on certain tracts located in Rotary-Geitner Park. The memorial park facilities would be a gift to the City of Hickory and the public.

ANALYSIS

The memorial park facilities would be a gift to the City of Hickory and the public. In addition, based on its location the memorial park would serve as an enhanced entry point the proposed river walk.

Council has previously expressed its support for the project at other council meetings. The proposed resolution reaffirms council's support for the project.

RECOMMENDATION

Staff recommends Council adopt the Resolution Declaring the Hickory City Council's Intent to Reaffirm Their Continued Support and Approval of the Deidra Lackey Memorial Park Project.

Informational

(Some info items will not have to appear on the Council agenda, but will be communicated to Council in weekly Communication format. These items will still require a Council Agenda Memo)

Requires Council Approval

(All new or revisions in Ordinances or Council enacted policies, as well as contracts/agreements over \$100,000 will be placed on Agenda)

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

Source of City/State/Federal funds?

Revenues

State/Federal Funds: (Codes)

- - . -
- - . -

\$
\$

City Funds: (Codes)

- - . -
- - . -

\$
\$

Other Financial Resources: (Codes)

- - . -
- - . -

\$
\$

In-kind Services: (Describe)

\$
\$

TOTAL

Expenditures: (Codes)

- - . -
- - . -
- - . -
- - . -

\$
\$
\$
\$
\$

TOTAL:

Reviewed by:

Arnita M. Dula
Initiating Department Head

Date

Arnita M. Dula
Deputy City Attorney, A. Dula

7-28-15
Date

Rodney Miller
Asst. City Manager, Rodney Miller

7-29-15
Date

A. Surratt
Asst. City Manager, A. Surratt

Date

Melissa Miller
Finance Officer, Melissa Miller

7-29-15
Date

Bo Weichel
Purchasing Manager, Bo Weichel

7-29-15
Date

Recommended for approval and placement on _____ Council agenda (as Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

RESOLUTION NO. 15-22

RESOLUTION OF INTENT

A Resolution Declaring the Intention of the City Council of the City of Hickory to Reaffirm Their Continued Support and Approval of the Deidra Lackey Memorial Park Project to be Located at the City of Hickory's Rotary-Geitner Park

WHEREAS, the City of Hickory owns and operates a number of city parks and recreational facilities, including the Rotary-Geitner Park ("Geitner Park"), to provide multiple recreational opportunities to the public; and

WHEREAS, Robert Lackey, a citizen of Hickory, desires to memorialize his late wife, Deidra Lackey, by constructing a waterfront memorial park, which will include certain facilities, gardens, and other amenities, on certain tracts located in Geitner Park; and

WHEREAS, Mr. Lackey will construct the memorial park facilities as a gift to the City of Hickory and the public; and

WHEREAS, Mr. Lackey also desires to continue partnering with the City in the expansion, operation, and maintenance of the memorial park facilities; and

WHEREAS, City staff and Mr. Lackey presented his proposal to the Hickory City Council ("Council") at its August 20, 2013 meeting; and

WHEREAS, upon hearing the presentation, Council unanimously voted for the proposed project to go forward thus expressing Council's commitment and support of Mr. Lackey's intent to benefit the City of Hickory and the public with this valuable gift; and

WHEREAS, a joint City Council and Parks and Recreation meeting was held on May 12, 2015. Following presentations and discussions concerning the conceptual site plan for the memorial park, an introduction to the agreements required for the project, and the city's partnership with Mr. Lackey, the Council unanimously voted to approve the conceptual site plan as presented; and

WHEREAS, at a special called meeting on June 22, 2015, Council participated in an extensive review of drafts of three proposed agreements for the memorial park project and Council expressed general consensus that they looked forward to the great partnership with Mr. Lackey.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory that:

1. The Hickory City Council reaffirms its continued support of Mr. Lackey intention to construct a memorial park at Geitner Park to honor his late wife and as a gift to the City and the public.

2. Council further reaffirms its support for Mr. Lackey to move forward with the detailed design plans for the project.
3. Council further acknowledges that Mr. Lackey and the City will memorialize their mutual support of the memorial park project by executing formal documents, and more specifically Grant/Construction Easement, Conservancy, and Burial Agreements, in the near future. These agreements will delineate the specific rights and responsibilities of the respective parties.

Approved the 4th day of August, 2015.

THE CITY OF HICKORY,
A North Carolina Municipal Corporation

ATTEST: (Seal)

By: _____
Rudy Wright, Mayor

Debbie D. Miller, City Clerk

Approved as to Form:

Attorney for the City of Hickory

GRANT PROJECT ORDINANCE AMENDMENT # 1

BE IT ORDAINED by the Governing Board of the City of Hickory, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, that the following amendment be made to the grant project ordinance for the duration of the project.

SECTION 1. To amend the Grant Project Fund, the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
General Capital Project - General Fund	836,563	6,563
TOTAL	836,563	6,563

To provide the additional revenue for the above, the revenues will be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Restricted Governmental Revenue (Federal)	664,000	
Other Financing Sources	166,000	-
TOTAL	830,000	-

SECTION 2. Copies of the grant project ordinance amendment shall be furnished to the Clerk of the Governing Board, and to the City Manager (Budget Officer) and the Finance Officer for their direction.

Adopted this _____ day of _____, 2015

Mayor

Clerk

BUDGET ORDINANCE AMENDMENT # 2

BE IT ORDAINED by the Governing Board of the City of Hickory, that pursuant to Section 15 of Chapter 159 of the General Statutes of North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, 2016.

SECTION 1. To amend the General Fund the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Uses	900,000	
TOTAL	900,000	-

To provide the additional revenue for the above, the revenues will be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Sources	900,000	-
TOTAL	900,000	-

SECTION 2. To amend the Transportation Fund the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Transportation	900,000	-
TOTAL	900,000	0

To provide the additional revenue for the above, the revenues will be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Sources	900,000	-
TOTAL	900,000	0

SECTION 3. To amend the Capital Reserve Fund, the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Uses	166,000	
TOTAL	166,000	-

To provide the additional revenue for the above, the revenues will be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Sources	166,000	-
TOTAL	166,000	-

SECTION 4. Copies of the budget ordinance amendment shall be furnished to the Clerk of the Governing Board, and to the City Manager (Budget Officer) and the Finance Officer for their direction.

Adopted this _____ day of _____, 2015

Mayor

Clerk

COUNCIL AGENDA MEMOS

To: City Manager's Office

From: Planning & Development Services Department

Contact Person: Cal Overby, Principal Planner

Date: July 23, 2015

Re: Public Hearing – Voluntary Contiguous Annexation Burgin – Hickory Properties, LLC

REQUEST

Consideration of the voluntary contiguous annexation of 2.001 acres (87,163.56 ft²) of property located at 2191 13th Avenue Drive SE.

BACKGROUND

Burgin – Hickory Properties, LLC has submitted a petition for the voluntary contiguous annexation of 2.001 acres of property located at 2191 13th Avenue Drive SE. The annexation area consists of a commercial development site, which is the proposed future location of a Sheetz retail facility.

ANALYSIS

The submitted petition is a request for consideration of the voluntary contiguous annexation of 2.001 acres of commercial property located at 2191 13th Avenue Drive SE.

The owners of the property are seeking annexation in order to obtain utility services (water & sewer) for a commercial development site. The subject property is planned to be developed as the location of a ~6,900 ft² Sheetz retail facility. The subject property is currently located within the City's extra-territorial jurisdictional area (ETJ), and is zoned Regional Commercial (C-3).

The current tax value of the vacant land is \$588,364.00. If annexed with its present value, the property would generate approximately \$3,333.00 in additional tax revenues. This estimate will increase as a result of the proposed development project. The developers of the property have projected construction costs to be approximately \$4,000,000.00.

Upon analysis, staff has determined the petition meets the statutory requirements for voluntary contiguous annexation, and adequate public services are available.

RECOMMENDATION

Staff finds the petition to be in conformity with applicable statutes, and recommends approval of the voluntary annexation petition.

BUDGET ANALYSIS:

Budgetary Action

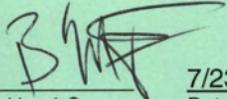
Is a Budget Amendment required?

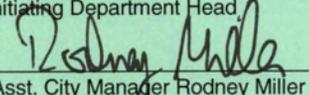
Yes

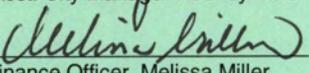
No

LIST THE EXPENDITURE CODE:

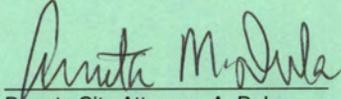
Reviewed by:

Brian Frazier 
Initiating Department Head 7/23/2015
Date

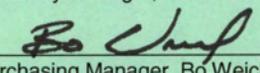
Rodney Miller 
Asst. City Manager 7-28-15
Date

Melissa Miller 
Finance Officer, 7-28-15
Date

Date

A. Dula 
Deputy City Attorney, 7-27-15
Date

Asst. City Manager, A. Surratt Date

Bo Weichel 
Purchasing Manager, 7-28-15
Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

CITY OF HICKORY
APPLICATION FOR VOLUNTARY ANNEXATION

DATE SUBMITTED: 6-16-15

TO THE CITY COUNCIL OF THE CITY OF HICKORY, NORTH CAROLINA:

I (We), the undersigned, do hereby respectfully make application and petition for voluntary annexation into the municipal limits of the City of Hickory, and have provided an annexation plat meeting the requirements of the City of Hickory

1. The property be voluntarily annexed is located ~~on~~ in the Northwest quadrant of the intersection of the R/W for ~~between~~ McDonald Parkway, S.E. and 13th Avenue Drive, S.E. and is shown in more detail on the attached survey.

PIN NO. (S): Portion of 3712 2080 2156

Physical (Street) Address: unknown (2191 13th A. D. SE)

2. The property is owned by: (please print) Burgin-Hickory Properties, LLC
 (Attach a copy of the most recent deed, contract for purchase or other legal interest demonstrating an interest in the property.) Deed Book 2068, Page 1446

Owner Information:

Name: Burgin-Hickory Properties, LLC

Address: P.O. Box 2610, Hickory, NC 28603

Phone Number: 828-381-5820

3. The petition is submitted by: Burgin-Hickory Properties, LLC
 (If the Petition is submitted by someone other than the owner, the attached agent authorization must be signed, notarized and submitted from the owner(s) authorizing the agent to act on his behalf.)

Agent Information: N/A

Name: _____

Address: _____

Phone Number: _____

4. If annexation is approved by the Hickory City Council, and if the property(s) is not currently zoned by the City of Hickory, the applicant would request that the property be placed into a _____ zoning district.

5. APPLICANT'S AFFIDAVIT

We, the undersigned Applicant, hereby certify that the information contained herein and submitted in support of this application is true and correct and the property owner's list and associated envelopes were obtained using the most recent Tax Office property information and are true, correct and complete.

Burgin-Hickory Properties, LLC
Printed Name of Applicant

[Signature]
Signature of Applicant

P.O. Box 2610, Hickory, NC 28603
Address of Applicant

828-381-5820
Telephone Number of Applicant

(Please choose the appropriate notary block)

State of North Carolina – County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of this foregoing instrument for the purposes expressed herein. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20____.

My Commission Expires: _____
Notary Public

State of North Carolina – County of Catawba

I, the undersigned Notary Public of the County and State aforesaid, certify that Howard L. Pruitt, Alexander personally came before me this day and acknowledged the he / ~~she~~ is the Managing Member of Burgin-Hickory Properties, LLC ~~corporation /~~ limited liability corporation / ~~general partnership / limited partnership~~ (strike through the inapplicable), and that by authority duly given and as the act of such entity he /she signed the foregoing instrument in its mane on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 15 day of June, 20 15.

My Commission Expires: 9-5-2016
Notary Public Dorene Orthey



CONTIGUOUS ANNEXATION
BY THE CITY OF HICKORY

KNOWN AS:

BURGIN – HICKORY PROPERTIES, LLC

That certain parcel or tract of land lying and being about 3.2 miles east southeast of the center of the City of Hickory. Bounded on the north by the south right-of-way line of Interstate 40 exit ramp and existing City of Hickory city limits line as shown in Plat Book 40 at Page 84, on the east by the west right-of-way line of McDonald Parkway and existing City of Hickory city limits line as shown in Plat Book 51 at Page 11, on the south by the north right-of-way line of 13th Avenue Drive SE and existing City of Hickory city limits line as shown in Plat Book 72 at Page 101, and on the west by other lands of Burgin – Hickory Properties, LLC as shown in Plat Book 74 at Page 196 and more particularly described as follows to/wit:

Beginning at a R/W disk in the south right-of-way line of Interstate 40 exit ramp and in the existing City of Hickory city limits line as shown in P.B. 40 at Pg. 84, said R/W disk having North Carolina Grid Coordinates of N 720,122.177, E 1,328,377.771 (NAD 83) and running thence, as the west right-of-way line of McDonald Parkway and existing City of Hickory city limits line as shown in P.B. 51 at Pg. 11, the following calls: South 04 degrees 55 minutes 19 seconds East 197.51 feet to a R/W disk in said city limits line, thence South 12 degrees 09 minutes 45 seconds West 186.18 feet to a R/W disk in the north right-of-way line of 13th Avenue Drive SE and existing City of Hickory city limits line as shown in P.B. 72 at Pg.101; thence, as said city limits line, North 64 degrees 26 minutes 07 seconds West 307.50 feet to a 0.04' rebar in said city limits line; thence, a new City of Hickory city limits line, North 25 degrees 33 minutes 53 seconds East 337.60 feet to a 0.04' rebar in the south right-of-way line of Interstate 40 exit ramp and existing City of Hickory city limits line as shown in P.B. 40 at Pg. 84; thence, as said city limits line, South 69 degrees 12 minutes 36 seconds East 164.71 feet to the beginning. Containing 2.001 acres more or less.

VOLUNTARY CONTIGUOUS ANALYSIS

APPLICANT: Burgin – Hickory Properties, LLC

AGENT: Howard Pruitt

PROPERTY LOCATION (See Map 1): 2191 13th Avenue Drive SE

PIN NUMBER: 3712-20-89-7992

WARD: If annexed, the subject property will be located in Ward 3 (Councilman Seaver).

REQUESTED ACTION: The request is for a voluntary contiguous annexation. The annexation is being requested to obtain connections to the City’s water and sewer system.

ACREAGE: 2.001 acres (87,163.56 ft²)

DEVELOPMENT POTENTIAL: The subject property is currently located in the City’s extra-territorial jurisdictional area (ETJ), and zoned Regional Commercial (C-3). Properties located within Regional Commercial (C-3) districts can be developed for a variety of commercial and office uses, as well as for multi-family residential. Non-residential development is permitted at a floor area ratio (FAR) of 0.85, which could theoretically equate into 74,089 ft² of commercial building space. Multi-family residential is permitted at a rate of 30 units per acre, which could theoretically equate into 60 dwelling units. The property is proposed to be developed for the location of a ~6,900 ft² retail facility (Sheetz convenience store).

TAX VALUE: The current tax value of the vacant land is \$588,364.00. If annexed with its present value, the property would generate approximately \$3,333.00 in additional tax revenues. This estimate will increase as a result of the proposed development project. The developers of the property have projected construction costs to be approximately \$4,000,000.00.

POPULATION INCREASES: As previously outlined, the property is proposed to be developed for commercial purposes, and as such, the annexation would not directly increase the City’s population. While neither the owner nor the developer of the property intends to construct housing units, it should be duly noted the existing zoning does permit for the construction of multi-family dwellings. Should plans change and multi-family dwellings be constructed on the property, the City’s population could potentially increase by 144 residents (60 potential dwelling units X 2.41 average household size).

SCHOOL DISTRICTS: The property is located within the jurisdictional area of the Catawba County Public School System, and located in the following school districts:

School Type	School District	Student Multiplier Per Dwelling	Number of Potential Dwelling Units	Potential Additional Students
Elementary	Blackburn	0.08	60	4.8
Middle	Jacobs Fork	0.03	60	1.8
High	Fred T. Foard	0.05	60	3

**Note: The student multipliers above reflect numbers for multi-family dwellings only.*

SURROUNDING LAND USE AND ZONING (See Maps 2 & 3):

- **North:** The properties across Interstate are zoned Industrial (IND), and are occupied by a quarry (Martin-Marietta) and a manufacturing operation (Corning);
- **South:** The property is zoned Regional Commercial (C-3), and is occupied by a shopping center (Valley Corners);
- **East:** The property across McDonald Parkway SE is zoned Regional Commercial (C-3), and is vacant; and
- **West:** The property is zoned Regional Commercial (C-3), and is vacant.

UTILITY SERVICE: Water and sewer are available to serve the property. The Developer shall be responsible for all cost associated with the design, permitting, and construction of the utility system. This shall include construction of lines to and across the property as approved by the Public Utilities Department on the NCDENR Permit applications for Collection and Distribution system extensions. The developer must pay for connections to the system at the then current rates and fees approved by City Council. After construction, NCDENR permitted Collection and Distribution lines are to be dedicated to the City for inclusion to the City's Public Utilities System.

ACCESS: Access to the subject property is available, and planned to be from 13th Avenue Drive SE.

DISTANCE FROM CITY LIMITS (See Map 1): The proposed annexation area is immediately adjacent to the City's existing corporate boundary on its northern, southern and eastern boundaries.

STAFF COMMENTS:

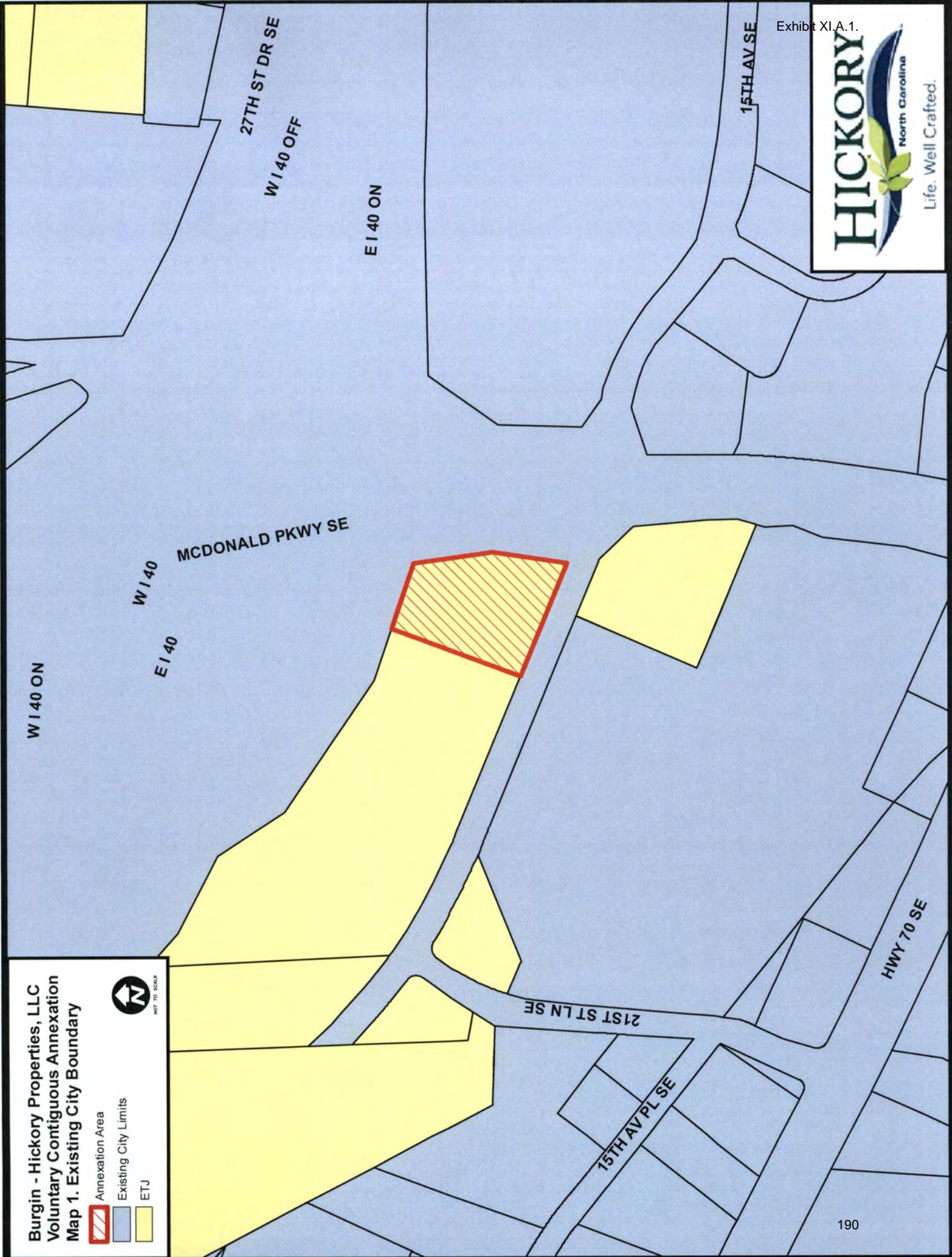
- **Fire Department:** Annexation of this property would not adversely affect the operations of the fire department. Property is currently in Engine 5 fire district and will remain.
 - Additional Comments:
 - Fire hydrants shall be provided and distributed in accordance to Chapter 11 of the Hickory City Code and the NC Fire Code. See Section 8.11.5 of the Land Development Code for minimum requirements.
 - Construction and use of the building shall comply with the NC Fire and Building Code.
 - As the area is developed, access to the building and fire hydrants shall be provided in accordance to the NC Fire Code and Chapter 11 of the Hickory City Code.
- **Police Department:** Police protection is adequate. The property will be located within the patrol area of Charles PACT.
- **Engineering:** No objections.
- **Planning:** No objections.
- **Public Services:** No objections.

- Public Utilities: Water and sewer are available to serve the property. The Developer shall be responsible for all cost associated with the design, permitting, and construction of the utility system. This shall include construction of lines to and across the property as approved by the Public Utilities Department on the NCDENR Permit applications for Collection and Distribution system extensions. The developer must pay for connections to the system at the then current rates and fees approved by City Council. After construction, NCDENR permitted Collection and Distribution lines are to be dedicated to the City for inclusion to the City's Public Utilities System.
- Legal: The property owner / developer must comply with all stipulations and requirements imposed by other departments.
- City Manager's Office: No objections.

STAFF RECOMMENDATION: Upon evaluation staff has found the following:

1. The voluntary annexation petition complies with all applicable statutes regarding the voluntary annexation of contiguous properties;
2. Adequate public services are available in sufficient quantities to properly serve the subject property; and
3. The annexation of the property will not cause available public services to fall below acceptable levels.

Based upon the findings provided above, staff recommends City Council approve the voluntary contiguous annexation petition.



**Burgin - Hickory Properties, LLC
Voluntary Contiguous Annexation
Map 1. Existing City Boundary**

 Annexation Area
 Existing City Limits
 ETJ

 NOT TO SCALE



Coming

Valley Corners Shopping Center

Burgin - Hickory Properties, LLC
 Voluntary Contiguous Annexation
 Map 2. Existing Land Use



NOT TO SCALE



Annexation Area

Note: Area shown in white is street right-of-way.

Exhibit XI.A.1.



**Burgin - Hickory Properties, LLC
Voluntary Contiguous Annexation
Map 3. Existing Zoning**

 Annexation Area
 Regional Commercial (C-3)
 Industrial (IND)



W I 40 ON

W I 40 MCDONALD PKWY SE

E I 40

27TH ST DR SE
W I 40 OFF

E I 40 ON

15TH AV SE

C-3

21ST ST LN SE

15TH AV PL SE

HWY 70 SE

PREPARED BY: LEGAL DEPARTMENT, CITY OF HICKORY
P.O. BOX 398, HICKORY, NC 28603

ANNEXATION ORDINANCE NO. 430

VOLUNTARY ANNEXATION ORDINANCE (CONTIGUOUS)

Burgin-Hickory Properties, LLC

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF HICKORY, NORTH CAROLINA, PURSUANT TO GENERAL STATUTES 160A-31, AS AMENDED (CONTIGUOUS)

WHEREAS, the City Council of the City of Hickory has been petitioned under G.S. 160A-31, as amended, to annex the area herein described; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said petition; and

WHEREAS, the City Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held in the Council Chambers of the Julian G. Whitener Municipal Building at 7:00 p.m. on the 4th day of August, 2015, after due notice by publication on July 17, 2015; and

WHEREAS, the City Council does find as a fact that said petition meets the requirements of G.S. 160A-31, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HICKORY, NORTH CAROLINA:

Section 1. By virtue of the authority granted by G.S. 160A-31, as amended, the following-described territory is hereby annexed and made a part of the City of Hickory

as of August 31, 2015

**CONTIGUOUS ANNEXATION
BY THE CITY OF HICKORY
KNOWN AS:
BURGIN – HICKORY PROPERTIES, LLC**

That certain parcel or tract of land lying and being about 3.2 miles east southeast of the center of the City of Hickory. Bounded on the north by the south right-of-way line of Interstate 40 exit ramp and existing City of Hickory city limits line as shown in Plat Book 40 at Page 84, on the east by the west right-of-way line of McDonald Parkway and existing City of Hickory city limits line as shown in Plat Book 51 at Page 11, on the south by the north right-of-way line of 13th Avenue Drive SE and existing City of Hickory city limits line as shown in Plat Book 72 at Page 101, and on the west by other lands of Burgin – Hickory Properties, LLC as shown in Plat Book 74 at Page 196 and more particularly described as follows to/wit:

Beginning at a R/W disk in the south right-of-way line of Interstate 40 exit ramp and in the existing City of Hickory city limits line as shown in P.B. 40 at Pg. 84, said R/W disk having North Carolina Grid Coordinates of N 720,122.177, E 1,328,377.771 (NAD 83) and running thence, as the west right-of-way line of McDonald Parkway and existing City of Hickory city limits line as shown in P.B. 51 at Pg. 11, the following calls: South 04 degrees 55 minutes 19 seconds East 197.51 feet to a R/W disk in said city limits line, thence South 12 degrees 09 minutes 45 seconds West 186.18 feet to a R/W disk in the north right-of-way line of 13th Avenue Drive SE and existing City of Hickory city limits line as shown in P.B. 72 at Pg.101; thence, as said city limits line, North 64 degrees 26 minutes 07 seconds West 307.50 feet to a 0.04' rebar in said city limits line; thence, a new City of Hickory city limits line, North 25 degrees 33 minutes 53 seconds East 337.60 feet to a 0.04' rebar in the south right-of-way line of Interstate 40 exit ramp and existing City of Hickory city limits line as shown in P.B. 40 at Pg. 84; thence, as said city limits line, South 69 degrees 12 minutes 36 seconds East 164.71 feet to the beginning. Containing 2.001 acres more or less.

Section 2. Upon and after the 31st day of August, 2015, the above-described territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Hickory. Said territory shall be subject to municipal taxes according to G.S. 160A-31 (e), as amended.

Section 3. That the newly annexed territory described hereinabove shall become a part of Ward No. 3 of the City of Hickory.

Section 4. The Mayor of the City of Hickory shall cause to be recorded in the Office of the Register of Deeds of Catawba County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section

1 hereof, together with a duly certified copy of this Ordinance.

Section 5. That all ordinances and clauses of ordinances in conflict with this Ordinance are hereby repealed.

Section 6. This Ordinance shall be in full force and effect from and after the 31st day of August, 2015.

ADOPTED THIS 4th DAY OF AUGUST, 2015.

Rudy Wright
Mayor

Mick Berry, City Manager

Approved As To Form:



Deputy City Attorney for the City of Hickory

CERTIFICATION OF ANNEXATION ORDINANCE

NORTH CAROLINA
CATAWBA COUNTY
CITY OF HICKORY

I, Debbie D. Miller, City Clerk of the City of Hickory, North Carolina, do hereby certify that the Annexation Ordinance of Burgin-Hickory Properties, LLC was adopted at a regular meeting of the Hickory City Council held on August 4, 2015, and that said Ordinance is in full force and effect on August 31, 2015.

City Clerk

NORTH CAROLINA
CATAWBA COUNTY

I, _____, a Notary Public in and for said County and State, do hereby certify that Debbie D. Miller, City Clerk of the City of Hickory, personally appeared before me this date and acknowledged the due execution of the foregoing certificate for the purposes therein expressed.

Witness my hand and notarial seal, this _____ day of _____, 2015.

Notary Public

My Commission Expires: _____

10

COUNCIL AGENDA MEMOS

Exhibit XI.A.2.

To: City Manager's Office
From: David Leonetti, Community Development Manager
Contact Person: David Leonetti Community Development Manager
Date: July 16, 2015
Re: Conduct Public Hearing to Consider Whisnant Hosiery Mills Local Historic Landmark Designation

REQUEST

Staff requests that City Council conduct a public hearing to consider an ordinance designating the Whisnant Hosiery Mills as a local historic landmark.

BACKGROUND

The Whisnant Hosiery Mills complex located at 74 8th Street SE was built in 1929 with significant expansions in 1937 and 1966. The complex serves as a reminder of the pivotal role that the hosiery industry played in the development of the City of Hickory. The property is now known as Moretz Mill and has recently undergone an extensive rehabilitation. The owners of the property have requested that the property be designated as a local historic landmark. The property has been listed on the National Register of Historic Places since 2013. The attached report and national register nomination provide more information about the property.

ANALYSIS

If the property is designated as a local landmark, all changes to the exterior of the building and site would need approval from the Hickory Historic Preservation Commission. Also, if designated, there would be a 50 percent deferral on all property taxes provided that property maintains its historic integrity. The property is currently assessed at \$2,518,300 by the Catawba County Tax Office.

RECOMMENDATION

Staff recommends that City Council approve the local landmark designation ordinance for the Whisnant Hosiery Mills property.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

There will be no expenditures required by this ordinance.

Reviewed by:

Brian M. Frazier

Initiating Department Head

7-16-15

Date

Aurita M. Dula

Deputy City Attorney, A. Dula

7-27-15

Date

Rodney Miller

Asst. City Manager Rodney Miller

7-28-15

Date

Asst. City Manager, A. Surratt

Date

Melissa Miller

Finance Officer, Melissa Miller

7-28-15

Date

Bo Weichel

Purchasing Manager, Bo Weichel

7-28-15

Date

Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

ORDINANCE NO. _____

AN ORDINANCE OF THE HICKORY CITY COUNCIL DESIGNATING THE WHISNANT HOSEY MILLS LOCATED AT 74 8TH STREET SE AS A LOCAL HISTORIC LANDMARK.

WHEREAS, North Carolina General Statutes § 160A-400.5 states that the City of Hickory may adopt an ordinance designating a property as a local landmark; and

WHEREAS, the City has complied with the required landmark designation procedures of § 160A-400.6 of the North Carolina General Statutes; and

WHEREAS, the Hickory Historic Preservation Commission conducted a public hearing on June 23, 2015 to consider the proposed designation; and

WHEREAS, the Hickory City Council conducted a public hearing on August 4, 2015 to consider the proposed designation; and

WHEREAS, Whisnant Hosiery Mill was constructed in 1929 and remains one of the most lasting reminders of the role that the hosiery industry played in the development of Hickory;

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

1. That the exterior of the property known as the Southern Railway Passenger Depot is hereby designated a local historic landmark pursuant to Part 3B, Article 19, Chapter 160A of the North Carolina General Statutes.
2. The property subject to this designation is located at 74 8th Street SE. This property is more specifically described GIS PIN 3702-08-99-4831 on the Catawba County Tax Maps.

3. That said designated property may be materially altered, restored, moved, or demolished only following the issuance of a Certificate of Appropriateness by the Hickory Historic Preservation Commission. An application for a Certificate of Appropriateness authorizing the demolition of said property may not be denied. However, the effective date of such a Certificate may be delayed in accordance with Chapter 160A, Article 19, Part 3B and amendments, thereto and hereinafter adopted. The regulations relating to Certificates of Appropriateness are found in the City of Hickory Land Development Code.
4. That nothing in this ordinance shall be construed to prevent or delay the ordinary maintenance or repair of any architectural feature in or on said property that does not involve a change of design, material, or outer appearance thereof, nor to prevent or delay the making of emergency repairs, nor to prevent or delay the construction, reconstruction, alteration, restoration; demolition, or removal of any such feature when a building inspector or similar official certifies to the Commission that such action is, required for the public safety because of an unsafe condition. Nothing herein shall be construed to prevent the property owner from making any use of this property not prohibited by other statutes, ordinances, or regulations.
5. That a suitable sign may be posted indicating that said property has been designated as historic property and containing any other appropriate information. If the owner consents, the sign shall be placed on said property. If the owner objects, the sign shall be placed on a nearby public right-of-way.
6. That the owners of the property known as the Whisnant Hosiery Mills be given the notice of this ordinance as required by applicable law and that copies of this ordinance be filed and indexed in the offices of the City Clerk, Catawba County Building Services Division, Catawba County Register of Deeds, and the Tax Supervisor as required by law.
7. This ordinance shall become effective upon adoption.

ORDAINED by the City Council of Hickory, North Carolina, this, the _____ day of _____, 2015.

(SEAL)

THE CITY OF HICKORY, a
North Carolina Municipal Corporation

Attest:

By: _____
Rudy Wright, Mayor

Debbie D. Miller, City Clerk

Approved as to form this _____ day of _____, 2015.

Attorney for the City of Hickory

**City of Hickory
Historic Preservation Commission
Local Historic Landmark Designation Report**

Property Name: Whisnant Hosiery Mills

Property Location: 74 8th Street SE (Parcel ID: 3702-08-99-4831)

Property Owner Information: Moretz Mills, LLC, 74 8th Street SE #220, Hickory, NC 28602

Proposed Boundary of Designation: The area proposed for designation is all of Parcel ID: 3702-08-99-4831 (2.53 acres). See Exhibit A for a map of the property.

Proposed level of design review: If designated, the Historic Preservation Commission will have design review authority over the exterior features of the building and site as described in Sections 5.5 and 2.7 of the Hickory Land Development Code.

Land Assessed Value: \$107,600

Buildings Assessed Value: \$2,410,700

Total Assessed Value: \$2,518,300

Date of Construction: The building was originally constructed in 1929, with expansions in 1937 and 1966.

Assessment of Significance: The Whisnant Hosiery Mills is historically significant because of its association events that have contributed significantly to the history of the City of Hickory. This is described more thoroughly in the attached National Register Nomination Report.

Historical Assessment of the Property: The property serves as a reminder of the pivotal role that the hosiery industry played in the development of Hickory. More information is included in the attached National Register Report.

Architectural Description of the Property: The attached National Register Nomination provides an overview of the architectural significance of the property. Since the completion of the report, the building has been extensively rehabilitated through a Historic Preservation Tax Credit project. This included removal of the boards covering the windows on the south elevation and complete restoration of the entire exterior and extensive interior renovations. Before and after photos of the interior rehabilitation are attached. Additional signage has been added on the south side of the building. The façade of 1929 section of the building was extensively altered when the 1966 addition took place. This section of the building has been extensively restored with windows, loading doors, and signage added to bring the building back to its original appearance. Windows have been added to the 1966 addition on the north side of the property to

allow light to enter the building. An emergency exit was also added on the west side of the building at the intersection of the 1966 addition and the older two story section to meet current life safety requirements. Photographs of the existing conditions are attached. The rehabilitation work was completed according to the Secretary of the Interior's Standards for Rehabilitation and approved by the National Park Service.

Assessment of Integrity

The integrity of the historic mill building is good, and it is discussed more throughout the attached nomination report. The following is an assessment of the building's integrity.

- **Design:** The mill is architecturally similar to other mills in Hickory and the immediate vicinity. The numerous additions that took place between 1937 and 1966 are similar to many of Hickory's hosiery mills that were constantly being expanded and improved to meet growing industrial demand.
- **Setting:** The mill located approximately a quarter mile south of the railroad tracks that are currently used by the Norfolk Southern Railroad. Many of the City's mills are located in mixed use areas that are near the railroad line. These mills are also often in close proximity to residential development that was used to house the company's workforce.
- **Workmanship:** The 1966 addition to the mill was constructed by D. Carroll Abee and is similar to other modernist industrial buildings in the Hickory. The earlier building sections appear to have similar workmanship to other hosiery mills built around the same time period.
- **Materials:** Much of the building's original materials have been retained, as described in the attached nomination report. The owner has used national and state historic preservation tax credits to redevelop the building while retaining its historical integrity. The additions and alterations that have taken place over the years have generally achieved their significance in their own right according to the national register nomination.
- **Feeling:** The property remains an expression of the role that the hosiery industry served in early twentieth century communities.
- **Association:** The mill building is located in its original location about a quarter mile south of the Norfolk Southern tracks in a predominately industrial area. Its direct association with the hosiery industry serves as a reminder of the role the industry played in the development of Hickory.

Staff Recommendation: After compiling this report and reviewing materials relevant to the history of the station, staff recommends that the Historic Preservation Commission recommend that Hickory City Council designate the Whisnant Hosiery Mills as a local historic landmark.

Exhibit A (Map of Subject Property)

The Whisnant Hosiery Mill
Subject property is outlined in yellow



Exhibit B (Property Photographs)

Photo 1 (North Side of Property)



Photo 2 (Northwest Side of Property)

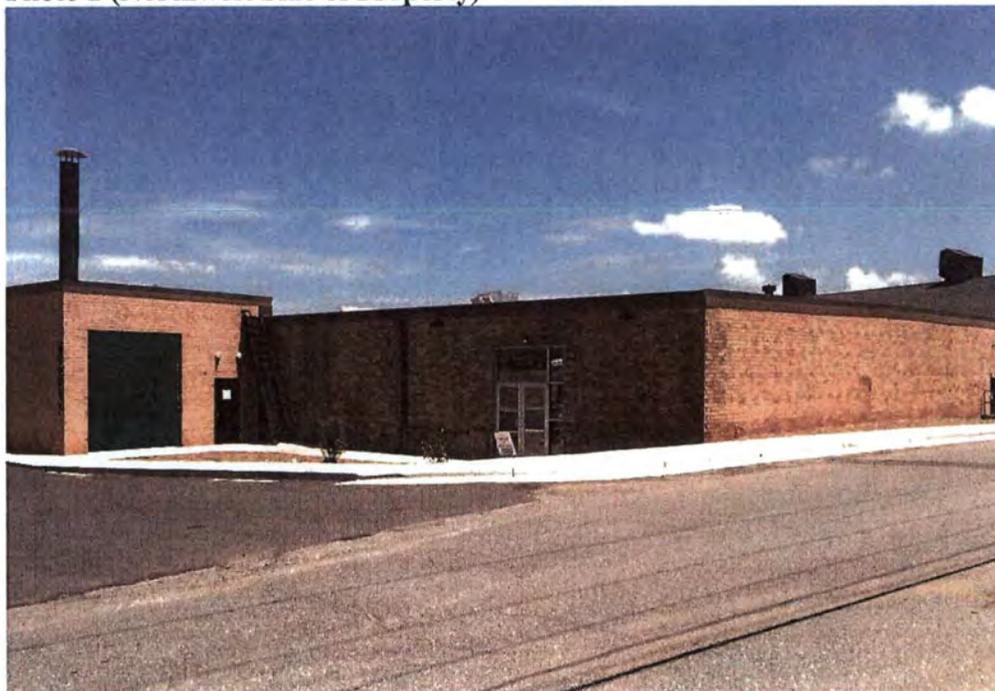


Photo 3 (West Side of the Property)

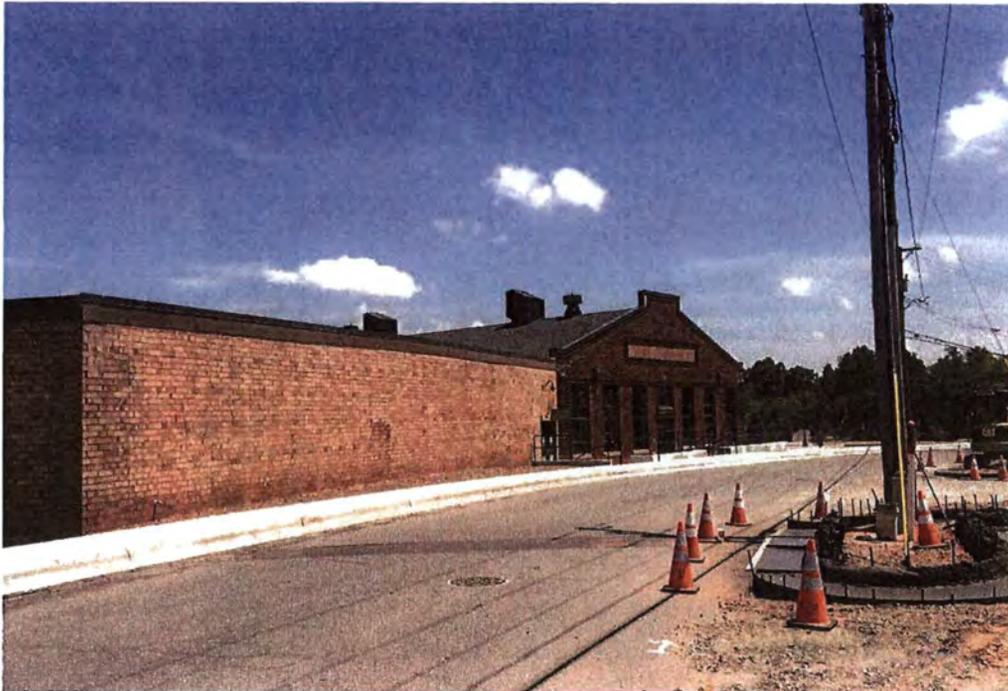


Photo 4 (South Side of the Property)



Photo 5 (Southeast Side of the Property)



Photo 6 (East Side of the Property)

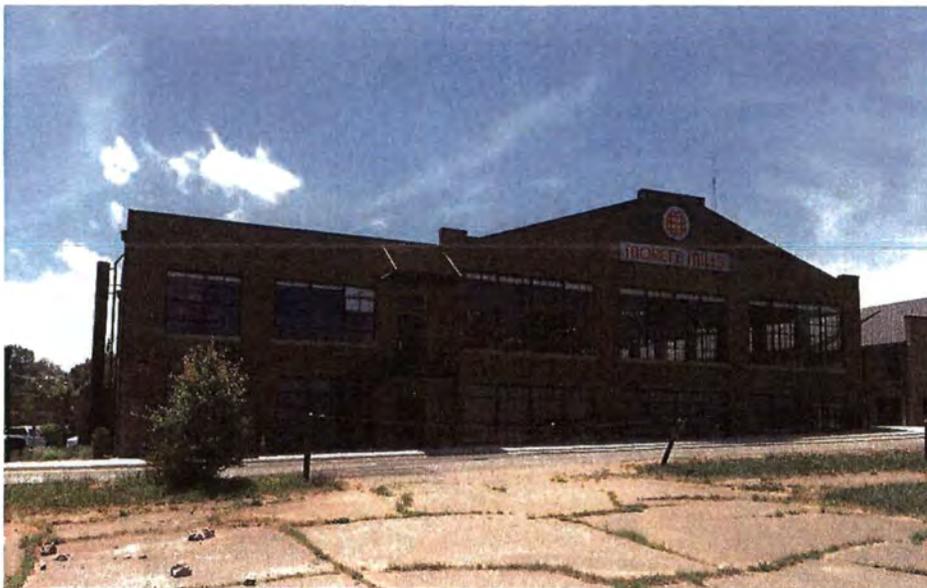


Photo 7 (East Side of the Property)

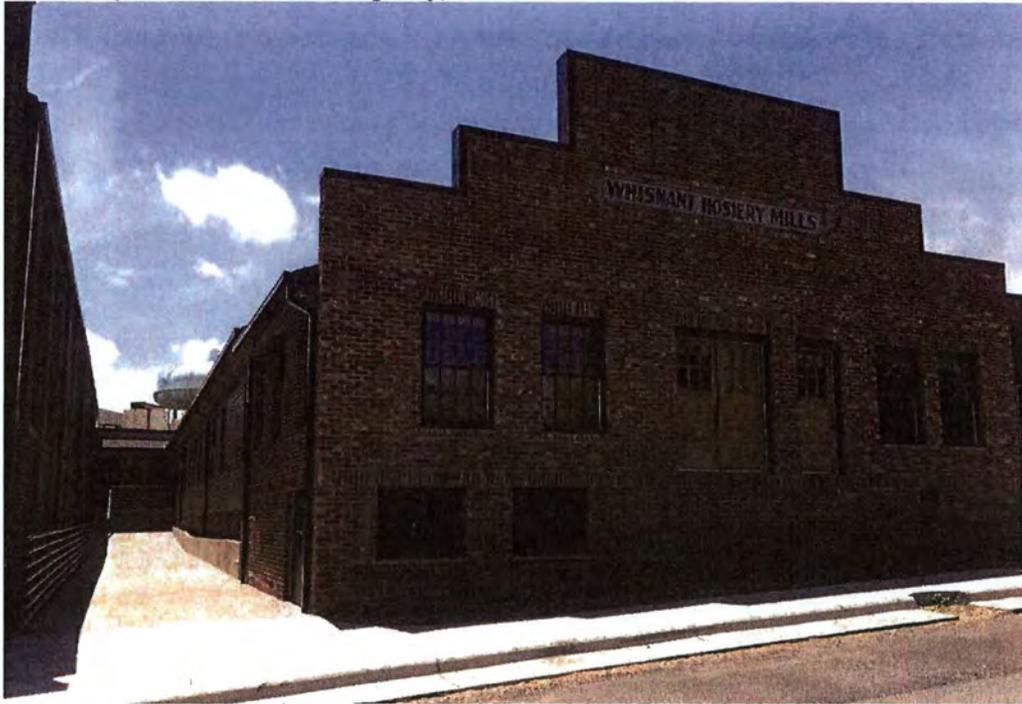


Photo 8 (East Side of the Property)



Exhibit C (Pre-Renovation Exterior Photos)

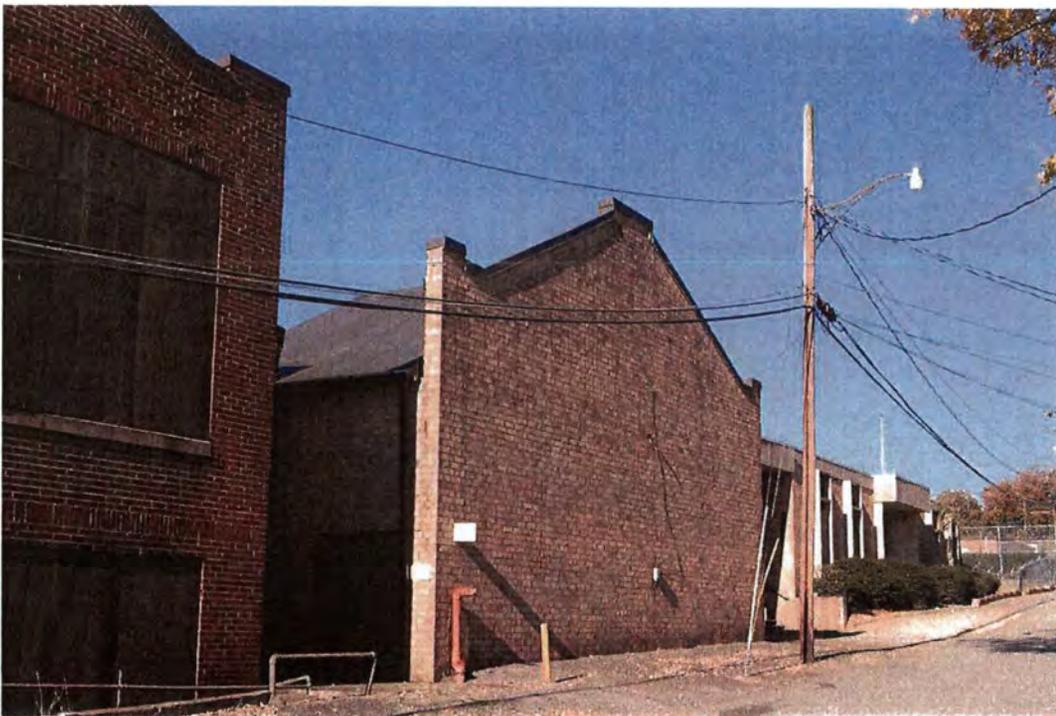
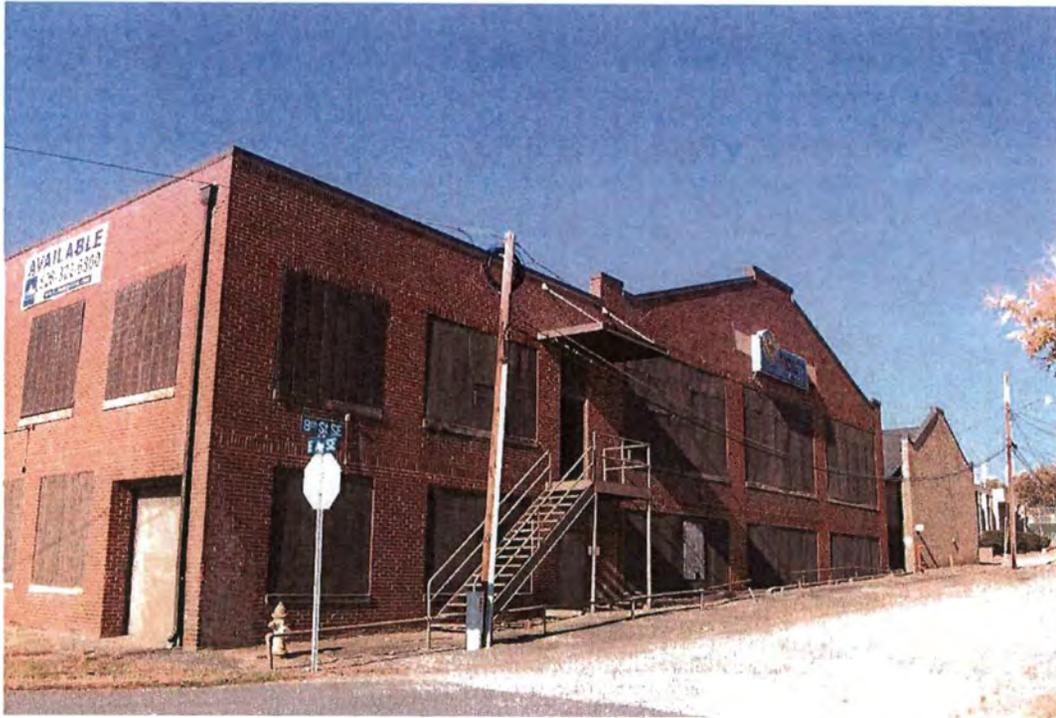


Exhibit D (Interior Photos of Property – Before and After Renovation)



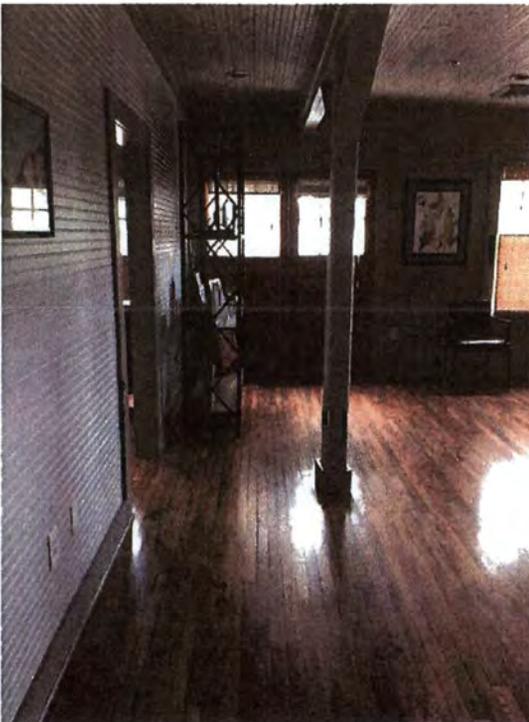
Doors to Original Loading Dock Area



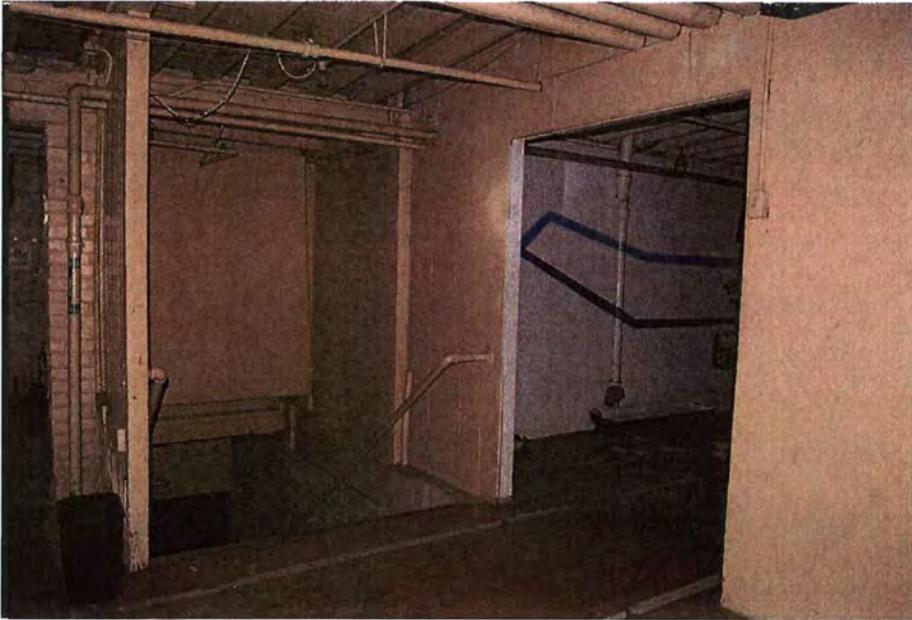
**Renovated Doors to
Original Loading
Dock Area**



Upstairs Knitting Area



Renovated Upstairs Knitting Area



Stairway from Upper Floor to Lower Floor



Renovated
Stairway from
Upper Floor to
Lower Floor



7th Street Side Interior



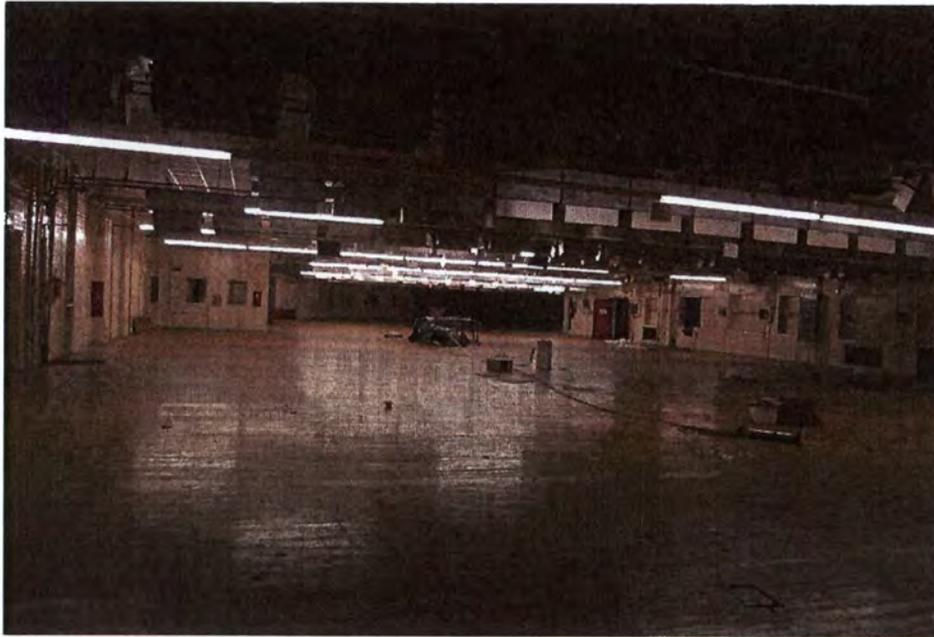
Partially Renovated 7th Street Side Interior



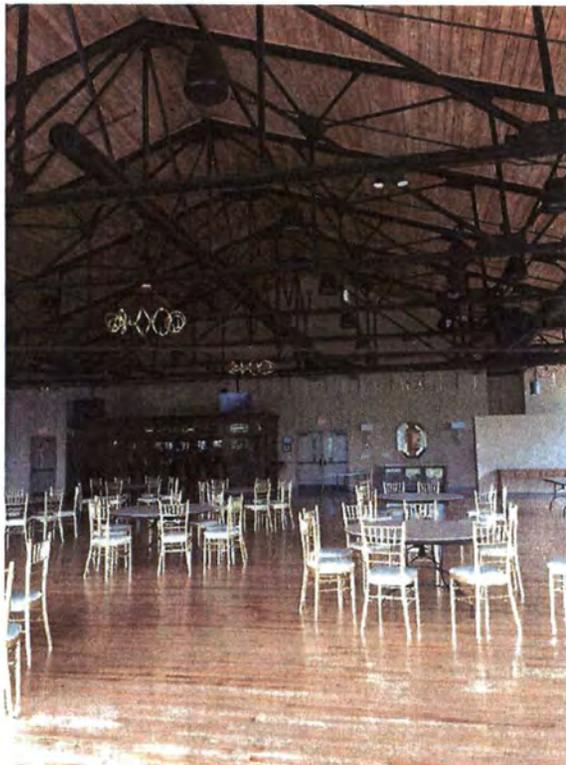
Front Windows Looking Out to Parking



Renovated Front Windows Looking Out to Parking



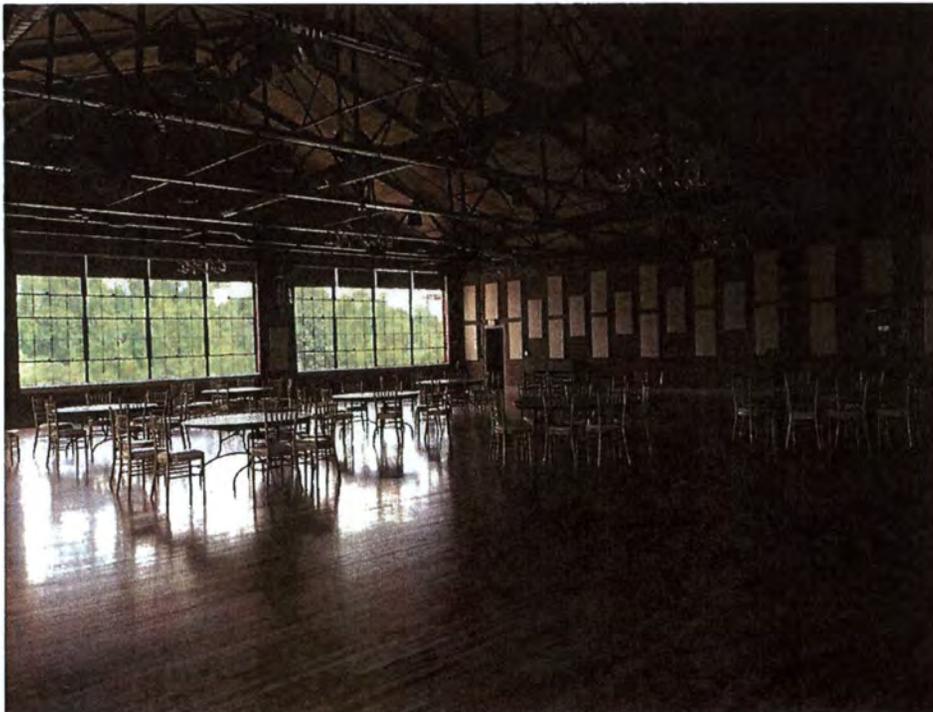
Finishing Area



Renovated Finishing Area



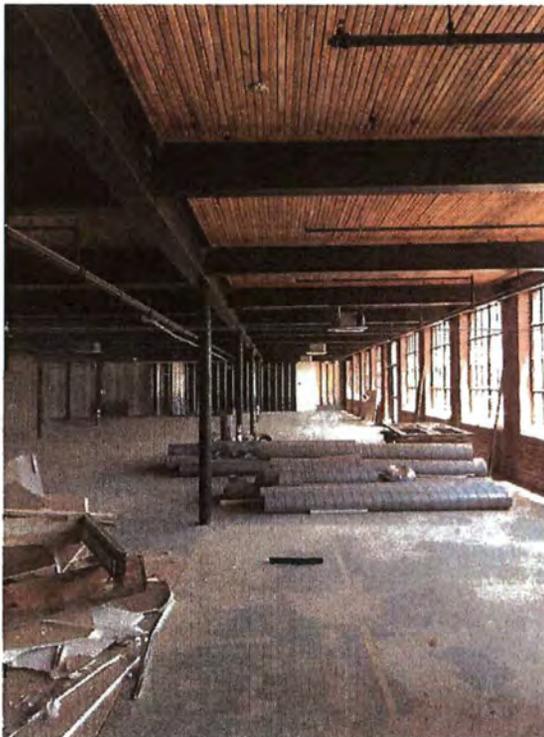
Finishing Area



Renovated Finishing Area



Downstairs Ceilings



Renovated Downstairs Ceilings

**United States Department of the Interior
National Park Service**

**NATIONAL REGISTER OF HISTORIC PLACES
REGISTRATION FORM**

This form is for use in nominating or requesting determinations for individual properties and districts. See Instructions In How to Complete the National Register of Historic Places Registration Form (National Register Bulletin 16A). Complete each item by marking "x" in the appropriate box or by entering the information requested. If any item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, architectural classification, materials, and areas of significance, enter only categories and subcategories from the instructions. Place additional entries and narrative items on continuation sheets (NPS Form 10-900a). Use a typewriter, word processor, or computer, to complete all items.

1. Name of property

historic name Whisnant Hosiery Mills

other names/site number Moretz Mills

2. Location

street & number 74 Eighth Street SE not for publication N/A

city or town Hickory vicinity N/A

state North Carolina code NC county Catawba code 035 zip code 28602

3. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act of 1986, as amended, I hereby certify that this X nomination request for determination of eligibility meets the documentation standards for registering properties in the National Register of Historic Places and meets the procedural and professional requirements set forth in 36 CFR Part 60. In my opinion, the property X meets does not meet the National Register Criteria. I recommend that this property be considered significant nationally statewide X locally. (See continuation sheet for additional comments.)

Signature of certifying official _____ Date _____

North Carolina Department of Cultural Resources

State or Federal agency and bureau

In my opinion, the property meets does not meet the National Register criteria. (See continuation sheet for additional comments.)

Signature of commenting or other official _____ Date _____

State or Federal agency and bureau

4. National Park Service Certification

I, hereby certify that this property is:

Signature of the Keeper

Date of Action

 entered in the National Register

 See continuation sheet.

 determined eligible for the

National Register

 See continuation sheet.

 determined not eligible for the

National Register

 removed from the National Register

 other (explain): _____

Whisnant Hosiery Mills
Name of Property

Catawba County, North Carolina
County and State

5. Classification

Ownership of Property
(Check as many boxes as apply)

Category of Property
(Check only one box)

Number of Resources within Property
(Do not include previously listed resources in the count)

- private
- public-local
- public-State
- public-Federal

- building(s)
- district
- site
- structure
- object

Contributing	Noncontributing	
<u>1</u>	<u>0</u>	buildings
<u>0</u>	<u>0</u>	sites
<u>0</u>	<u>0</u>	structures
<u>0</u>	<u>0</u>	objects
<u>1</u>	<u>0</u>	Total

Name of related multiple property listing
(Enter "N/A" if property is not part of a multiple property listing.)
N/A

Number of contributing resources previously listed in the National Register
N/A

6. Function or Use

Historic Functions

(Enter categories from instructions)

Cat: INDUSTRY Sub: manufacturing facility

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Current Functions

(Enter categories from instructions)

Cat: VACANT/NOT IN USE Sub: _____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

7. Description

Architectural Classification (Enter categories from instructions)

Commercial Style

Materials (Enter categories from instructions)

foundation Not visible
roof Rubber
walls BRICK
other CONCRETE
BRICK

Narrative Description

(Describe the historic and current condition of the property on one or more continuation sheets.)

Whisnant Hosiery Mills
Name of Property

Catawba County, North Carolina
County and State

8. Statement of Significance

Applicable National Register Criteria

(Mark "X" in one or more boxes for the criteria qualifying the property for National Register listing)

A Property is associated with events that have made a significant contribution to the broad patterns of our history.

B Property is associated with the lives of persons significant in our past.

C Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.

D Property has yielded, or is likely to yield information important in prehistory or history.

Criteria Considerations

(Mark "X" in all the boxes that apply.)

A owned by a religious institution or used for religious purposes.

B removed from its original location.

C a birthplace or a grave.

D a cemetery.

E a reconstructed building, object, or structure.

F a commemorative property.

G less than 50 years of age or achieved significance within the past 50 years.

Areas of Significance

(Enter categories from instructions)

Industry

Period of Significance

1929 – 1966

Significant Dates

1929

1937

1966

Significant Person

(Complete if Criterion B is marked above)

N/A

Cultural Affiliation

N/A

Architect/Builder

Abee, D. Carroll, Architect, 1966 addition

Narrative Statement of Significance

(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

Bibliography

(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS)

preliminary determination of individual listing (36 CFR 67) has been requested.

previously listed in the National Register

previously determined eligible by the National Register

designated a National Historic Landmark

recorded by Historic American Buildings Survey # _____

recorded by Historic American Engineering Record # _____

Primary Location of Additional Data

State Historic Preservation Office

Other State agency

Federal agency

Local government

University

Other

Name of repository: _____

United States Department of the Interior
National Park Service

National Register of Historic Places Continuation Sheet

Section Number 7 Page 1

Whisnant Hosiery Mills
Catawba County, North Carolina

DESCRIPTION

Materials

Other: STUCCO
METAL

Summary and Setting

The Whisnant Hosiery Mills is located at 74 Eighth Street (originally named Fourth Street) SE just west of the main thoroughfare of Lenoir-Rhyne Boulevard in Hickory's southeast quadrant. The mill building, which faces northeast, occupies the southeastern half of the city block bounded by Eighth Street SE, E Avenue SE, Seventh Street SE, and Highland Avenue SE. The mill's linear, asphalt parking lot stretches from Eighth Street to Seventh Street along the northwest side of the building, separating the property from those along Highland Avenue. A strip of grass borders the mill along its southeast (E Avenue SE) and southwest (Seventh Street SE) sides. The mill stands in an historically industrialized mixed-use area with a few small houses across Eighth Street, a parking lot across E Avenue, and light industrial and a few commercial buildings across Seventh Street and along Highland Avenue.

The mill, itself, fills a trapezoidal shape that follows the street lines on three sides and consists of contiguous sections built in 1929, 1937, the 1940s, the 1950s, and 1966. Most of the brick mill is one-story, but the 1937 section has two levels. The upper level is the main floor and the lower level is the basement that, due to the slope of the land from northwest to southeast, is partially above grade, especially at the east corner.

Exterior

The exterior of the mill will be described in a clockwise sequence, beginning at the north corner. The northeast, primary, façade displays several of the mill's stages of building, from the original mill at the center to the last addition at the north end. The 1966, most recent, section of the mill stretches from the north corner across nearly half of the façade. Set back several feet from the rest of the façade, it is bordered by low, manicured shrubbery. The one-story modernist addition designed by Hickory architect D. Carroll Abee has tan brick walls and a flat roof. At the center of the five-bay section of the 1966 façade is a tall, glass-paneled entry bordered by projecting concrete walls on either side and sheltered by an even more projecting boxed canopy. On each side of the entry are two tall, single-pane glass windows with, like the entry, projecting concrete surrounds. At the east end of the 1966 section is a recessed loading dock with a concrete

United States Department of the Interior
National Park Service

National Register of Historic Places Continuation Sheet

Section Number 7 Page 2

Whisnant Hosiery Mills
Catawba County, North Carolina

base, three roll-up loading doors, and a metal stair at the north end that rises to a glass-and-metal pedestrian door.

East of the 1966 section, at the center of the northeast façade, is the original, 1929, frame section of the mill. In 1966 its later brick façade, with its doors and windows and stepped-parapet gable end, along with two bays of the side walls were remodeled to conform to both the 1966 section on one side and the 1937 section on the other side. Blocking out all fenestration, these areas were sheathed with the same tan brick used with the 1966 addition, and the facade parapet was refigured to match that of the 1937 addition. Like the 1937 section, the remodeled parapet is lined with a band of soldier-course bricks.

Originally the 1929 and 1937 sections of the mill were detached, but according to the Sanborn maps, between 1948 and 1961 – probably in the 1950s – the space between the two was enclosed with a brick connector. Set back from the façade line, the space is open the depth of two bays and is fronted by a red brick wall with a double-leaf metal and glass door accessed by a metal stair on the north side and a metal platform with iron railing. Above the door is a large vent and beneath the platform are two low, metal doors. A frame shed roof, sloping downward from east to north, shelters the stair and platform. The east, 1937, wall of the setback retains its fenestration pattern, with windows covered, but the north, 1929, wall carries the tan brick veneer of the 1966 section with only a double-leaf metal door near the front. Between the concrete base of the setback and the brick wall of the 1937 section is a deep open drain that runs from within the building to the edge of the 1937 façade and then continues along most of that façade.

The eastern portion of the façade dates from 1937. Like the rest of the 1937 section of the mill, it is faced with running-bond red brick. Although an industrial building, it is designed in a simple version of the Commercial Style. Patterned brickwork takes the form of soldier-course bands along the cornice, as lintels to the main floor windows and entrance, and as a string course between the main and basement levels. The north half of the 1937 section of the façade, marking the manufacturing space within, has an angular shaped parapet that hides its gable roof, while east half, which is the office portion, has a flat roof. Both rooflines have a plain cast-stone cornice, now covered with metal. Beneath the shaped parapet is a rectangular name panel with a brick border and contrasting cast-stone corner blocks. Some of the original letters spelling “Whisnant Hosiery Mills” can be seen beneath the current stuccoed surface of the panel. The name panel is partly covered by a 1990s plastic sign for Moretz Mills, Inc., the owner of the mill at that time. Large industrial windows are in groups of two and three and have cast-stone sills. As with the windows on the rest of the 1937 (and the 1940s) section of the mill, which survive intact, the façade windows have been covered with vertical-board plywood panels, believed to have been added in the 1970s during the ownership of the Adams-Millis Corporation. At the center of the 1937 façade, single replacement metal doors open to the main and basement levels. The upper door is reached by a metal stair with metal pole supports and a metal-pipe handrail

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that rises from east to north. Originally the stair rose from both sides and had concrete steps and supports. When the original stair was replaced is not known. Above the main-level entrance is a suspended, flat, metal canopy. It probably dates from the same time as the replacement stair.

The southeast side of the mill, dating from 1937 except for the southernmost ten bays, which were added in the 1940s, is composed of three sections. The first, at the east corner, houses the 1937 offices and, on the exterior, continues the treatment of the office portion of the northeast façade in terms of the flat roof, windows, and patterned brickwork. However, what initially was a double-leaf door at the corner is now a roll-up vehicular door, probably installed in the last quarter of the twentieth century. At the south end of the office section, the wall angles back toward the west one bay's width. At the angle is a metal smokestack for the boiler housed in the lower level within a one-story room that projects from the façade. Its walls have curved corners, and it has a flat roof.

At this point, including the angled section of the office, the wall recedes in a series of steps toward the west to accommodate the various functions that lie within and to follow the edge of E Avenue SE. The one-story front section, which houses the compression room, has a flat roof and a vertical-board wall. The upper-level brick wall behind it gives evidence that this area was originally taller and had a shed roof. The set-back upper level has three windows and a side-gable roof as part of the manufacturing area of the mill. At the south end of the compression room, the upper level, which housed the machine fixer's room, is brick and has parapeted northeast and southwest walls that rise above a shed roof. Two small windows are on the northeast side, and two large windows are on the southwest side. To the west is the last angled section. Behind it is the manufacturing part of the 1937 section of the mill. Its basement level has three bricked-up windows and a replacement double-leaf metal door. Of the five windows on the main level, one is bricked-up. At the center of the wall, above the main level windows, is a brick horizontal panel surrounded by a brick band. Above the panel are four small windows. At the base of this wall is an exterior transformer surrounded by a chain link fence.

At the south end of the stepped portion of the southeast elevation, the wall abruptly changes direction, angling westward and paralleling E Avenue SE. One of the most distinctive parts of the mill exterior, this section of the southeast elevation extends twenty-three bays to Seventh Street SE. Although no exterior seam is visible denoting the two different periods of building, only the first thirteen bays date from 1937. The westernmost ten bays date from the 1940s. Each bay has a large window at each level on the first thirteen bays, but the windows are only on the main level on the last ten bays, because that section has no basement. Plain brick pilasters separate the bays, and a brick spandrel runs horizontally between the two levels of windows. A drain bordered by a pipe railing on a concrete base runs along this long wing. At the tenth bay from the Seventh Street SE end of the wing, concrete steps lead downward from south to east to a door where the 1937 and 1940s sections of the wing join.

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With its angular shaped parapet hiding the gable roof, rectangular stuccoed name panel, and decorative brickwork, the 1940s southwest façade is much like that of the 1937 facade on the northeast. However, here the brickwork bordering the parapet and the name panel, on the string course above the windows, and around the center-bay window, is raised, rather than being flat with the plane of the wall. At each corner of the 1940s façade, alternate brick courses project, giving a quoin-like appearance. The 1940s façade is seven bays wide with a metal replacement double-leaf entrance and surmounting window at the center flanked by tall windows. The west-end window has been infilled with brick and a metal vent.

Adjacent to the 1940s portion of the southwest façade and set at a slight angle to it so that it follows Seventh Street SE is the large, one-story, 1966 section of the mill. It is faced with tan brick and has a flat roof from which multiple ventilators rise. The southwest elevation is plain with no fenestration.

From the west corner of the mill, the 1966 northwest elevation stretches to the north corner of the mill at Eighth Street SE. The west end of the northwest elevation has a double-leaf metal door and a pair of concrete vats or tanks with wood steps and platform rising above each. A chain link fence encloses this corner of the mill. Adjacent to it on the north is a boiler room that projects from the main wall. It is slightly taller than the rest of the 1966 section. On its southwest wall is a pedestrian door and a tall roll-up door. In the corner with the main body of the building is a steep metal stair to the roof. A metal stack rises from the roof. Projecting outward from the boiler room is a large, metal, vertical tank surrounded by a concrete wall. Immediately north of the boiler room, in the corner formed by it and the main wall of the 1966 section, is some mechanical equipment that projects from the building. From there to the office portion of the 1966 addition at the north corner of the building, the remainder of the northwest elevation is largely plain, but with metal downspouts recessed into channels in the brick wall. At the center of this stretch of wall, a long, suspended, flat canopy projects into the parking area. Adjacent to it on the north is a double-leaf metal door sheltered by a boxed canopy that projects from the roof edge. Near the north end of the northwest elevation, the wall, which forms the side of the 1966 offices, is treated like the main, northeast office façade. This four-bay section has three tall windows with projecting concrete surrounds. A single recessed glass door and transom in the second bay from the corner has the same concrete-boxed panel surmounting it as is found over the three windows.

Interior

Refer to the 1966 floor plans of the mill, with dates added to the different sections, as an aid to understanding the layout of the mill at that time. Alterations since then have been minor.

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The interior of the Whisnant Hosiery Mills reflects the different periods of the mill's construction. Behind the center of the mill's northeast façade is the original 1929 frame section of the mill. Although none of the original frame walls can be seen from the exterior, the front and southeast walls are still clearly visible on the interior, along with their door and window openings. The original southeast exterior wall – as seen from within the 1950s link to the 1937 addition – has German siding, large window openings – glass removed and infilled with wood panels – and four-light clerestory tilt windows along the upper wall. The door and window surrounds are plain wood. The interior of the 1929 mill exhibits beaded-board walls and hardwood floors. Some of the original roof structure, with wood rafters supporting wood decking, is visible, but most of it has been covered by a sheet-rocked ceiling and multiple exposed pipes. The 1948 Sanborn map shows that the front and rear walls of the frame mill had been brick veneered. This veneering likely happened before or at the same time as the construction of the 1937 addition. In 1966, the façade was again veneered to match the tan brick of that year's major addition to the mill. At the same time, the first two bays of the southeast wall and the entire northwest wall adjoining the 1966 addition were veneered with the same tan brick. Despite the brick veneering, the original double- and single-leaf wood-panel-and six-light doors and six-over-six sash windows of the 1929 façade and office suite remain exposed to view. The brick veneer can be seen through the window glass. In the north corner of the 1929 building, just within the 1929 main entrance, a single-leaf, glass-and-wood-paneled door opens to the office suite, which contains three rooms and a narrow bathroom. The office rooms have either beaded-board or plaster-board walls.

Within the 1929 mill, more recent partition walls have been built to create break rooms and a nurse's station, and doors now open to the 1966 addition on the northwest. Near the front of the 1929 mill, an opening has been cut in the floor, through which a conveyor belt runs to the basement of the 1937 addition. Northeast of the conveyor belt, the area near the front of the 1929 building has been partitioned off with slatted walls for storage aisles. The Sanborn maps show that in 1948, most of the 1929 mill was used as the gray goods department, and that in 1961 this section of the mill housed the finished product warehouse and store room.

The 1937 mill addition is southeast of the 1929 mill and has two main parts – the offices in the east corner of the main level with corresponding mechanical rooms below and the vast manufacturing space on the main and basement levels. Over the years, the office section has had partitions added and subtracted, and many of the walls have been sheathed with modern plywood paneling. However, some original plaster walls and glass-and-wood-paneled doors with transoms and plain surrounds remain intact. At the end of a narrow hall on the southeast wall is a built-in Herring-Hall-Marvin safe (company established in 1896), which is probably original. The seller was the Kale-Lawing Company, an office supply business founded in Charlotte in 1925. The office section also includes two tiles bathrooms and a stair leading to the basement. Beneath the

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offices on the basement level are three bathrooms, the boiler room and, in the east corner, open floor space.

The manufacturing section of the main floor of the 1937 addition has maple flooring, brick walls with window placement still visible, and a dropped, acoustical-tile ceiling, from which hang duct work and lighting. Above the dropped ceiling, steel trusses support the gable roof. The manufacturing floor on the main level is totally open with no vertical supports. On the southeast side of the main floor, single doors lead to the offices and to the machine fixer's room. On the northwest side, single doors open to ceramic-tiled bathrooms and larger fire doors open to other sections of the mill. Close to halfway back from the front of the mill, the manufacturing space angles westward, as the building does on the exterior to align with the street. Both the 1948 and the 1961 Sanborn maps show that the main-level manufacturing floor back to the angled section held the knitting and finishing processes, while the floor in the angled section held the looping and boarding operations.

Toward the rear of the angled section of the manufacturing space, a vertical-board partition wall with a large doorway in the center opens to the 1940s addition, which is only on the main level. The 1940s addition has a wood floor, except for the three-and-a-half bays at the southwest end, where there is a concrete floor. The walls are brick, punctuated on the southeast side by massive industrial windows. Set between brick pilasters, each steel-frame window consists of two vertical sections, each with eighteen lights (thirty-six for the whole window) and two tilt sections of six lights each, one at the top and other near the bottom. The southwest end of the 1940s addition has a central door and more narrow windows, now covered with plywood. On the northwest side, the windows have been infilled with brick because they abut the 1966 section of the mill. On that side, one fire door and one open doorway provide access to the 1966 section. Unlike the 1937 manufacturing floor, the 1940s addition has exposed metal trusses that support the wood planking of the gable roof.

The basement level of the 1937 section of the mill follows the configuration of the main floor, except that it ends at the point where, on the main floor, the 1940s addition begins. This rear wall retains its window openings, now boarded over. The basement has a concrete floor and brick walls with the windows boarded up. Projecting from the walls in the angled section of the basement are low projecting wood platforms and vertical divider panels that have been added in more recent years. Two rows of round steel support posts run the length of the space. Steel beams support the narrow board ceiling and the multi-layer main floor above it. In a couple of places where the ceiling boards have broken away, the boards laid on edge that make up one of the floor layers can be seen. Mechanical systems and lighting hang exposed from the ceiling. Approximately where the angled rear section of the basement meets the front section, a partition wall has been built and enclosed storage rooms have been attached to it. Northeast of the partition, the industrial windows of the basement remain exposed.

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To the rear of the 1929 section of the mill and north of the 1937 and 1940s wing is a trapezoidal area with brick walls that was the dye house prior to 1966. It appears on the 1948 Sanborn map. It may have been built as part of the 1937 addition and then enlarged in the 1940s with the expansion of the looping and boarding wing. Most recently it housed bathrooms, the maintenance office, storage space, and the maintenance shop and chiller.

The last addition to the mill was built in 1966. The front, northeast, end contains offices, a reception area, a conference room, a safe, tile bathrooms, and an added break room. The floors are covered with linoleum, the walls are a combination of tan brick and handsome wood paneling, and the ceilings have acoustical tiles with recessed lighting. Southwest of the office area, the bulk of the 1966 addition was used initially for manufacturing processes and later for finishing and distribution functions. Currently it serves as miscellaneous storage. This section has a concrete floor, brick and concrete-block walls, and string trusses supporting a corrugated metal ceiling. Lighting and ductwork hang from the ceiling. Near the southwest end of the 1966 addition, a concrete-block wall separates the main room from what served after 1966 as the dye house. The ceiling in the dye house has concrete joists. At the southeast end of the divider wall are rooms for an office and a laboratory.

Integrity

The physical integrity of the Whisnant Hosiery Mills is good. It retains its original location and setting. Except for the 1966 remodeling of the façade of the 1929 section of the mill with a blank, tan brick-veneer facing devoid of doors and windows and a revised parapet to match that of the 1937 addition, the design and materials of the different stages of the mill's development remain largely intact. Although the 1937 and 1940s industrial windows have been covered on the exterior with board panels, the original windows remain, for the most part, intact beneath the wood. The 1966 addition to the mill doubled its size and added a modern component representative of its period to the overall design.

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STATEMENT OF SIGNIFICANCE

Summary

The history of Whisnant Hosiery Mills reflects the development and expansion of the hosiery industry in Hickory, North Carolina, during the second and third quarters of the twentieth century. The hosiery industry in this piedmont city began in 1906 and grew slowly at first, but by the third quarter of the twentieth century, it had become the largest industry and the primary economic force in Hickory. Only four mills were in operation by 1925, but by 1953, the number had increased to fifty-five, with 4,000 workers, and by 1962, at the peak of hosiery manufacturing in Hickory, there were eighty-nine mills. Like the hosiery industry in Hickory as a whole, the Whisnant Hosiery Mills started out modestly, with a small mill erected in 1929. From then on, however, the company enlarged its plant and workforce and updated its machinery almost continuously, with major additions built in 1937, the 1940s, and 1966. The physical appearance of the mill today tells the story of each period of its growth. By 1938, Whisnant Hosiery Mills, which manufactured, dyed, and finished men's half hose, employed 525 workers and had the capacity to produce 3,500 dozen pair of men's hose per day, far out-pacing the employment and production figures for all but one of the other mills at that time. [That mill, the Elliot Hosiery Mills, does not survive.] The Whisnant Hosiery Mills' important status within the local hosiery industry continued throughout its history. In 1966, the company constructed its last addition, doubling the size of the mill. Replacing the warehouses that had stood on part of the site, the addition substantially expanded the mill's manufacturing space for dyeing and finishing processes and provided a new and larger office suite for the management. Designed by Hickory architect D. Carroll Abee, the modernist brick, concrete, and glass exterior served to update the company's image. The 1966 addition not only signified the high level of success the company still enjoyed, but coincided with the hosiery industry's peak, as a whole, in Hickory.

The Whisnant Hosiery Mills meets National Register Criterion A for its local industrial significance within the context of Hickory's historic hosiery industry because, during most of its history, it eclipsed nearly all of Hickory's hosiery mills in its large-scale operation, physical size, number of employees, and longevity, with a single family ownership during its period of significance. The mill's period of significance spans the years from 1929, when the original mill was constructed, to 1966, when the last addition was built, signifying Whisnant Hosiery Mills' continued success.

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Historical Background and Industry Context

By 1965, North Carolina had become the nation's leader in hosiery manufacturing, with approximately 400 hosiery mills. Although these mills operated in seventy of the state's 100 counties, more than half were located in only two counties – Alamance and Catawba, where Hickory was the largest city (McGregor, 3, 9). The history of Whisnant Hosiery Mills is woven into that of Hickory's hosiery industry during the second and third quarters of the twentieth century.

According to Mattson and Alexander in the National Register nomination for the Hollar Hosiery Mills-Knit-Sox Knitting Mills (NR, 2012):

During the early twentieth century, textile mills played an increasingly vital role in Hickory's industrial success. Although some of these mills produced the cotton cloth and coarse yarns typical of Piedmont mills, Hickory also became one of the region's major producers of knit hosiery. The production of knit products emerged as a particularly important sector of the state's textile industry following World War I. After years of accelerated wartime demand, cotton cloth production slumped during the 1920s. Seeking to diversify the industry, textile manufacturers began to specialize in the production of knit hosiery as a means of surviving the reduced demand for cloth and meeting the new market for women's full-fashioned, or form-fitting, hose. Excellent rail connections in the Piedmont and a ready source of the mercerized cotton used to produce hosiery made this specialized form of production feasible.

In Hickory and its vicinity, the hosiery industry was made up primarily of numerous small mills, many of which were of short duration. J. A. Cline and the Reverend W. P. Cline (unrelated) established the town's first hosiery mill, the Hickory Hosiery Mill, in 1906, and Elliott Knitting (Hosiery) Mills, the second mill of significance, began in 1910. These two remained Hickory's dominant hosiery mills until the late 1920s. According to the Winter-Spring 1953 quarterly publication of North Carolina's Employment Security Commission, by 1925 there were only four hosiery mills operating in Hickory. Soon thereafter, however, that number grew exponentially. During the second quarter of the twentieth century, hosiery mills seemed to spring up on every vacant lot and in every vacant building, especially in the Highland industrial subdivision on eastern edge of Hickory. As a result, by 1953 Hickory could boast approximately fifty-five hosiery mills with a capacity for producing an estimated 150,000,000 pairs of hose (or socks) a year. Approximately 4,000 workers were engaged in hosiery manufacturing in Hickory at the time, which was as many as were employed in the furniture and other textile industries

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combined (*The E. S. C. Quarterly*, 25; Clinard, 267-269; Montgomery, 8: 5). It was into this milieu that the Whisnant Hosiery Mills at 74 Eighth Street S.E. (prior to 1950 the address was listed at 943 Fourth Street) was established and evolved into one of the most prominent hosiery mills in this piedmont North Carolina city.

The Whisnant Hosiery Mills was a family affair, with two Whisnant brothers, two sisters, and one Whisnant wife involved with its operation. However, Ernest Elmore Whisnant (1905-1981), an especially enterprising young man, was at the center of the mill's development. He grew up on a large farm in the county and was educated in Hickory. At the age of twelve, he began working after school and on Saturdays at a small hosiery mill in West Hickory, thus beginning his education in the operation of a hosiery mill. While in high school, Whisnant worked odd jobs at the Elliott Hosiery Mill. Following high school, he attended Lenoir-Rhyne College in Hickory, and at the conclusion of two years there, Whisnant began work as a mechanic at the Hollar Hosiery Mill. Upon graduation, at age twenty-one, he was promoted to plant superintendent at Hollar, a position he held for several years, even while he was beginning his own business (*North Carolina: The Old North State and the New*, 501; Hickory City Directories, 1961-1962, 1928-1929; *Hickory Daily Record*, February 2, 1981).

According to a 1938 newspaper article, in 1927 E. E. Whisnant and his brother, Clarence L., started their own hosiery business in the old Cloninger Mill (*Hickory Daily Record*, February 26 1938). This was likely the tiny mill labeled, "Knitting Mill, not in operation." shown on the 1925 Sanborn map on Lawrence Street (later Fourth Street and now Eighth Street) northwest of the present site of the Whisnant Hosiery Mills. It appears that the Whisnant mill initially may have been called the Highland Hosiery Mill. Before the Whisnant Hosiery Mills began to be listed in the city directories at 943 Fourth Street, the Highland Hosiery Mill was listed at 941 Fourth Street, with E. E. Whisnant as manager and C. L. Whisnant as secretary-treasurer (Hickory City Directories, 1930-1931, 1937-1938). In addition, the first deed for part of the Whisnant Hosiery Mills property, in 1929 – they must have been leasing the land until they could buy it – was to C. L. and E. E. Whisnant, "trading as Highland Hosiery Mill" (Deed Book 218, p. 348). The 1931 Sanborn map shows a long, rectangular mill that is larger and to the southeast of where the "Knitting Mill" stood in 1925. It is labeled "Whisnant Hosiery Mills," and the smaller mill is no longer shown (Sanborn Map, 1925 and 1931).

Having asserted that the Whisnant brothers started a business in the old Cloninger Mill in 1927, the 1938 newspaper article continued that six months later a new mill was erected on Fourth Street (*Hickory Daily Record*, February 26 1938). Written in 1981, E. E. Whisnant's obituary claims that he opened Hickory's fourth hosiery mill in 1928 (*Hickory Daily Record*, February 2, 1981). Perhaps somewhat more accurate than an obituary written a half century after the fact, a biographical sketch of Whisnant published in 1941 states that in August 1928, E. E. and Clarence Whisnant established a little mill that employed around twelve people, but that "in

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1929 they built the present mill" (*North Carolina: The Old North State and the New*, 501-502). That "present mill" was the earliest core of the mill that stands today. According to Whisnant's daughter, the mill whistle blew to announce her birth on October 4, 1929 (Mary Jo Williams Interview).

In addition to the initial 1929 purchase of land for the Whisnant Hosiery Mills, additional parcels that make up the current site were amassed in 1932, 1938, and 1939 (Deed Books 218, p. 348; 242, p. 120; 360, p. 32). Interestingly, the company did not incorporate until 1945. C. L. Whisnant, his wife, Elsie E., E. E. Whisnant, and E. E.'s wife, Louella P., each held 1,500 shares of stock in the company with a total value of \$600,000. However, the certificate of incorporation authorized the selling of as many as 10,000 shares at \$100 with a total value of \$1,000,000 (Records of Corporations, Book 4, p. 439). Immediately after the incorporation of Whisnant Hosiery Mills, the two Whisnant couples conveyed all of the mill property they had purchased between 1929 and 1939 to the new corporation (Deed Book 360, p. 32). In 1948, mill president Ernest Whisnant acquired his brother's, Clarence's, interest in the mill, continuing to operate it alone for another twenty-two years (*Hickory Daily Record*, February 2, 1981).

The physical appearance of the Whisnant Hosiery Mills tells the story of each period of its growth, reflecting the mill's long-term success. From the beginning, Whisnant Hosiery Mills enlarged its plant and workforce and updated its machinery almost continuously (*Hickory Daily Record*, February 26 1938). The depiction of the mill on the 1931 and 1948 Sanborn maps and in a 1938 photograph, along with the surviving elements of the original mill, indicate that the first enlargement doubled the width of the original frame building. Oddly, the front and rear portions of the mill were brick veneered, possibly at the same time that the width was doubled. In any event, the veneering probably occurred prior to the construction of a major new addition – originally separate – in 1937. A 1938 photograph shows that the veneered façade of the original mill had a multi-stepped brick parapet, and it seems likely that had the veneering been added at the same time as the new building, the parapets of the two buildings would have matched, which they do not (Sanborn Maps, 1931 and 1948; 1938 Photograph).

The *Hickory Daily Record* reported in 1938 on the recent growth of the Whisnant Hosiery Mills and provided a context for understanding its place within Hickory's hosiery industry at that time by also discussing fifteen other mills in the city. In 1937, Whisnant Hosiery Mills built a major addition southeast of the original mill all the way to E Avenue SE. With this addition, the square footage of Whisnant Hosiery Mills stood at approximately 30,000, more than tripling the manufacturing capacity of the original mill. The addition's main floor accommodated a suite of offices in the east corner and approximately 500 knitting machines in the manufacturing space. However, even before the 1937 addition, new dye and boarding equipment, new knitting machines for the manufacture of English ribbed fine hose, and a finishing plant had been installed at the mill. In 1938, the mill employed 525 workers and had the capacity to

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produce 3,500 dozen pairs of men's hose (socks) per day, far out-pacing the production and employment figures for fourteen of the fifteen other hosiery mills discussed. Among those other mills were the Hollar Hosiery Mills, with 300 employees and 2,500 dozen pairs of hose daily, and the Lyerly Full-Fashioned Mill (NR, 2007), with 300 employees and 400 pairs of hose a day. Only the Elliott Hosiery Mills, known at the time as the largest hosiery manufacturing plant in Hickory with 800 employees surpassed Whisnant Hosiery Mills. However, Elliott's production of 800,000 dozen pairs of hose a year – or approximately 2,500 a day – was less than the production level stated for Whisnant. The Elliott Hosiery Mills no longer stands (*Hickory Daily Record*, February 26, 1938).

Whisnant Hosiery Mills continued to expand, and the 1948 Sanborn map shows the changes and how different parts of the mill were used at that time. The front half of the 1937 addition was used as the knitting and finishing floor (except for the office suite), while the rear, angled wing (following the line of E Street) was used for looping and boarding. By this time, probably soon after World War II, the rear wing had been extended all the way to Seventh (then Fifth) Street. A roughly triangular dye house is shown attached to the northwest side of the looping and boarding wing and the rear of the original mill. It may have been part of the 1937 addition, but the 1948 map shows that, like the looping and boarding wing, it had been lengthened. At that time, the original mill, still detached from the front half of the 1937 addition, was used as the gray goods department. A two-part warehouse, of unknown date, stood northwest of the original mill and attached to it by an enclosed walkway (Sanborn Map, 1948).

The Winter-Spring 1953 edition of the *E. S. C. Quarterly*, published by the Employment Security Commission of North Carolina, provides information on forty-nine hosiery mills in Hickory at that time, including updated information on Whisnant Hosiery Mills. Based only on a comparison of the mills' capital stock, it appears that Whisnant Hosiery Mills was still one of the largest hosiery manufacturers in the city. At that time, Ernest E. Whisnant was president and manager, and although Whisnant's brother, Clarence, was no longer with the company, his son-in-law, Harry J. Williams, was vice-president, and his wife, Louella Whisnant, was treasurer. The company boasted capital stock of \$600,000, had opened a branch mill in Maiden, and operated 612 circular knitting machines. It manufactured, dyed, and finished men's half hose and slacks, Komets, and wraps. Slacks were the cheapest socks and had an elastic or rubber band around the top to hold them up. Komets, named after the automatic double-cylinder machine of that name produced in England, had a ribbed top to help hold up the sock and a plainly knit foot. Wraps were slack socks with a pattern – usually a solid or stripe – in color. Whisnant's selling agency at that time was Hanes Hosiery, Inc., located in the Empire State Building in New York, and the company's products were sold to jobbers, chain stores, and department stores (*E. S. C. Quarterly*, 26-28; Robert Merritt Interview).

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The 1961 Sanborn map shows that several changes to the physical plant of the Whisnant Hosiery Mills had occurred since the previous map of 1948. Northwest of the mill, the warehouse building, with a frame interior and a masonry exterior, had expanded by one third and was attached to the mill by two, instead of one, enclosed walkways. Used at that time as the gray goods department, this building no longer stands. The 1961 map also shows that the original mill building was then being used as the finished product warehouse and stock room. Between 1948 and 1961, the open space between the 1929 building and the 1937 addition had been enclosed, except for a small area at the northeast end (Sanborn Map, 1948 and 1961).

In 1962, the Hickory Chamber of Commerce could list eighty-nine hosiery mills in the city (*Hickory Daily Record*, Spring 1962, p. 11). By that time, the hosiery industry had become the greatest of Hickory's diversified manufacturers, including furniture. Beyond the considerable economic impact of the hosiery industry on Hickory, it was an asset to the local economy in another way. A host of other businesses and industries were established to serve the needs of the hosiery industry. Among these were printers, lithographers, makers of transfers, box makers, makers of both textile and rubber yarns, machine shops, and dye makers (Clinard, 271).

The hosiery industry reached its peak in the mid-1960s, but began to decline in the following decades. While there had been eighty-nine hosiery mills in Hickory in 1962, by 1980 the number had dropped to fifty-two (*Hickory Daily Record*, November 30, 1983).

Perhaps more than any of the other hosiery mills in Hickory, the Whisnant Hosiery Mills illustrates the industry's high point during the mid-1960s. In 1966, a modern addition, designed by Hickory architect D. Carroll Abee, was built to the northwest side of the mill, replacing the warehouse/gray goods building that had occupied part of the site (Abee, Architectural Plans). This last addition doubled the size of the mill and signified the high level of success it still enjoyed. The 1966 addition housed a variety of functions. The front (northeast) end held a suite of offices and a loading dock, while the rear (southwest) end held the new dye house. In between, the bulk of the space housed the finishing room, with its assorting, labeling, and boxing functions. Two conveyor belts wound from the rear to the front of the space through the various finishing processes. Starting at the rear and moving forward, there were the pre-boarding, boarding, pairing, assorting, transfers, riders, and folding operations, ending with the shipping area at the front. In addition, in the front half of the space, the northwest side had areas for long fold storage and paper box storage, while general storage was on the southeast side.

In 1971, Whisnant Hosiery Mills, Inc. merged into the large Adams-Millis Corporation of High Point (Corporation Book 17, p. 282), ending more than forty years of the mill's association with the Whisnant family. In 1993, the Adams-Millis Corporation conveyed the Whisnant Hosiery Mills property to Moretz Mills, Inc. (Deed Book 1832, p. 1480). Moretz Mills, which also had plants in the Catawba County towns of Newton and Conover, used the mill in Hickory for dyeing, finishing, and packaging (John Moretz Interview). In 2003, Moretz, Inc. conveyed

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Whisnant Hosiery Mills
Catawba County, North Carolina

the property to LaMoe, LLC, the present owner, consisting of members of the Moretz family (Deed Book 2534, p. 1563). The mill closed in 2011 and now stands, largely vacant, awaiting rehabilitation for a new use (John Moretz Interview).

Today, with only a handful of hosiery mills surviving from among the many established during the first half of the twentieth century in Hickory, those that do are all the more significant. In addition to the Whisnant Hosiery Mills are the Lyerly Full Fashioned Mill (NR, 2007), the Hollar Hosiery Mills-Knit-Sox Knitting Mills (NR, 2012), the Hickory Hosiery Mills, and the Sigmon-Terry Hosiery Mill. The Whisnant Hosiery Mills surpassed these other surviving mills, as well as all but one of the mills historically associated with Hickory's hosiery industry, in terms of scale of operation, physical size, number of employees, and longevity.

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Whisnant Hosiery Mills
Catawba County, North Carolina

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Catawba County, North Carolina

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Robert Merritt (retired hosiery industrialist), September 9, 2012.

John Moretz (owner of former Whisnant Hosiery Mills), September 4, 5, 7, and 10, 2012.

Jim Williams (grandson of Ernest E. Whisnant), September 9, 2012.

Mary Jo Williams (daughter of Ernest E. Whisnant), September 9, 2012.

Photograph of Whisnant Hosiery Mills and its employees, September 1938. Original in the Patrick Beaver Memorial Library, Hickory, North Carolina. Copy in the survey file, North Carolina Historic Preservation Office, Raleigh.

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Whisnant Hosiery Mills
Catawba County, North Carolina

GEOGRAPHICAL DATA

Verbal Boundary Description

The boundary of the nominated property is identified as Catawba County tax parcel 370208994831.

Boundary Justification

The boundary of the nominated property includes the entirety of the Whisnant Hosiery Mills building complex and the 2.35- acre setting historically and currently associated with it.

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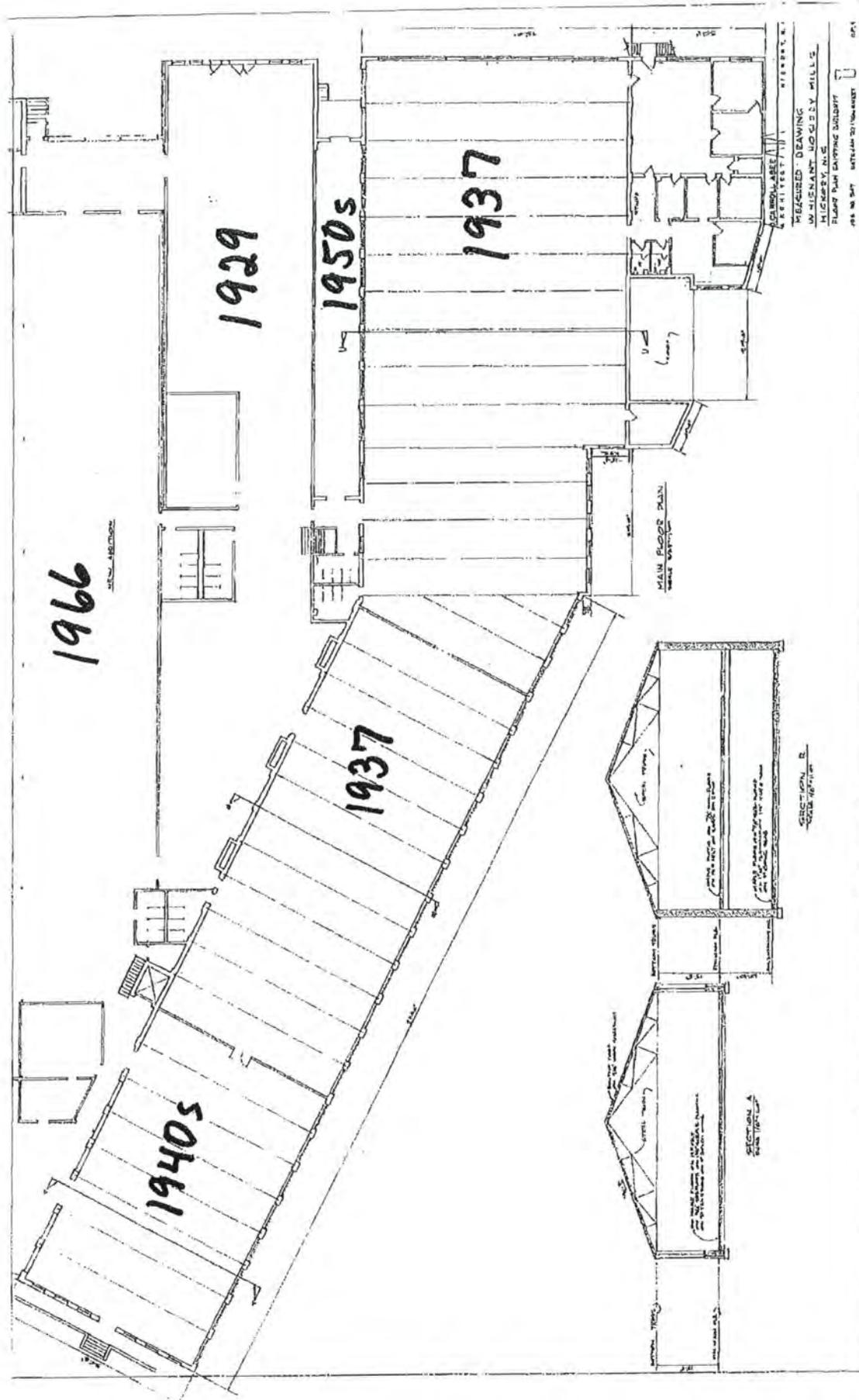
Section Number Photos Page 18

Whisnant Hosiery Mills
Catawba County, North Carolina

PHOTOGRAPHS

The following information for 1), 2), and 5) applies to all nomination photographs:

- 1) Whisnant Hosiery Mills
- 2) Hickory, Catawba County, North Carolina
- 3-4) Laura A. W. Phillips, October 25, 2012, Photos #1, 2, 3, 13, 14, 15
Heather Fearnbach, July 17, 2012, Photos # 4, 5, 6, 7, 8, 9, 10, 11, 12
- 5) CD: NCHPO, Raleigh, NC
- 6-7)
 - 1: Northeast façade with 1937 addition in foreground, view to northwest
 - 2: Northeast façade with 1966 addition in foreground, view to southeast
 - 3: Overall view, to west
 - 4: 1937 addition, southeast elevation, view to northeast
 - 5: Southwest and southeast elevations with 1940s addition in foreground, view to northeast
 - 6: Southwest elevation with 1966 addition in foreground, view to southeast
 - 7: 1966 addition, northwest elevation, view to southeast
 - 8: 1966 addition, northwest elevation, view to east
 - 9: 1929 mill, southeast side taken from within 1950s link to 1937 addition, view to northeast
 - 10: 1937 addition, main floor, view to northeast
 - 11: 1940s addition, view to southwest
 - 12: 1937 addition, basement, view to north
 - 13: 1937 addition, basement, view to northeast
 - 14: 1966 addition, office suite, view to west
 - 15: 1966 addition, dye house, view to northwest



Whisnant Hosiery Mills
 74 Eighth Street SE
 Hickory, Catawba Co., NC
 Floor Plan (drawn 1966)

17

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Andrea Surratt, Assistant City Manager
Contact Person: Andrea Surratt
Date: July 24, 2015
Re: Hickory Regional Airport Legal Settlement

REQUEST

To update City Council on the Settlement of Disputed Issues Between the City of Hickory and AGI Associates, LLC and CRA Enterprises, LLC concerning the Hickory Regional Airport.

BACKGROUND

The City of Hickory took over the Fixed Based Operations for the Hickory Regional Airport in December 2011 as a result of a judge's ruling in a bankruptcy case involving the FBO tenant. On December 9, 2011 a bankruptcy Judge in Charlotte made a ruling that dispossessed Profile Aviation of properties on the Airport that it had been occupying under the 2003 FBO Concession Agreement and Lease and returned these properties to the City free of Profile's leasehold rights. The properties in question are hangars N2 through N6; S2 and S5; and W1,W2 and W4.

As a result of losing the FBO operation, AGI (Profile) purchased the Airport Security from the Bank and sued the City for the value of the Encumbered Hangars under the legal theory of unjust enrichment in an effort to continue to extract funds from the City.

ANALYSIS

As a result of a recent mediation effort between the City of Hickory and the parties in conflict, a settlement agreement was reached that gave back to the City of Hickory full control of remaining facilities at the airport that had been in dispute, specifically the leasehold interest of the Moose Hangar as well as other hangars on the property. In all, the City gained 2.1 Million in the value of hangars and other assets for \$900,000.

The City of Hickory has been operating the airport since 2011 and has developed it into a self-sustaining airport operation. The resolution of these legal issues now enables the City of Hickory to fully own and operate the entire airport and all of its facilities free and clear of any claims from former tenants.

RECOMMENDATION

Staff is pleased to update City Council on this matter and also in consideration of a budget amendment to appropriate the funds.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

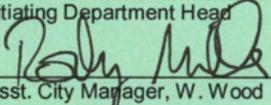
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Reviewed by:

A Surratt

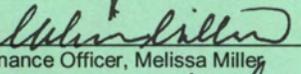
Initiating Department Head

Date



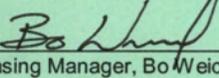
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Date

Asst. City Manager, W. Wood



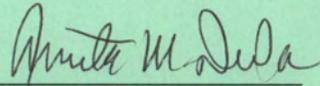
7-29-15
Date

Finance Officer, Melissa Miller



7-29-15
Date

Purchasing Manager, Bo Weichel



7-28-15

Deputy City Attorney, A. Dula

Date

Asst. City Manager, A. Surratt

Date

Administrative Services Director
M. Bennett

Date

Recommended for approval and placement on _____ Council agenda (as
Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date

of this Agreement (the "CRA Payment").

3. Dismissal of Federal Court Action.

Within five (5) days of receipt of the AGI Payment and the CRA Payment (collectively, the "Settlement Payments"), AGI will dismiss with prejudice all claims against Hickory by filing a Voluntary Dismissal with Prejudice in the Federal Court Action.

4. Dismissal of State Court Action.

Upon execution hereof, Hickory will dismiss with prejudice the summary ejectment proceeding by filing a Voluntary Dismissal with Prejudice in the State Court Action.

5. Termination of the Moose Hangar Lease.

The Moose Hangar Lease is hereby terminated.

6. Hickory Resolution.

The City Council of Hickory has adopted a resolution, Resolution No. 15-21, approving the terms of this Agreement, and authorizing the City Manager of Hickory to execute this Agreement on behalf of Hickory.

7. Release by AGI.

In consideration of this Agreement, and effective only upon receipt in full of the Settlement Payments, AGI hereby releases and forever discharges Hickory, its officers, directors, shareholders, partners, members, agents, attorneys, employees, successors, predecessors, heirs, assigns, subsidiaries, affiliated or related entities, insurers, and all persons or entities, present, former and future, who are or might be liable, of and from any and all claims that AGI has or might have against Hickory—whether known or unknown—that arise from or relate in any way to the Federal Court Action, and AGI hereby acknowledges full and final settlement and accord and satisfaction of all claims, demands, actions or causes of action that AGI – or any of AGI's agents, attorneys, employees, successors, predecessors, heirs, assigns, officers, directors, shareholders, partners, subsidiaries, affiliated or related entities, or insurers – has or may have against Hickory arising out of or related in any way to the Federal Court Action.

8. Release by CRA.

In consideration of this Agreement, and effective only upon receipt in full of the Settlement Payments, CRA hereby releases and forever discharges Hickory, its officers, directors, shareholders, partners, members, agents, attorneys, employees, successors, predecessors, heirs, assigns, subsidiaries, affiliated or related entities, insurers, and all persons or entities, present, former and future, who are or might be liable, of and from any and all claims that CRA has or might have against Hickory—whether known or unknown—that arise from or relate in any way to the State Court Action or the Moose Hangar Lease, and CRA hereby acknowledges full and final settlement and accord and satisfaction of all claims, demands,

actions or causes of action that CRA – or any of CRA’s agents, attorneys, employees, successors, predecessors, heirs, assigns, officers, directors, shareholders, partners, subsidiaries, affiliated or related entities, or insurers – has or may have against Hickory arising out of or related in any way to the State Court Action or the Moose Hangar Lease.

9. Release by Hickory.

In consideration of this Agreement, the release of liability provided herein, and the agreement by AGI and CRA to accept the Settlement Payments, Hickory hereby releases and forever discharges AGI and CRA, their partners, agents, attorneys, employees, successors, predecessors, heirs, assigns, affiliated or related entities, insurers, and all persons or entities, present, former and future, who are or might be liable, of and from any and all claims that Hickory has or might have against AGI or CRA—whether known or unknown—that arise from or relate in any way to the Federal Court Action, the State Court Action, or the Moose Hangar Lease, and Hickory hereby acknowledges full and final settlement and accord and satisfaction of all claims, demands, actions or causes of action that Hickory – or any of Hickory’s agents, attorneys, employees, successors, predecessors, heirs, assigns, officers, directors, shareholders, partners, subsidiaries, affiliated or related entities, or insurers – have or may have against AGI or CRA arising out of or related in any way to the Federal Court Action, State Court Action, or Moose Hangar Lease.

10. Non-Disparagement.

Each party hereto—including without limitation each party’s officers, directors, shareholders, partners, members, agents, attorneys, employees, successors, predecessors, heirs, assigns, subsidiaries, affiliated or related entities—agrees not to engage in any communications or conduct with the intent or effect of disparaging the other party hereto in any way.

11. Non-Admission.

The parties’ signing of this Agreement to take the proposed action set forth herein in no way constitutes any admission of liability or violation of any law or regulation, and the parties expressly deny the same, this Agreement being entered into solely to avoid the cost and uncertainty of further proceedings or litigation. Nothing in this Agreement may be used against any party hereto in any way, except for the enforcement of its terms and provisions.

12. Counterparts.

The parties hereto agree that this Agreement may be executed in counterparts as if executed as one document.

13. Consideration Acknowledged.

The parties acknowledge that the covenants contained in this Agreement provide good and sufficient consideration for every promise, duty, release, obligation and right contained in this Agreement.

14. Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, executors, administrators, trustees, directors, officers, shareholders, members, predecessors, successors, and assigns, and the individuals signing below hereby confirm that they are authorized to execute this binding agreement on behalf of the respective parties.

15. Costs, Expenses and Attorneys' Fees.

Each party shall bear its own costs, expenses and attorneys' fees incurred in connection with the Federal Court Action, the State Court Action, and this Agreement.

16. Involvement of Counsel and Advisors, Voluntary Execution.

Each party represents and acknowledges that it has been afforded full opportunity to discuss all aspects of this Agreement with legal counsel, tax advisors and/or financial advisors of its own choosing, and that it executes this Agreement without reliance upon any statement or representation of any party or their representatives. Each party further represents and warrants that it has reviewed this Agreement, fully understands all of its provisions, and voluntarily and knowingly signs this Agreement.

17. Entire Agreement.

The parties covenant and agree that this Agreement contains the entire agreement between the parties hereto, that all agreements and understandings between the parties are embodied and expressed herein, and that any pre-existing agreements or contracts between the parties are superseded by this Agreement.

18. Mutual Drafting.

This Agreement is the result of negotiations between the parties and shall be considered as being mutually drafted by the parties.

19. Governing Law.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date(s) indicated below.

AGI ASSOCIATES, LLC

By: [Signature] (SEAL)

Name: RICHARD GIRAQUARD

Title: MEMBER

Date: 7/16/15

CRA ENTERPRISES, INC.

By: [Signature] (SEAL)

Name: John E. Girouard

Title: Managing member

Date: 7/16/15

THE CITY OF HICKORY, NORTH CAROLINA

By: _____ (SEAL)

Name: _____

Title: _____

Date: _____

Approved as to form

Armita M. DeLa
City of Hickory – Legal Dept.

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

[Signature]
City of Hickory
Finance Officer

16
COUNCIL AGENDA MEMOS

Exhibit XI.B.2.

To: City Manager's Office
From: Tom Adkins, Chief of Police
Contact Person: Tom Adkins/Arnita Dula
Date: 23 July 2015
Re: Informational Presentation about Proposed Changes to Chapter 4 (Animal and Fowl) Ordinance

REQUEST: Staff requests approval to give a presentation of proposed changes to Chapter 4 (Animal and Fowl) Ordinance that would restrict animals on public property during approved special events.

BACKGROUND: The City of Hickory approves organizations to use public property (Union Square and other venues) to host events for the public. These events include Music under the Sails, Oktoberfest, the Farmer's Market, special events in the parks not hosted by Hickory Parks and Recreation, and many other events. Over the years, citizens and staff have expressed concerns about animals being allowed at these events due to public safety concerns for the citizens and animals attending the event.

ANALYSIS: City Staff to include Legal, Police, Parks and Recreation, and Branding/Public Information Office have worked together to develop proposed changes to Chapter 4 (Animal and Fowl) Ordinance restricting animals within the "footprint" of the approved special event on public property. These proposed changes are in the interest of protecting the public from potential aggressive animals that could cause harm to a human or another animal, and to ensure the appropriate public health and sanitation of food and surrounding areas.

RECOMMENDATION: Staff recommends City Council to provide feedback in order to precede with any changes to Chapter 4 (Animal and Fowl) ordinance that would restrict animals from approved special events on public property.

BUDGET ANALYSIS:

Budgetary Action

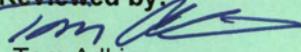
Is a Budget Amendment required?

Yes

No

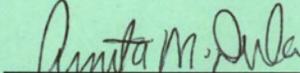
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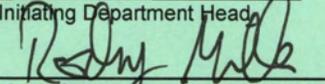

Tom Adkins

Initiating Department Head

7/23/15
Date


Deputy City Attorney, A. Dula

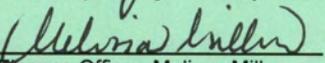
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Date


Asst. City Manager Rodney Miller

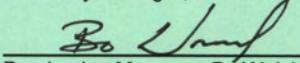
7-28-15
Date

Asst. City Manager, A. Surratt

Date


Finance Officer, Melissa Miller

7-28-15
Date


Purchasing Manager, Bo Weichel

7-28-15
Date

Date

Recommended for approval and placement on _____ Council agenda (as Consent, Public Hearing, Informational, Department Report, etc).

City Manager, M. Berry

Date