

A G E N D A

HICKORY CITY COUNCIL

November 17, 2020



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

November 17, 2020
7:00 p.m.

- I. Call to Order
- II. Invocation by Reverend Kathy Wood, Executive Director Greater Hickory Cooperative Christian Ministries
- III. Pledge of Allegiance
- IV. Special Presentations
 - A. Proclamation Recognizing J.T. Poston
 - B. Annual Audit - Presentation by Kari Dunlap, Martin Starnes & Associates
- V. Persons Requesting to Be Heard
- VI. Approval of Minutes
 - A. Regular Meeting of November 3, 2020. **(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. Budget Revision Number 8. **(First Reading Vote: Unanimous)**
- VIII. Consent Agenda: All items below will be enacted by vote of City Council. 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 of a Quitclaim Deed to Mildred Mauney to Correct a Mapping Error Resulting from her Purchase of a City-Owned Lot in 2012. **(Exhibit VIII.A.)**

Mildred Mauney purchased the vacant lot adjacent to her residence at 520 2nd Street SW from the City of Hickory in 2012. The parcel is further described as Catawba County GIS PIN 3702-11-57-3006. Prior to her purchase, the City of Hickory closed an unopened right of way to the south of the vacant lot in 1995. The Catawba County GIS maps indicate an approximately 7.5-foot wide strip of property to the south that is identified by Catawba County GIS PIN 3702-11-57-3002. According to research conducted by the City of Hickory Legal Department and the City of Hickory Surveyor, this property should have transferred to Ms. Mauney during the property transfer that took place in 2012. Approval of a quitclaim deed should address the issue and ensure that Ms. Mauney has title to all property that she purchased from the City in 2012. Staff requests that City Council approve the quitclaim deed to Mildred Mauney.

- B. Approval of the Appointment of Jeffrey Allen Hoyle to the Hickory Fire Department Local Relief and Supplemental Retirement Board of Trustees. **(Exhibit VIII.B.)**

The Hickory Fire Department Board of Trustees for the Local Relief and Supplemental Retirement Board consist of five members. The five members consist of (1) appointed by the North Carolina Insurance Commissioner (2) appointed by Mayor and Council, and (2) elected by the fire department membership. The purpose of the board is to administer the disbursement of funds received from the State of North Carolina Department of Insurance for local firefighter relief and supplemental retirement programs. On November 3, 2020, retired Hickory Battalion Fire Chief Jeffery S. Gouge requested to be removed from the Board effective December 31, 2020. Retired Hickory Battalion Fire Chief Jeffery S. Gouge has served on the fire department's Board of Trustees for the Local and Supplemental Retirement Funds since 2002. He will be leaving this position effective December 31, 2020. The Hickory Fire Department requests that Fire Captain Jeffrey A. Hoyle be appointed to this vacancy on the Board of Trustees. Staff recommends approval of Jeffrey Allen Hoyle to be appointed to the Hickory Fire Department's Board of Trustees for the Local Relief and Supplemental Retirement Funds.

- C. Citizens' Advisory Committee Recommendations for Assistance through the City of Hickory's Housing Programs. **(Exhibit VIII.C.)**

The following requests were considered by the Citizens' Advisory Committee at their regular meeting on November 5, 2020.

- *Teaundra Hewitt, 732 8th Avenue SE, Hickory, was recommended for approval of a Housing Rehabilitation Loan. The Citizens' Advisory Committee recommends approval for assistance not to exceed \$15,000 for repairs to her house. Assistance would be in the form of a 0% interest deferred loan.*
- *John & Marian Hodge, 3332 3rd Street Drive NW, Hickory, was recommended for approval of a Housing Rehabilitation Loan. The Citizens' Advisory Committee recommends approval for assistance not to exceed \$25,000 for repairs to their house. Assistance would be in the form of a zero percent interest deferred loan.*

Funds are budgeted for these items through the City of Hickory's former Housing Rehabilitation Program income received in FY 2019 and/or program income received through the City of Hickory's Community Development Block Grant Program.

The following applicant is being recommended for approval for assistance under the City of Hickory's 2019 Urgent Repair Program. This program provides qualified low-income citizens with assistance for emergency-related repairs not to exceed \$10,000.

- *Lorene Wimbush, 835 9th Avenue Place NE, Hickory-up to \$10,000.*

The Citizens' Advisory Committee recommends approval of the aforementioned request for assistance through the City of Hickory's housing assistance programs.

- D. Approval of a Contract with Civil & Environmental Consultants, Inc. in the Amount of \$62,000 for Construction Administration for Trivium Court and Trivium Parkway NCDOT U-6238. **(Exhibit VIII.D.)**

Staff requests Council's approval of a construction administration agreement for Trivium Court and Trivium Parkway NCDOT U-6238 – Phase II bidding and construction administration services with Civil & Environmental Consultants, Inc. in the lump sum amount of \$62,000. This phase of the project generally consists of the construction of approximately 400 linear feet of Trivium Court including grading, storm drainage, 30" concrete curb and gutter, 5' wide concrete sidewalks, street trees, erosion control measures, seeding, grassing and restoration, and approximately 400 linear feet of 12-inch diameter water mains. The scope of services for Civil & Environmental Services includes the progress meetings, fulltime site observations and inspections, recommendations to the owner, direction to the contractor, final inspections and North

Carolina Department of Transportation (NCDOT) coordination for the project. The cost will be split 50/50 with Catawba County. Staff recommends Council's approval of the construction administration agreement for Trivium Court and Trivium Parkway NCDOT U-6238 – Phase II bidding and construction administration services with Civil & Environmental Consultants, Inc. in the lump sum amount of \$62,000.

- E. Approval of a Permanent Sewer Easement and Partial Abandonment of an Existing Easement for the Property of Pond View LLC Located at 304 Main Avenue East, Hildebran. **(Exhibit VIII.E.)**

Staff requests approval of a permanent sewer easement and partial abandonment of an existing easement for the property of Pond View, LLC, described as a 7.72-acre tract in the Town of Hildebran, located at 304 Main Avenue East, Hildebran. The City of Hickory owns and operates the sanitary sewer system in the Town of Hildebran. The City of Hickory Public Utilities Department is responsible for all facets of this system including permitting, operation and maintenance. This easement is necessary for Pond View, LLC to turnover ownership to the City of Hickory. The infrastructure was built according to the Hickory Public Utilities Department's standards and has been tested and verified. These sewer lines and easement will be a donation to the City of Hickory. Staff recommends approval of the permanent sewer easement and partial abandonment of existing easement for the property of Pond View, LLC described as a 7.72-acre tract in the Town of Hildebran located at 304 Main Avenue East, Hildebran.

- F. Approval of an Agreement for Professional Services with Gannett Fleming, Inc. for Construction Engineering and Inspection Services related to the Riverwalk Project (EB-5939) in an Amount not to Exceed \$618,264.52. **(Exhibit VIII.F.)**

Staff requests Council's approval of an agreement for professional services with Gannett Fleming, Inc. for construction engineering and inspection (CEI) Services related to the Riverwalk Project (EB-5939) in an amount not to exceed \$618,264.52. The Riverwalk NCDOT portion of the project will contain an entrance from Old Lenoir Road, parking and access to the trail system, as well as an elevated walkway over Lake Hickory that interacts with existing City of Hickory amenities. Lighting on the bridge, retaining walls and all necessary drainage piping are included in this project. The funding for this project is apportioned 80/20, NCDOT and City respectively. NCDOT requires that recipients hire an engineering firm separate from the design firm to perform construction engineering and inspection services for oversight, materials testing and record keeping. Gannett Fleming, Inc. was selected based on qualifications-based proposals with NCDOT concurrence. Gannett Fleming's fees were negotiated by City of Hickory staff and NCDOT staff. Staff recommends Council's approval of an agreement for professional services with Gannett Fleming, Inc. for CEI Services related to the Riverwalk Project (EB-5939) in an amount not to exceed \$618,264.52.

- G. Budget Revision Number 9. **(Exhibit VIII.G.)**

1. To recognize the receipt of \$12,329 in donations to the Parks, Recreation, and Sports Tourism Department for the following projects: Virtual Learning supplies; resurfacing of tennis courts; purchase of scoreboard; supplies for drive-thru Back 2 School event and Candy Drop; and Bill McDonald Scholarship.
2. To transfer and appropriate a total of \$1,426,420 from the Water and Sewer Fund Balance for the following work: relocation of a sewer line along 3rd Street NE; waterline extension to the Airport hangar project; repairs to damaged sewer crossings from the 8/15/2020 heavy rain event, the Snow Creek pump station, and the Northeast Wastewater Treatment Plant outfall.
3. To transfer and appropriate a total of \$500,000 from Water and Sewer Fund Balance towards an incentive agreement with MDI, Inc.

IX. Items Removed from Consent Agenda

X. Informational Item

XI. New Business:

A. Public Hearings

1. Consideration of a Voluntary Non-Contiguous Annexation of Property Owned by Futuro, LLC and Corbin Harline, Containing Approximately 18.264 acres of Property Located at the Northeastern and Southeastern Corners of Snow Creek Road and 25th Street Place NE and 25th Street NE, Identified as PIN 3724-06-48-2558. - Presentation by Planning Director Brian Frazier. **(Exhibit XI.A.1.)**

Futuro, LLC and Corbin Harline have petitioned for the voluntary non-contiguous annexation of 18.264 acres of property located at the northeastern and southeastern corners of Snow Creek Road and 25th Street Place NE and 25th Street NE. The subject property is currently located within Catawba County's zoning jurisdiction, and zoned R-20 Residential. The annexation is being requested in order to connect to the City's sewer system. Under Catawba County's current zoning the property may be developed for one-and-two family residential uses at an intensity of two dwelling units per acre, which could potentially yield thirty-six new single-family or two-family dwelling units (duplexes). Should the property be annexed, and rezoned to R-2 (Residential), the property could be developed for single-family residential, at a density of four dwelling units per acre, which theoretically could yield seventy-one single-family dwelling units. This theoretical number is not likely achievable due to the configuration of the property, as well as topographical challenges. The property developer has indicated they would like to yield at least sixty single-family residential lots for future development. The differences between the existing zoning (R-20), and the proposed zoning (R-2); is that duplexes are not permitted, and Hickory's density is greater. The current tax value of the property is \$215,000. If annexed with its present value, the property would immediately generate additional tax revenues of \$1,263.12. The future tax revenues generated by the development of the property is currently unknown. Upon analysis, staff has determined the petition meets the statutory requirements for voluntary contiguous annexation, and adequate public services are available. Staff finds the petition to be in conformity with applicable statutes and recommends approval of the petition.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on November 6, 2020.

2. Consideration of Rezoning Petition 20-03 of 18.264 Acres of Property Located at the Northeast and Southeast Corner of Snow Creek Road and 25th Street Place NE and 25th Street NE. - Presentation by Planning Director Brian Frazier **(Exhibit XI.A.2.)**

Futuro, LLC and Corbin Harline have petitioned for the rezoning of 18.264 acres of property located at the northeast and southeast corner of Snow Creek Road and 25th Street Place NE and 25th Street NE. The request is to rezone the properties from R-20 Residential to Medium Density Residential (R-2). The subject property is currently zoned R-20 Residential by Catawba County, and is currently vacant. This property was recently annexed into the City of Hickory in anticipation of single-family residential development. The general area is classified as Low Density Residential by the Hickory By Choice 2030 Comprehensive Plan. This classification is intended to provide an area of transition between higher density housing and the surrounding area by offering development at two to four units per acre. The R-2 zoning district's permissible density is four units per acre, which adheres to the recommendations for areas classified as Low Density Residential by the Hickory by Choice 2030. The Hickory Regional Planning Commission conducted a public hearing on October

28, 2020 to consider the petition. During the public hearing, the property owners spoke in favor of the petition, while thirteen spoke in opposition. Those who spoke in opposition cited concerns over the residential density, traffic, driveway locations, stormwater, schools, lack of transparency, property values, privacy, and noise. Upon closing the public hearing, the Hickory Regional Planning Commission voted unanimously (6-0) to affirm the petition's consistency with the Hickory by Choice 2030 Comprehensive Plan, and recommended City Council approval of the petition.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on November 6, 2020.

3. Approval of a Resolution Approving the Financing Terms and Acceptance of the Bank Bid from BB&T (Trust Bank) for the Multiple General Fund Projects Installment Purchase Financing. – Presentation by Assistant City Manager Rodney Miller. **(Exhibit XI.A.3.)**

The City of Hickory has recognized the need to finance multiple general fund projects using an installment purchase method of financing for a fifteen-year period. The projects include a Fire Training Facility, Ridgeview Branch Library Expansion and Upgrades, Henry Fork River Park Turf Field, Deidra Lackey Memorial Park, and Appalachian Regional Commission (ARC) Road Project-Local Match. Projects involving financing methods of installment purchase are required to hold a public hearing for presentation of the financing concept in order to meet the public participation requirement prior to approval of debt by the Local Government Commission. This meeting is required to be a public hearing and must identify the concept that the City has chosen to use to finance the projects. A request for proposal was distributed to various banks on September 30, 2020 by the Finance Department. Three bids were received by the deadline date of October 23, 2020: BB&T (Trust Bank) – 1.69%; Regions Bank – 1.94%; Peoples Bank – 2.35%. Staff recommends approval of a Resolution approving financing terms and to accept the bank bid from BB&T (Trust Bank) for the Multiple General Fund Projects installment purchase financing.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on November 6, 2020.

B. Departmental Reports

1. Update on Hickory Homelessness – Presentation by Community Navigator Casey McCall
2. Appointments to Boards and Commissions

COMMUNITY APPEARANCE COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
 At-Large (Outside City but within HRP) (Council Appoints) VACANT

COMMUNITY RELATIONS COUNCIL

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
 Other Minority (Council Appoints) VACANT
 Other Minority (Council Appoints) VACANT
 Other Minority (Council Appoints) VACANT
 Differently-Abled and is African-American or Other Minority (Council Appoints) VACANT

HICKORY REGIONAL PLANNING COMMISSION

(Terms Expiring 6-30; 3-Year Terms With Unlimited Appointments)
 (Appointed by City Council)
 Brookford (Mayor Appoints with Recommendation from Brookford) VACANT

LIBRARY ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
At-Large (Mayor Appoints) VACANT
(Unexpired Term of Helen Devlin)

PUBLIC ART COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
Ward 4 (D. Williams Appoints) VACANT

PUBLIC HOUSING AUTHORITY

(Terms Expiring 6-30; 5-Year Terms) (Appointed by the Mayor)
Position 3 (Mayor Appoints) VACANT
Position 9 (Mayor Appoints) (Unexpired Term of Rebecca Clements) VACANT

YOUTH COUNCIL

(Terms Expiring 6-30; 1-Year Terms) (Appointed by City Council)
Youth Council Applicant Review Committee Recommends the Following
Appointments:

FTF VACANT
HCAM VACANT
HHS VACANT
Homeschool 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. 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, November 3, 2020 at 7:00 p.m., with the following members present:

| | | |
|-----------------------|------------|-------------------|
| Tony Wood | Hank Guess | David L. Williams |
| Charlotte C. Williams | Aldermen | David P. Zagaroli |
| Danny Seaver | | Jill Patton |

A quorum was present.

Also present were: City Manager Warren Wood, Assistant City Manager Rick Beasley, Assistant City Manager Rodney Miller, Deputy City Attorney Arnita Dula, City Attorney John W. Crone, III, Deputy City Clerk Crystal B. Mundy and City Clerk Debbie D. Miller

- I. Mayor Guess called the meeting to order. All Council members were present.
- II. Invocation by Dr. Chris Simmons, Chaplain at Frye Regional Medical Center and Behavioral Healthcare at Frye South
- III. Pledge of Allegiance
- IV. Special Presentations
- V. Persons Requesting to Be Heard
- VI. Approval of Minutes

A. Regular Meeting of October 20, 2020

Alderman Patton moved, seconded by Alderman Williams that the Minutes of October 20, 2020 be approved. 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.

Alderman Patton moved, seconded by Alderman Seaver that the following be reaffirmed and ratified on second reading. The motion carried unanimously.

A. Budget Revision Number 7. (First Reading Vote: Unanimous)

- VIII. Consent Agenda: All items below will be enacted by vote of City Council. 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 Patton moved, seconded by Alderman Zagaroli approval of the Consent Agenda. The motion carried unanimously.

A. Accepted the North Carolina Department of Transportation Grant 36237.NPE.20 (Non-Primary Entitlement Funds) in the Amount of \$166,666 for Airport Improvements.

Staff requests City Council's acceptance of Grant 36237.NPE.20 (Non-Primary Entitlement Funds) awarded by the North Carolina Department of Transportation (NCDOT) in the amount of \$166,666 for future airport improvements at the Hickory Regional Airport. By letter dated October 1, 2020, NCDOT has allocated FAA Non-Primary Entitlement funds under the State Block Grant Program for Federal Fiscal Year 2020 for the Hickory Regional Airport. Said funds are to be used for airside safety needs first with consideration of other needed airport projects. These funds are to be expended no later than July 31, 2024. NCDOT has allocated Federal funds via Grant 36237.NPE.20 with the Federal share of \$150,000 and a Federal Match of \$16,666 for airport improvements. To assist Local Government/Airports financially during COVID-19, the FY2020 Federal NPE grant is 100 percent funded with no local share requirement. This grant will assist in the continuation of the airfield improvement program as recommended by the Airport's Task Force. Once City Council accepts said grant, any future proposed projects that fall under the guidelines of this grant will be brought back to Council for approval. Staff recommends City Council's acceptance of Grant 36237.NPE.20 in the amount of \$166,666 from NCDOT.

B. Approved Two Resolutions Approving the Terms of Refinancing Existing Debt with BB&T.

Staff requests Council's approval of two resolutions approving the terms of refinancing existing debt with BB&T. Due to declining interest rates, the City will be able to refinance two current outstanding installment purchase contracts with BB&T. The refinancing will realize significant savings over the remaining life of the debts. The two resolutions for refinancing terms apply to the Convention Center Parking Deck and Henry River Basin contracts. All terms will remain the same except for the reduced interest rate and reduced prepayment penalty. BB&T agreed to reduce the prepayment penalty from 1 percent to 0.5 percent on both contracts. The refinancing will have the following impact: The remaining balance on the Convention Center Parking Deck debt is \$1,758,387.91.

The interest rate will decrease from 2.94 percent to 1.98 percent which will save \$69,692.74. The remaining balance on the Henry River Basin debt is \$2,375,000. The interest rate will decrease from 3.19 percent to 1.67 percent which will save \$87,400. The fee charged by BB&T to refinance these two installment purchase debts will be \$6,000. Staff recommends Council's approval of two resolutions approving the terms of refinancing existing debt with BB&T.

RESOLUTION NO. 20-39
RESOLUTION APPROVING TERMS OF REFINANCING DEBT FOR
CONVENTION CENTER PARKING DECK

WHEREAS, the City of Hickory, North Carolina desires to refinance the existing debt on the Convention Center Parking Deck with BB&T; and

WHEREAS, the changes to the terms of the financing agreement include revising the interest rate from 2.94% to 1.98% and reducing the prepayment penalty from 1% to 0.5%.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory, North Carolina, that the proposed changes to the original financing agreement are hereby approved and the officers designated to sign financing documents are hereby authorized and directed to take such action as may be necessary to effectuate such changes. All other terms and conditions of the original financing agreement thereof remain in full force and effect.

RESOLUTION NO. 20-40
RESOLUTION APPROVING TERMS OF REFINANCING DEBT FOR
HENRY RIVER BASIN

WHEREAS, the City of Hickory, North Carolina desires to refinance the existing debt on the Henry River Basin with BB&T; and

WHEREAS, the changes to the terms of the financing agreement include revising the interest rate from 3.19% to 1.67% and reducing the prepayment penalty from 1% to 0.5%.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory, North Carolina, that the proposed changes to the original financing agreement are hereby approved and the officers designated to sign financing documents are hereby authorized and directed to take such action as may be necessary to effectuate such changes. All other terms and conditions of the original financing agreement thereof remain in full force and effect.

- C. Called for a Public Hearing for Consideration of a Voluntary Non-Contiguous Annexation of Property Owned by Futuro, LLC and Corbin Harline, Containing Approximately 18.264 acres of Property Located at the Northeastern and Southeastern Corners of Snow Creek Road and 25th Street Place NE and 25th Street NE, Identified as PIN 3724-06-48-2558. (Authorized the Public Hearing for November 17, 2020, at 7:00 p.m. in Council Chambers of the Julian G. Whitener Municipal Building).

RESOLUTION NO. 20-41
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 Futuro, LLC & Corbin Harline requesting annexation of an area described in a petition was received on October 16, 2020 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:

Property located at the northeastern and southeastern corners of Snow Creek Road and 25th Street Place NE and 25th Street NE, PIN 3724-06-48-2558, containing approximately 18.264 acres more or less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Hickory this 16th day of October 2020.

/s/ Debbie D. Miller, City Clerk

RESOLUTION NO. 20-42

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 November 17, 2020 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 located at the northeastern and southeastern corners of Snow Creek Road and 25th Street Place NE and 25th Street NE, PIN 3724-06-48-2558, containing approximately 18.264 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. 20-43

A RESOLUTION DETERMINING THE INTENT TO ANNEX INTO THE CORPORATE LIMITS OF THE CITY OF HICKORY CERTAIN PROPERTY OWNED BY FUTURO, LLC AND CORBIN HARLINE AND CALLING FOR A PUBLIC HEARING ON THE SAME

WHEREAS, Futuro, LLC and Corbin Harline are the owners of certain real property as described herein, which property is located at the northeastern and southeastern corners of Snow Creek Road and 25th Street Place NE and 25th Street NE, Hickory containing 18.264 acres more or less; and

WHEREAS, such property is currently located in the City's extra-territorial jurisdictional (ETJ); 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 3rd day of November, 2020, 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 November 17, 2020 in the Council Chambers 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 maps entitled Futuro & Harline Annexation, Voluntary Non-Contiguous Map 1, Current City Boundary, subject property outlined in red; Futuro & Harline Annexation, Voluntary Non-Contiguous Map 2, Current Zoning, subject property outlined in red; Futuro & Harline Annexation, Voluntary Non-Contiguous Map 3, Aerial Photography, subject property outlined in red.
- Section 4: 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.
- D. Called for a Public Hearing for Review and Presentation of the Financing Concept for Multiple General Fund Projects Using an Installment Purchase Method of Financing Not to Exceed \$7,500,000. (Authorized Public Hearing for November 17, 2020, at 7:00 p.m. in Council Chambers of the Julian G. Whitener Municipal Building).
- E. Approved a Resolution Supporting an Application to the Local Government Commission for its Approval of a Financing Agreement for Multiple General Fund Projects.

Staff requests approval of a resolution supporting an application to the Local Government Commission for its approval of a financing agreement for multiple general fund projects. The City of Hickory has recognized the need to finance general fund projects which include a Fire Training Facility, Ridgeview Library Expansion and Upgrades, Henry Fork River Park Turf Field, Deidra Lackey Memorial Park, and Appalachian Regional Commission (ARC) Road Project-Local Match. On August 11, 2020, staff conducted an initial conference call with the Local Government Commission (LGC) to discuss the projects. An installment purchase method of financing has been chosen to finance these projects in an amount not to exceed \$7,500,000. In order for a local government in North Carolina to finance a project, approval is to be obtained from the Local Government Commission (LGC). The LGC requires a resolution be passed by City Council prior to the LGC's approval of the financing agreement application. In order to meet the application deadline, the completed LGC application must be received more than 28 days prior to the scheduled LGC meeting on December 1, 2020. The resolution resolves that the City is in financial standing to finance this project using the installment purchase debt method without raising taxes and includes an opinion by the Deputy City Attorney that the proposed project is authorized by law. On this November 3, 2020 Council agenda is also a call for public hearing regarding the financing concept for this project. City Council will also have the opportunity to consider accepting bank proposals for financing at its December 1, 2020 meeting pending approval by the LGC at their meeting earlier that day. Staff recommends approval of a resolution supporting an application to the Local Government Commission for its approval of a financing agreement for multiple general fund projects.

RESOLUTION NO. 20-44
RESOLUTION SUPPORTING AN APPLICATION TO THE LOCAL
GOVERNMENT COMMISSION FOR ITS APPROVAL OF A FINANCING
AGREEMENT FOR MULTIPLE GENERAL FUND PROJECTS

WHEREAS, the City of Hickory, North Carolina desires to finance the costs of multiple general fund projects to better serve the Citizens of Hickory; and

WHEREAS, the City desires to finance the projects by the use of an installment contract, as authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, finding of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory, North Carolina as follows:

1. The proposed projects include a Fire Training Facility, Ridgeview Library Expansion and Upgrades, Henry Fork River Park Turf Field, Deidra Lackey Memorial Park, and Appalachian Regional Commission (ARC) Road Project-Local Match. These projects will provide additional recreational, transportation, and educational opportunities for the citizens and staff of the City of Hickory.

2. The proposed installment financing is preferable to a bond issue for the same purpose. The types of installment financing arrangements available to the City make the overall cost of such a financing not substantially different from the overall cost of issuing voter-approved general obligation bonds.
3. The sums to fall due under the proposed financing contract are adequate and not excessive for the proposed purposes. The amounts needed for the projects are based on the architect's project budget projections. The City will closely evaluate the proposed lending rates with guidance from the Local Government Commission.
4. As confirmed to the Council at this meeting by the City's Chief Financial Officer and City's Finance Officer, the City's debt management procedures and policies are sound and in compliance with law. The City is not in default under any of its debt service obligations.
5. No tax increase will be necessary to meet debt obligations under the proposed financing agreement.
6. The attorney for the City of Hickory has rendered an opinion that the proposed projects are authorized by law and purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Finance Officer is hereby authorized to act on behalf of the City of Hickory, North Carolina, in filing an application with the North Carolina Local Government Commission for approval of the projects and the proposed financing contract and other actions not inconsistent with this resolution.

- F. Approved the Community Relations Council's Fall 2020 Grant Recommendations.

Staff requests approval of the Community Relations Council's Fall 2020 Grant recommendations. As part of the Community Relations Council's work plan and annual budget process, the Community Relations Council received funds to disperse during the fiscal year through the Community Relations Council's grant process. Non-profit agencies working with diverse populations in Hickory are eligible for grant funding. The grant proposal must show how the program under consideration fits into the Community Relations Council's goals and mission and how the program will serve to improve human relations in the Hickory area. For the Fall 2020 grant cycle, the Community Relations Council received nine grant applications for projects totaling \$11,395 and recommends Councils approval of six grants totaling \$6,300. Funds are available in the Community Relations Council's budget for the recommended grant approvals.

- G. Accepted the 2020 Bulletproof Vest Grant in the Amount of \$8,995.

Hickory Police Department requests permission to accept a grant to assist in funding the purchase of bulletproof vests for police officers. The City of Hickory will receive up to 50 percent reimbursement for each vest purchased. Since 1999, the Bullet Proof Vest Grant program has provided an opportunity for law enforcement agencies to apply for a grant to receive up to 50 percent funding on the purchase of ballistic vests. In order to be eligible, the agency must have a policy in effect making it mandatory for uniformed officers to wear the vests while on duty. Hickory Police Department has the mandatory wear policy in effect and has been a recipient of this grant for numerous years. Monies are placed in the police department budget uniform line item annually to purchase vests for police officers. Life expectancy of each vest is approximately five years. The Police Department recommends acceptance of this grant to receive up to 50 percent funding to purchase bulletproof vests for police officers. The total project cost is \$17,990. Hickory Police Department recommends acceptance of the award in the amount of \$8,995.

- H. Approved a Contract with McGill Associates P.A. in the Amount of \$111,400 for Upgrades to the Water Treatment Facility.

Staff requests Council's approval of a contract with McGill Associates P.A. for the design, permitting, and construction administration of upgrades to the water treatment facility air scour system and media replacement in filters 1 through 4 in the amount of \$111,400. In February 2019, Council approved an evaluation of the filters at the water treatment facility, which was completed in November 2019. Based on the study findings and the engineer's recommendation, it was determined that the filters should be rehabilitated by replacing filter media and upgrading the existing surface wash with a more efficient air scour system. Request for qualifications (RFQ) were solicited on August 13, 2020 and responses were received from: Freese & Nichols Inc., Hazen and Sawyer, HDR Inc., KCI Associates, McGill Associates and WithersRavanel. After review by staff, McGill Associates was selected based on qualifications and key personnel of the team. Staff requests Council's approval of the contract with McGill Associates P.A. for design,

permitting, and construction administration of upgrades to the water treatment facility air scour system and media replacement in filters 1 through 4 in the amount of \$111,400.

- I. Approved Change Order Number One in the Amount of \$18,000 with James E. Harris Construction Co., for the Water Treatment Facility Filter Media Replacement.

Staff requests Council's approval of change order number one for the water treatment facility filter media replacement for filters 5 through 12, with James E. Harris Construction Co., in the amount of \$18,000. In February of 2019, Council approved an evaluation of the filters at the water treatment facility. This study was completed in November 2019. Based on the study findings and the engineer's recommendation, it has been determined that the filters be rehabilitated by replacing filter components such as media and nozzles. Change order number one will provide inspection of components inaccessible before media removal to check condition of underdrain plenum and an allowance for the removal of debris if found during the inspection of underdrain plenums. Staff recommends Council's approval of change order number one for the water treatment facility filter media replacement for filters 5 through 12, with James E. Harris Construction Co., in the amount of \$18,000.

- J. Approved on First Reading Budget Revision Number 8.

**ORDINANCE NO. 20-52
BUDGET REVISION NUMBER 8**

BE IT ORDAINED by the Governing Board of the City of Hickory that, pursuant to N.C. General Statutes 159.15 and 159.13.2, the following revision be made to the annual budget ordinance for the fiscal year ending June 30, 2021 and for the duration of the Project Ordinances noted herein.

SECTION 1. To amend the General Fund within the FY 2020-21 Budget Ordinance, the expenditures are to be changed as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|------------------------|---------------|--------------|
| Public Safety | - | 8,995 |
| Culture and Recreation | 9,544 | - |
| Other Financing Uses | 9,245 | - |
| TOTAL | 18,789 | 8,995 |

To provide funding for the above, the General Fund revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|-------------------------|--------------|----------|
| Other Financing Sources | 9,794 | - |
| TOTAL | 9,794 | - |

SECTION 2. To amend the Water and Sewer within the FY 2020-21 Budget Ordinance the expenditures are to be changed as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|----------------------|---------------|----------|
| Other Financing Uses | 80,000 | - |
| TOTAL | 80,000 | - |

To provide funding for the above, the Water and Sewer revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|-------------------------|---------------|----------|
| Other Financing Sources | 80,000 | - |
| TOTAL | 80,000 | - |

SECTION 3. To amend the McLin & Lyle Creek Wastewater Capital Project Ordinance (#803305), the expenditures shall be changed as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|----------------------------------|---------------|----------|
| Water and Sewer Capital Projects | 80,000 | - |
| TOTAL | 80,000 | - |

To provide funding for the above, the Project revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|-------------------------|---------------|----------|
| Other Financing Sources | 80,000 | - |
| TOTAL | 80,000 | - |

SECTION 4. To establish the 2020 Bulletproof Vest Partnership Grant Project Ordinance (#G51103) within the Multi-Year Grant Projects Fund, the expenditures shall be established as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|-----------------|----------|----------|
| Public Safety | 17,990 | - |
| TOTAL | 17,990 | - |

To provide funding for the above, the Project revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|--------------------------------------|----------|----------|
| Restricted Intergovernmental Revenue | 8,995 | - |
| Other Financing Sources | 8,995 | - |
| TOTAL | 17,990 | - |

SECTION 5. To amend the Bruce Meisner Park Capital Project Ordinance (#62008), the expenditures shall be changed as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|--------------------------|----------|----------|
| General Capital Projects | 250 | - |
| TOTAL | 250 | - |

To provide funding for the above, the Project revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|-------------------------|----------|----------|
| Other Financing Sources | 250 | - |
| TOTAL | 250 | - |

SECTION 6. To amend the Project Enzyme Roadway Infrastructure Capital Project Ordinance (#B1B003), the expenditures shall be changed as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|--------------------------|----------|----------|
| General Capital Projects | 220,059 | - |
| TOTAL | 220,059 | - |

To provide funding for the above, the Project revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|------------------------|----------|----------|
| Miscellaneous Revenues | 220,059 | - |
| TOTAL | 220,059 | - |

SECTION 7. Copies of the budget revision shall be furnished to the Clerk of the Governing Board, and to the City Manager (Budget Officer) and the Finance Officer for their direction.

IX. Items Removed from Consent Agenda – None

X. Informational Item

XI. New Business:

A. Public Hearings

1. Approved Preliminary Assessment Roll for Curb and Gutter Petition No. 20-01 for Property Located at 638 28th Avenue Court NE – Presentation by Assistant Public Services Director Steve Miller.

The City Clerk received petition number 20-01 from the owners of property along 638 28th Avenue Court NE to install curb and gutter along a portion of their street as per section 29-2 of the Hickory Code of Ordinances. The petition was a single-party petition. The City Council adopted a Resolution Directing that Street Improvement Project Be Undertaken. Construction of the curb and gutter was completed on September 28, 2020. The preliminary assessment roll number 20-01 has been prepared based on the curb and gutter constructed. The City Clerk has certified she mailed a copy of the adopted Preliminary Resolution, which called for a public hearing, to all affected property owners. Staff requests Council's consideration of a Resolution confirming the assessment roll.

This public hearing was advertised in a newspaper having general circulation in the Hickory area on October 23, 2020.

City Manager Warren Wood asked Assistant Public Services Director Steve Miller to the podium to present Council with the preliminary assessment roll for

curb and gutter petition number 20-01 for property located at 638 28th Avenue Court NE.

Assistant Public Services Director Steve Miller presented a PowerPoint presentation. He discussed curb and gutter petition number 20-01 for the preliminary assessment roll for the Keller property located at 638 28th Avenue Court NE. He noted that this was a single party petition. The property was at the corner of 28th Avenue Court and 6th Street Court NE. The petition included 155 linear feet of curb and gutter and an 18 linear foot driveway. The cost to the property owner for construction was \$7,794.91. He referred to the PowerPoint and pointed out 29th Avenue located between Highway 127 and Sandy Ridge Road. He pointed out 28th Avenue Court and the subject property. He pointed out another parcel owned by Mr. Keller noting the wooded lot had been cleared. He pointed out the location of the curb and gutter and the driveway apron and displayed a photo of the finished project. He mentioned that he thought Mr. Keller had plans, at some point, to place a single-family residence on the lot for Mr. Keller's personal use, or Mr. Keller may develop it to sell as a single-family residence. He advised staff requested approval of the Resolution confirming the assessment roll for the cost to install the curb and gutter along the portion of 28th Avenue Court at the residence located at 638.

Mayor Guess asked for any questions. He explained the rules for conducting the public hearing. He declared the public hearing open and asked if there was anyone present to speak in opposition to the proposal. No one appeared. He asked if there was anyone present to speak in favor of the proposal. No one appeared. Mayor Guess closed the public hearing.

Alderman Seaver moved, seconded by Alderman Zagaroli approval of the preliminary assessment roll for curb and gutter petition number 20-01. The motion carried unanimously.

RESOLUTION NO. 20-45
RESOLUTION CONFIRMING AND LEVYING ASSESSMENT
STREET IMPROVEMENTS ON A PORTION OF
638 28TH AVENUE COURT NE, HICKORY
NO. 20-01

WHEREAS, the City Council of the City of Hickory has on this day held a public hearing, after due notice as required by law, on the Assessment Roll for the street improvements on a portion of 638 28th Avenue Court NE, Hickory; and

WHEREAS, the City Council has heard all those persons present who requested to be heard and has found the Assessment Roll to be proper and correct.

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

1. The Assessment Roll for the improvement of a portion of 638 28th Avenue Court NE, Hickory are hereby confirmed in accordance with Chapter 160A, Section 228, of the General Statutes of North Carolina.
2. The City Council of the City of Hickory, pursuant to authority conferred by Chapter 160A, Section 216, of the General Statutes of North Carolina, and following sections, does hereby levy assessments as contained in the said Assessment Roll.
3. The City Clerk is hereby directed to deliver to the Collector of Revenue the said Assessment Roll.
4. Assessments may be paid without interest at any time before expiration of 30 days from the date this notice is published.
5. The Collector of Revenue is hereby charged with the collection of the said assessments that are not paid within this time, in accordance with the procedure established by Chapter 160A, Sections 232 and 233 of the General Statutes of North Carolina.
6. The City Clerk is hereby further directed to publish once on the 23rd day of November, 2020.

B. Departmental Reports:

1. Appointments to Boards and Commissions

COMMUNITY APPEARANCE COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
 At-Large (Outside City but within HRP) (Council Appoints) VACANT

COMMUNITY RELATIONS COUNCIL

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
 Other Minority (Council Appoints) VACANT
 Other Minority (Council Appoints) VACANT
 Other Minority (Council Appoints) VACANT
 Differently-Abled and is African-American or Other Minority (Council Appoints) VACANT

HICKORY REGIONAL PLANNING COMMISSION

(Terms Expiring 6-30; 3-Year Terms With Unlimited Appointments)
 (Appointed by City Council)
 Brookford (Mayor Appoints with Recommendation from Brookford) VACANT

LIBRARY ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
 At-Large (Mayor Appoints) VACANT
 (Unexpired Term of Helen Devlin)

PUBLIC ART COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)
 Ward 4 (D. Williams Appoints) VACANT

PUBLIC HOUSING AUTHORITY

(Terms Expiring 6-30; 5-Year Terms) (Appointed by the Mayor)
 Position 3 (Mayor Appoints) VACANT
 Position 9 (Mayor Appoints) (Unexpired Term of Rebecca Clements) VACANT

YOUTH COUNCIL

(Terms Expiring 6-30; 1-Year Terms) (Appointed by City Council)
 Youth Council Applicant Review Committee Recommends the Following Appointments:

FTF VACANT
 HCAM VACANT
 HHS VACANT
 Homeschool 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

Mayor Guess commented two City employees were recognized by the Hickory Young Professionals as the "Top Ten Under Forty", Sarah Prencepe, and Bryson Grier with Hickory Police Department. He mentioned that was quite an achievement and he wanted to congratulate Ms. Prencepe and Mr. Grier on their award. He also recognized and congratulated Airport Manager Terry Clark for receiving the Patriot Award, given by the National Guard. He congratulated those City employees. He reminded everyone that all the City's coworkers and staff do a tremendous job. He commented that probably not a week goes by that he doesn't hear from one of the citizens about something that may go unnoticed, but they will let him, other Councilmembers, or staff know how much they appreciate how they go out of their way to do things that were not necessarily in their job description. Anything from helping people with limbs, different things, sanitation, fire department, police department, public works, everybody. He appreciated the City's coworkers, because all the City's coworkers go above and beyond and a lot of times, they might not hear about it, but he knew that it was out there. He commented the City has some of the best staff of any municipality that he knows, and it certainly didn't go unrecognized. It makes their jobs as Council and elected officials job a lot easier when they have the caliber of staff that the City of Hickory has.

XIV. Closed Session Per NC General Statutes 143-318.11(a)(4) to consult with the attorneys regarding the following: (Action on these items, if any, will occur in Open Session)

Mayor Guess advised that City Manager Warren Wood had a closed session item that needed to be added to the meeting.

City Manager Warren Wood confirmed that was correct. It was not on the agenda, because it had come up late. Catawba County Economic Development Corporation President Scott Millar was present for an economic development item to discuss in closed session.

Mayor Guess moved, seconded by Alderwoman Patton, that Council go into closed session to consult with the attorneys to discuss the items below. The motion carried unanimously.

1. Discussion of Potential Economic Development - NCGS §143-318.11(a)(4)

Council convened to closed session at approximately 7:11 p.m.

Council reconvened to open session at approximately 7:26 p.m.

No action was taken upon return to open session.

- XV. There being no further business, the meeting adjourned at 7:26 p.m.

Mayor

City Clerk

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: David Leonetti, Business Services Manager
Contact Person: Dave Leonetti, Business Services Manager
Date: October 30, 2020
Re: Approve Quitclaim Deed to Mildred Mauney

REQUEST

Staff requests that City Council approve and execute a quitclaim deed to Mildred Mauney to correct a mapping error resulting from her purchase of a City-owned lot in 2012.

BACKGROUND

Mildred Mauney purchased the vacant lot adjacent to her residence at 520 2nd Street SW from the City of Hickory in 2012. The parcel is further described as Catawba County GIS PIN 370211573006 on the Catawba County Tax Maps. Prior to her purchase, the City of Hickory had closed an unopened right of way to the south of the vacant lot in 1995. The Catawba County GIS maps indicate an approximately 7.5 foot wide strip of property to the south that is identified by Catawba County GIS PIN 370211573002.

ANALYSIS

According to research conducted by the City of Hickory Legal Department and the City of Hickory Surveyor, this property should have transferred to Ms. Mauney during the property transfer that took place in 2012. Staff has drawn a quitclaim deed that, if executed, should address the issue and ensure that Ms. Mauney has title to all property that she purchased from the City in 2012.

RECOMMENDATION

Staff requests that City Council approve the quitclaim deed to Mildred Mauney.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Dave Leonetti

Initiating Department Head

10/30/2020

Date

Rodney Miller

Asst. City Manager, R. Miller

11/9/20

Date

Melissa Miller

Finance Officer, Melissa Miller

11/9/20

Date

Annita M. Dula

Deputy City Attorney, A. Dula

11-6-20

Date

R. Beasley

Asst. City Manager, R. Beasley

11/9/20

Date

_____ Date

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

Warren Wood
City Manager-Warren Wood

11-10-20
Date

Prepared by/Return to:

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

NORTH CAROLINA

QUITCLAIM DEED

CATAWBA COUNTY

This deed, made and entered into this ____ of November, 2020 by and between **CITY OF HICKORY, a North Carolina Municipal Corporation**, having a mailing address of **P.O. Box 398, Hickory, North Carolina, 28601**(Grantor), and **MILDRED A. MAUNEY**, duly organized and existing under the laws of the State of North Carolina, having a mailing address of **520 2ND Street SW, Hickory, North Carolina 28602** (Grantee), and.

WITNESSETH:

That said Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to them in hand paid, the receipt of which is hereby acknowledged, have remised and released and by these presents do remise, release and forever quitclaim unto the Grantee and his heirs and assigns all right, title, claim and interest of the said Grantors in and to a certain tract or parcel of land lying and being in the County of Catawba, State of North Carolina, Hickory Township, and more particularly described as follows:

QUITCLAIM DEED
City of Hickory to Mildred A Mauney
PAGE 1 OF 2

Being all of the 7' ft. parcel showing as North Carolina Parcel Identification Number of 3702-11-57-3002. See back reference to a street closing in an Order and Resolution dated March 20, 1990 and recorded in Book 1663 at Page 285, Catawba County Register of Deeds Office.

To have and to hold the aforesaid tract or parcel of land and all privileges thereunto belonging to him, the said Grantee and his heirs and assigns free and discharged from all right, title, claim or interest of the said Grantor or anyone claiming by, through or under them.

IN TESTIMONY WHEREOF, the said Grantors have hereunto set their hand and seal the day and year first above written.

THE CITY OF HICKORY,
A North Carolina Municipal Corporation

Hank Guess, Mayor

ATTEST:

(SEAL)

Debbie D. Miller, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, _____, a Notary Public of said County and State, certify that Debbie D. Miller personally appeared before me this day and acknowledged that she is the Clerk 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 Mayor, sealed with its corporate seal and attested by her as City Clerk.

Witness my hand and seal this _____ day of _____, 2020.

(SEAL)

Notary Public
My Commission Expires: _____

QUITCLAIM DEED
City of Hickory to Mildred A Mauney
PAGE 2 OF 2

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Matthew S. Hutchinson, Fire Chief
Contact Person: Matthew S. Hutchinson
Date: November 3, 2020
Re: Appointment of Fire Department Local Relief and Supplemental Retirement Board Member

REQUEST

Approve the appointment of Jeffrey Allen Hoyle to the Hickory Fire Department Local Relief and Supplemental Retirement Board of Trustees.

BACKGROUND

The Hickory Fire Department Board of Trustees for the Local Relief and Supplemental Retirement Board consist of five (5) members. The five members consist of (1) appointed by the North Carolina Insurance Commissioner (2) appointed by Mayor and Council, and (2) elected by the fire department membership. The purpose of the board is to administer the disbursement of funds received from the State of North Carolina Department of Insurance for local firefighter relief and supplemental retirement programs. As on November 3, 2020, retired Hickory Battalion Fire Chief Jeffery S. Gouge requested to be removed from the Board effective 12/31/2020.

ANALYSIS

Retired Hickory Battalion Fire Chief Jeffery S. Gouge has served on the fire department's Board of Trustees for the Local and Supplemental Retirement Funds since 2002. He will be leaving this position effective December 31, 2020. The Hickory Fire Department requests that Fire Captain Jeffrey A. Hoyle be appointed to this vacancy on the Board of Trustees. He currently reside at 2042 19th Avenue Circle, NC, Hickory.

RECOMMENDATION

Staff recommends approval for Jeffrey Allen Hoyle to be appointed to the Hickory Fire Department's Board of Trustees for the Local Relief and Supplemental Retirement Funds.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Matthew S. Hutchinson

11/3/2020

Initiating Department Head

Date

Aunta Madua

11-6-20

Deputy City Attorney, A. Dula

Date

Rodney Miller

11/9/20

Asst. City Manager, R. Miller

Date

Paul Beasley

11/9/20

Asst. City Manager, R. Beasley

Date

Melissa Miller

11/9/20

Finance Officer, Melissa Miller

Date

Asst Finance Director, Shana Guy

Date

Date

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

W. Wood
City Manager, W. Wood

11.10.20
Date



Hickory Fire Department

City of Hickory
19 Second Street Drive NE
Hickory, NC 28601
Phone (828) 323-7420
Fax (828) 323-7566

Matt Hutchinson
Fire Chief

Memo No. 8/20
Filed: loc&supplemental

MEMORANDUM TO: Warren Wood, City Manager

FROM: Matthew S. Hutchinson, Fire Chief

DATE: November 3, 2020

SUBJECT: **APPOINTMENT TO HICKORY FIREMEN'S LOCAL RELIEF AND SUPPLEMENTAL RETIREMENT BOARD**

Due to the request from Jeffery S. Gouge, to resign from the Hickory Firemen's Local Relief and Supplemental Retirement Board of Trustees, I am requesting that you appoint Captain Jeffrey Allen Hoyle to fill his vacancy. The Council Agenda Memoranda has been submitted for consideration, I would appreciate you having this placed on the City Council agenda at your earliest opportunity.

Thank you.

mew

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Karen Dickerson, Community Development Manager
Contact Person: Karen Dickerson, Community Development Manager
Date: November 5, 2020
Re: Citizen's Advisory Committee Recommendation

REQUEST Recommendation for assistance through the City of Hickory's Housing Programs.

BACKGROUND The mission of the City of Hickory's Community Development Division is to preserve the existing housing base, enhance ownership opportunities for all of its citizens to obtain decent housing, and provide a quality environment conducive to the safe and healthy growth of its citizenry. The seven-member Citizens' Advisory Committee was formed to provide for citizen input in the facilitation of the City's CDBG program, as well as any other similar community enhancement funding the City may receive.

ANALYSIS The following request was considered by the Citizens' Advisory Committee at their regular meeting on November 5, 2020:

- Teaundra Hewitt, 732 8th Avenue SE, Hickory, was recommended for approval of a Housing Rehabilitation Loan. The Citizens' Advisory Committee recommends approval for assistance not to exceed \$15,000.00 for repairs to her house. Assistance would be in the form of a 0% interest deferred loan.
- John & Marian Hodge, 3332 3rd Street Drive NW, Hickory, was recommended for approval of a Housing Rehabilitation Loan. The Citizens' Advisory Committee recommends approval for assistance not to exceed \$25,000.00 for repairs to their house. Assistance would be in the form of a 0% interest deferred loan.

Funds are budgeted for these items through the City of Hickory's former Housing Rehabilitation Program income received in FY 2019 and/or program income received through the City of Hickory's Community Development Block Grant Program.

The following applicant is being recommended for approval for assistance under the City of Hickory's 2019 Urgent Repair Program. This program provides qualified low-income citizens with assistance for emergency-related repairs not to exceed \$10,000.

- Lorene Wimbush, 835 9th Avenue Place NE, Hickory-up to \$10,000.00

RECOMMENDATION The Citizens' Advisory Committee recommends approval of the aforementioned request for assistance through the City of Hickory's housing assistance programs.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

059-1533-558-38-01

056-1616-558-32-03

Reviewed by:

Dave Leonetti

Initiating Department Head

SG

11/05/20

Date

Auntama Dula
Deputy City Attorney, A. Dula

11-6-20

Date

Rodney Miller
Asst. City Manager, R. Miller

11/9/20

Date

Rod Beasley
Asst. City Manager, R. Beasley

11/5/20

Date

Melissa Miller
Finance Officer, Melissa Miller

11/9/20

Date

Purchasing Manager,

Date

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

W. Wood
City Manager, W. Wood

11-10-20
Date

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Shawn Pennell, Assistant Public Services Director
Contact Person: Shawn Pennell, Assistant Public Services Director
Date: November 17, 2020
Re: Trivium Court and Trivium Parkway NCDOT U-6238 – Phase II Bidding and Construction Administration Services

REQUEST

Staff requests Council acceptance of Construction Administration Agreement for the Trivium Court and Trivium Parkway NCDOT U-6238 – Phase II Bidding and Construction Administration Services to Civil & Environmental Consultants, Inc, in the amount of \$62,000.00 lump sum fee.

BACKGROUND

The City of Hickory identified an area in southeast Hickory that is large enough and conducive to development of a business park, convenient to major roadways and adjacent to significant Utility infrastructure. The City of Hickory, Catawba County and Economic Development Corporation have worked on development of this area as a business park for several years and the City and County have agreed to split the cost of development. Trivium Business Park is the business park identified for Bond proceeds for the Bond Referendum that was passed by the City of Hickory.

ANALYSIS

This phase of the project generally consists of the construction of approximately 400 linear feet of Trivium Court including grading, storm drainage, 30" concrete curb and gutter, 5' wide concrete sidewalks, street trees, erosion control measures, seeding, grassing and restoration, and approximately 400 linear feet of 12-inch diameter water mains.

The scope of services for Civil & Environmental Services includes the progress meetings, full time site observations and inspections, recommendations to the owner, direction to the contractor, final inspections and NCDOT coordination for the project.

RECOMMENDATION

Staff recommends Council acceptance of Construction Administration Agreement for the Trivium Court and Trivium Parkway NCDOT U-6238 – Phase II Bidding and Construction Administration Services to Civil & Environmental Consultants, Inc, in the amount of \$62,000.00 lump sum fee.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Project# B1B003
061-7505-577.24-04

Reviewed by:

ms

Shawn Pennell
Initiating Department Head

11/05/2020
Date

Amanda M. Dula
Deputy City Attorney, A. Dula

11-6-20
Date

Rodney Miller
Asst. City Manager, R. Miller

11/9/20
Date

Paul Beasley
Asst. City Manager, R. Beasley

11/9/20
Date

Melissa Miller
Finance Officer, Melissa Miller

11/9/20
Date

Date

Date

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

Warren Wood
City Manager Warren Wood

11/16/20
Date

**CONTRACT BETWEEN CITY OF HICKORY AND
CIVIL & ENVIRONMENTAL CONSULTANTS, INC. (CONSULTANT)
FOR PROFESSIONAL SERVICES**

City of Hickory
Mailing Address:
Zip:
PO Box 398
Phone Number: 828-323-7412

Contact: Mrs. Yaidee C. Fox
City: _____ State: _____
Hickory, NC 28603
Email: yfox@hickorync.gov

CONSULTANT: Civil & Environmental Consultants, Inc.
Mailing Address: 3701 Arco Corporate Dr., Suite 400
Zip: 28273
Phone Number: 980-237-0373

Contact: Mr. Shad Walters, PE
City: Charlotte State: NC
Email: swalters@cecinc.com

The Contract is made and entered into on the last date executed below, by and between the City of Hickory and Civil & Environmental Consultants, Inc., hereinafter referred to as "CONSULTANT".

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IMPORTANT INFORMATION AND INSTRUCTIONS

SECTIONS WITHIN THIS AGREEMENT:

Contact Information

Important Information and Instructions

Professional Services Contract Provisions

Special Conditions

General Contract Provisions Under Federal Awards

Professional Services Contract Provisions Under Federal Awards

General Contract

Exhibit A

Exhibit B

1. **SUBMIT ALL PAGES:** All pages and exhibits of this document will be used as the Contract. CONSULTANT shall submit *all* pages of this document with completed information.
2. **GENERAL CONTRACT:** AUTHORIZED AGENT of CONSULTANT must sign before proposal is submitted to the City of Hickory. Upon acceptance of the proposal, the City of Hickory will sign the page following EXHIBIT A and the Contract shall be fully executed.
3. **EXHIBIT A:** Insert the proposed scope and associated costs for services behind this page.
4. **CONTRACT TIME:** 35 WEEKS FROM NTP
5. **EXHIBIT B:** Insert completed E-verify form and all required certificates of insurance behind this page.

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PROFESSIONAL SERVICES CONTRACT PROVISIONS

1. **ACCEPTANCE OF CONTRACT:** This document constitutes only the CONSULTANT's offer until it is accepted on behalf of the City of Hickory and is fully executed by both parties.
2. **EXECUTION OF CONTRACT:** Contract documents must contain the original signature(s) of the authorized representative(s) in the space(s) provided. Contract must be typed or printed in ink. Use of erasable ink is not permitted. The Contract, including the exhibits made part hereof, constitute the entire Contract between CONSULTANT and the City of Hickory, supersedes and controls over all prior written or oral understandings. The Contract may be amended, supplemented or modified only by a written instrument duly executed by the Parties in the same manner as the Contract.
3. **CONTROLLING AGREEMENT:** The Contract shall take precedence over any inconsistent or contradictory provisions contained in any proposal, purchase order, requisition, notice-to-proceed, or like document.
4. **CONTROLLING LAW AND VENUE:** The Contract is to be governed by the state of North Carolina. Jurisdiction and Venue shall lie with the courts of Catawba County, NC.
5. **COMPLIANCE WITH LAWS:** CONSULTANT, at his own expense, shall obtain and maintain all licenses, permits, liability insurance and 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 CONSULTANT and the City of Hickory. Any such requirement specifically set forth in any contract document between CONSULTANT and the City of Hickory shall be supplementary to this section and not in substitution thereof.
6. **DISTRIBUTION OF CONTRACT:** One (1) copy of the Contract shall be furnished to CONSULTANT. It shall be CONSULTANT's responsibility to reproduce and distribute copies of the Contract as needed to employees/subcontractors of CONSULTANT. No additions, deletions or changes of any kind shall be made to the Contract by CONSULTANT.
7. **DELIVERY OF NOTICES:** Any notices required or permitted by the Contract will be considered sufficient if hand delivered, emailed with read receipt requested, 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 email, the Party entitled to receive the notice may request the original to be hand delivered or sent by certified mail. 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.
8. **CHANGES:** The City of Hickory and CONSULTANT agree that no change or modification to the Contract, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of the Contract. The execution of the change shall be authorized and signed in the same manner as the Contract. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of the Contract. Any proposed fees by CONSULTANT are estimates to perform the services required to complete the Project as CONSULTANT understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. CONSULTANT will inform the City of Hickory of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment may be made, and the Contract modified accordingly.

9. **WAIVER:** The City of Hickory reserves the right to waive any general provision, special provision or minor specification deviation when considered to be in the best interest of the City of Hickory. One or more waivers by the City of Hickory of any provision or specification shall not be construed by CONSULTANT as a waiver of any subsequent breach of the same provision or specification.
10. **SEVERABILITY:** If any provision under the Contract 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 the Contract or its application that can be given effect without the invalid provision or application.
11. **TERMINATION FOR CAUSE OR FOR CONVENIENCE BY THE CITY OF HICKORY**
- a. The performance of work and/or delivery of services under the Contract may be terminated by the City of Hickory, in whole or in part, in instances where CONSULTANT is found to violate or breach the Contract or whenever it is determined to be in the best interest of the City of Hickory.
 - b. Any such termination shall be effected by the delivery to CONSULTANT of a Notice of Termination specifying the extent to which performance of work and/or delivery of services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a Notice of Termination, CONSULTANT 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.
 - d. CONSULTANT may invoice the City of Hickory for any work performed or services delivered up to the date specified in the Notice of Termination. Invoicing and payment shall be done in accordance with the invoicing and payment provision(s) of the Contract.
12. **REMEDIES:** In instances where CONSULTANT is found to violate or breach the Contract, the City of Hickory is authorized to seek replacement services elsewhere and to seek legal remedies against CONSULTANT as appropriate.
13. **BANKRUPTCY:** If CONSULTANT becomes bankrupt or insolvent, or if a petition of bankruptcy is filed against CONSULTANT, or if a receiver is appointed for CONSULTANT, the City of Hickory shall have the right to terminate the Contract upon written notice to CONSULTANT without prejudice to any claim for damages or any other right of the City of Hickory under the Contract to the time of such termination.
14. **ADVERTISING:** In executing the Contract, CONSULTANT agrees not to use the results therefrom as a part of any commercial advertising.
15. **ASSIGNMENT:** The Contract shall not be assigned by CONSULTANT without written consent of the City of Hickory.
16. **MISTAKES:** CONSULTANT is expected to examine the Contract, scope, delivery schedule, costs, all instructions and documents pertaining to services. Failure to do so will be at CONSULTANT's risk.
17. **INDEPENDENT CONTRACTOR:** CONSULTANT agrees that CONSULTANT 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 or its employee(s) as an agent(s) or employee(s) of the City of Hickory.
18. **CONFLICT OF INTEREST:** The Contract is subject to the provisions of City of Hickory's *Ethics Policy* and *Conflict of Interest Policy*, which are herein incorporated by reference in the Contract. CONSULTANT must disclose 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, CONSULTANT must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the CONSULTANT's firm or any of its branches.

19. **PROFESSIONAL LICENSURE:** All work shall be sealed by a professional properly licensed in North Carolina and doing business in the state of North Carolina. These shall include but not be limited to: Engineer, Landscape Architect, Surveyor, Architect, Geologist, etc.
20. **SERVICE AND WARRANTY:** The standard of care for all professional engineering, consulting and related services performed or furnished by CONSULTANT and its employees under the Contract will be the care and skill ordinarily used by members of CONSULTANT's profession. CONSULTANT makes no warranties, express or implied, under the Contract or otherwise, in connection with CONSULTANT's services.
21. **OPINIONS OF PROBABLE COST (COST ESTIMATES):** Any opinions of probable project cost or probable construction cost provided by CONSULTANT are made on the basis of information available to CONSULTANT and on the basis of CONSULTANT's experience and qualifications, and represents its judgment as an experienced and qualified professional. However, since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost CONSULTANT prepares.
22. **CONSTRUCTION PROCEDURES:** CONSULTANT's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. CONSULTANT shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. CONSULTANT shall not be responsible for the acts or omissions of the construction contractor or other parties on the Project. Any construction contract documents shall not contain provisions that extend the duties or liabilities of CONSULTANT beyond those set forth in the Contract.
23. **SAFETY STANDARDS:** Unless otherwise stipulated, all work performed pursuant to the Contract shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder, which are herein incorporated by reference in the Contract.
24. **SERVICES AND INFORMATION**
- a. The City of Hickory will provide all criteria and information pertaining to the City of Hickory's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. The City of Hickory will also provide copies of any City of Hickory-furnished Standard Details, Standard Specifications, Standard Bidding Documents or other documents which are to be incorporated into the Project.
 - b. In performing professional services hereunder, it is understood by the City of Hickory that CONSULTANT is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the City of Hickory's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the City of Hickory's legal and financial interests. To that end, the City of Hickory agrees to have an appropriate representative examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by CONSULTANT, and will obtain the advice of an attorney, insurance counselor or other consultant as the City of Hickory deems necessary to protect the City of Hickory's interests before the City of Hickory takes action or forebears to take action based upon or relying upon the services provided by CONSULTANT.

25. **LIABILITY:** CONSULTANT shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned against the claims by third parties resulting from CONSULTANT's breach of the Contract or CONSULTANT's negligent acts, errors or omissions. However, neither Party to the Contract shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Contract from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.
26. **INSURANCE:** CONSULTANT agrees to procure and maintain, at its expense, the insurances listed below. The City of Hickory shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance shall be furnished to the City of Hickory and included in EXHIBIT B. CONSULTANT agrees to indemnify and save harmless the City of Hickory for claims to the extent caused by CONSULTANT's negligent acts, errors or omissions.
- a. Worker's Compensation insurance as required by statute;
 - b. Employer's Liability insurance of \$250,000;
 - c. Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles;
 - d. Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and
 - e. Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under the Contract caused by negligent acts, errors, or omissions for which CONSULTANT is legally liable.
27. **PATENTS AND ROYALTIES:** CONSULTANT, 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, design, or materials manufactured or used in the performance of the Contract including its use by the City of Hickory. If CONSULTANT uses any invention, process, design, or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the prices in EXHIBIT A shall include all royalties or cost rising from the use of such invention, process, design, or materials in any way involved in the work or service.
28. **RELEASE OF PATENTS AND COPYRIGHTS:** CONSULTANT agrees to relinquish ownership and exclusive rights to the City of Hickory for any patents and/or copyrights for any process, discovery, invention, design or document which arises or is developed in the course of the Contract. All plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by CONSULTANT as part of the Contract, with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by CONSULTANT and/or the professional design industry in the normal course of business, shall be deemed to be the property of the City of Hickory. Any reuse or modification of such documents for purposes other than those intended by CONSULTANT shall be at the City of Hickory's sole risk and without liability to CONSULTANT.
29. **ACCESS TO RECORDS**
- a) CONSULTANT agrees to provide, upon request, the City of Hickory or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- b) CONSULTANT agrees to permit any of the foregoing parties to reproduce records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
30. **RETENTION OF RECORDS:** CONSULTANT agrees to retain all records pertaining to the Contract for no less than three (3) years after final payment is made and all other pending matters are closed.
31. **TIME OF ESSENCE:** Unless otherwise stated, time shall be considered of the essence to the Contract. CONSULTANT specifically agrees that it shall be liable for failure to deliver or delay in delivery. This includes without limitations: strikes, lockouts, inability to obtain material, lack of shipping space, breakdowns, delays of carriers or suppliers, and pre-existing governmental regulations of the federal and state government or any subdivision thereof; unless governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of CONSULTANT prior to the execution of the Contract.
- It is further agreed that time is of the essence to each and every portion of the 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 the Contract.
32. **ACCEPTANCE OF PURCHASE ORDERS:** CONSULTANT is to accept only those purchase orders issued by the City of Hickory, prepared on Finance Department forms, unless instructed otherwise in the Contract.
33. **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, nor may CONSULTANT withdraw or cancel the Contract, or any part of the Contract for these reasons. CONSULTANT may only cancel the Contract pursuant to the cancellation clause, if one is included as a part of the Contract, and then only if the contractual obligation has been fulfilled by CONSULTANT in accordance with the terms stated.
34. **FEES:** CONSULTANT shall be responsible for paying all fees related to regulatory or other governing authority submittal, review, permitting, etc. These fees shall be requested as a reimbursement from the City of Hickory at the direct cost with no markup.
35. **PAYMENT/INVOICING:**
- a. The CONSULTANT shall be paid within a reasonable time, not to exceed thirty (30) calendar days, after the submission of proper certified invoices to the City of Hickory at the prices stipulated in EXHIBIT A of the Contract. Invoices shall contain the Project name and purchase order number. Failure to follow these instructions may result in delay of processing invoices for payment. CONSULTANT shall be the only office authorized to receive purchase order, do the billing and invoicing, and receive payment.
 - b. CONSULTANT will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by the City of Hickory's auditors upon request.
 - c. If the City of Hickory disputes any item(s) in CONSULTANT's invoice for any reason, including the lack of supporting documentation, the City of Hickory may temporarily delete the disputed item(s) and pay the remaining amount of the invoice. The City of Hickory will promptly notify CONSULTANT of the dispute and request clarification and/or correction. After any dispute has been settled, CONSULTANT will include the disputed item(s) on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item(s) only.
36. **PARTIAL PAYMENTS:**

- a. Partial payments may be made once each month as the work progresses. CONSULTANT shall submit a partial payment request for work completed by the 25th of each month. Said payments will be based upon estimates prepared by CONSULTANT and approved by the City of Hickory for the value of the work performed or service provided in accordance with the Contract.
 - b. From the total of the amount determined to be payable on a partial payment, five percent (5%) of such total will be deducted and retained by the City of Hickory until the final payment is made. Ninety-five percent (95%) of the amount payable, less all previous payments, shall be certified for payment.
 - c. CONSULTANT shall not receive partial payment based on quantities of work or services in excess of those provided in EXHIBIT A or covered by approved change orders, except when such excess quantities have been determined by the City of Hickory to be a part of the final quantity for the item of work or service in question.
 - d. No partial payment shall bind the City of Hickory to the acceptance of any work or service as to quality or quantity.
37. **EQUAL EMPLOYMENT OPPORTUNITY (under 41 C.F.R. Part 60):** During the performance of the Contract, CONSULTANT agrees as follows:
- a) CONSULTANT 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. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment.
 - c) CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONSULTANT's legal duty to furnish information.
 - d) CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representatives of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- e) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City of Hickory and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g) In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further City of Hickory contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h) CONSULTANT will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
38. **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 and shall be included with EXHIBIT B.

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SPECIAL CONDITIONS

1. **ALLOCATION OF RISK:** The City of Hickory and CONSULTANT have evaluated the risks and rewards associated with the Project, including CONSULTANT's fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of CONSULTANT (and its related corporations, subcontractors, and employees) to the City of Hickory and third parties granted reliance is limited to **the Fee** for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of CONSULTANT's services or the Contract regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. This limitation shall not apply to the extent the damage is paid under CONSULTANT's Commercial General Liability insurance policy.
2. **LIQUIDATED DAMAGES:** If CONSULTANT should neglect, fail, or refuse to complete the services within the time stipulated in EXHIBIT A, then CONSULTANT does hereby agree, as a part of the consideration for the Contract to pay to the City of Hickory the sum of **\$0.00** per day, not as a penalty, but as compensation to the City of Hickory for delays, damages, and additional expenses for such breach of contract as hereinafter set forth, for each and every calendar day that CONSULTANT shall be in default after the time stipulated in the Contract for completing the services. The said amount is fixed and agreed upon by and between CONSULTANT and the City of Hickory because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City of Hickory would, in such event, sustain.
3. **REPORTING REQUIREMENTS:** CONSULTANT is responsible for submitting weekly Project reports detailing the progress achieved to date for the Project. CONSULTANT agrees to submit all reports, certifications or other documents required by any of the provisions in the Contract to the City of Hickory.
4. **EXTENSIONS:** The Contract may be extended by properly executed change order.
5. **APPLICABILITY OF FEDERAL REGULATIONS TO FEDERALLY FUNDED PROJECTS:** The Contract includes federal funding from the Federal Highway Administration (FHWA) and dispersed through the North Carolina Department of Transportation (NCDOT), hereinafter referred to as the "DEPARTMENT", and, therefore, is subject to the provisions required for non-federal entity contracts under federal awards. These provisions are provided in the following section(s) and are herein incorporated by reference in the Contract.

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GENERAL CONTRACT PROVISIONS UNDER FEDERAL AWARDS

1. **REMEDIES:** In instances where CONSULTANT is found to violate or breach the Contract, the City of Hickory is authorized to seek replacement services elsewhere and to seek legal remedies against CONSULTANT as appropriate.
2. **TERMINATION FOR CAUSE OR FOR CONVENIENCE BY THE CITY OF HICKORY**
 - a. The performance of work and/or delivery of services under the Contract may be terminated by the City of Hickory, in whole or in part, in instances where CONSULTANT is found to violate or breach the Contract or whenever it is determined to be in the best interest of the City of Hickory.
 - b. Any such termination will be effected by the delivery to CONSULTANT of a Notice of Termination specifying the extent to which performance of work and/or delivery of services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a Notice of Termination, CONSULTANT will stop work and/or place no further orders under the Contract on the date and to the extent specified in the Notice of Termination.
 - d. CONSULTANT may invoice the City of Hickory for any work performed or services delivered up to the date specified in the Notice of Termination. Invoicing and payment will be done in accordance with the invoicing and payment provision(s) of the Contract.
3. **EQUAL EMPLOYMENT OPPORTUNITY (under 41 C.F.R. Part 60):** During the performance of the Contract, CONSULTANT agrees as follows:
 - a) CONSULTANT 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. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment.
 - c) CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONSULTANT's legal duty to furnish information.

- d) CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representatives of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - e) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City of Hickory, the DEPARTMENT, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g) In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further City of Hickory and/or DEPARTMENT contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h) CONSULTANT will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
4. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148):** If the Contract is in excess of \$2,000 and is for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1, CONSULTANT must comply with the following clauses:
- a. Minimum Wages
 - i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 CONSULTANT 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 paragraph (4)(a)(iv) of this section; 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 paragraph (4)(a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by CONSULTANT 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. CONSULTANT shall classify, in conformance with the wage determination, any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract.
 1. The City of Hickory shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - b. The classification is utilized in the area by the construction industry; and
 - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 2. If CONSULTANT and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the City of Hickory 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 the City of Hickory to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the City of Hickory or will notify the City of Hickory within the 30-day period that additional time is necessary.
 3. In the event CONSULTANT, the laborers or mechanics to be employed in the classification or their representatives, and the City of Hickory do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the City of Hickory shall refer the questions, including the views of all interested parties and the recommendation of the City of Hickory, to the Administrator for determination. The Administrator, or an authorized

representative, will issue a determination within 30 days of receipt and so advise the City of Hickory or will notify the City of Hickory within the 30-day period that additional time is necessary.

4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (4)(a)(ii) (2) or (3) of this section, shall be paid to all workers performing work in the classification under the 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, CONSULTANT 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 CONSULTANT does not make payments to a trustee or other third person, CONSULTANT 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 CONSULTANT, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require CONSULTANT to set aside in a separate account assets for the meeting of obligations under the plan or program.
- b. Withholding: The DEPARTMENT 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 CONSULTANT under the Contract or any other Federal contract with CONSULTANT, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by CONSULTANT, 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 CONSULTANT 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the DEPARTMENT may, after written notice to the City of Hickory and CONSULTANT, 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.
- c. Payrolls and Basic Records
 - i. Payrolls and basic records relating thereto shall be maintained by CONSULTANT during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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, CONSULTANT 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.

ii.

1. CONSULTANT shall submit weekly, for each week in which any Contract work is performed, a copy of all payrolls to the DEPARTMENT if the agency is a Party to the Contract, but if the agency is not such a Party, CONSULTANT will submit the payrolls to the City of Hickory, as the case may be, for transmission to the DEPARTMENT. 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 website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. CONSULTANT is responsible for the submission of copies of payrolls by all subcontractors. CONSULTANT and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the DEPARTMENT if the agency is a Party to the Contract, but if the agency is not such a Party, CONSULTANT will submit them to the City of Hickory, as the case may be, for transmission to the DEPARTMENT, 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 section for a contractor to require a subcontractor to provide addresses and social security numbers to CONSULTANT for its own records, without weekly submission to the City of Hickory.
2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by CONSULTANT or the subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - a. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - b. 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 Regulations, 29 CFR part 3;

- c. 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.
 - 3. 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 paragraph (4)(c)(ii)(2) of this section.
 - 4. The falsification of any of the above certifications may subject CONSULTANT or the subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
 - iii. CONSULTANT or the subcontractor shall make the records required under paragraph (4)(c)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City of Hickory, the DEPARTMENT, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If CONSULTANT or the subcontractor fails to submit the required records or to make them available, the DEPARTMENT may, after written notice to the City of Hickory and CONSULTANT, 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.
- d. 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 ninety (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 CONSULTANT 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 CONSULTANT's or the 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, CONSULTANT 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 classification of 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, CONSULTANT 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 this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30, which are herein incorporated by reference in the Contract.
- e. Compliance with Copeland Act Requirements: CONSULTANT shall comply with the requirements of 29 CFR Part 3, which are herein incorporated by reference in the Contract.
- f. Subcontracts: CONSULTANT or the subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the City of Hickory or the DEPARTMENT may, by appropriate instructions, require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONSULTANT shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- g. 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.

- h. 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 the Contract.
- i. Disputes concerning labor standards: Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the 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 CONSULTANT (or any of its subcontractors) and the City of Hickory, the DEPARTMENT, the U.S. Department of Labor, or the employees or their representatives.
- j. Certification of eligibility
- i. By entering into the Contract, CONSULTANT certifies that neither it (nor he or she) nor any person or firm who has an interest in CONSULTANT'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).
 - ii. No part of the 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).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
5. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** If the Contract is in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, CONSULTANT must comply with the following clauses, in addition to the clauses required by 29 CFR § 5.5(a). As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
- a. Overtime requirements: CONSULTANT or any subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (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 forty hours in such workweek.
 - b. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (5)(a) of this section, CONSULTANT and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, CONSULTANT and such 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 paragraph (5)(a) of this section, in the sum of twenty-seven dollars (\$27) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (5)(a) of this section.
 - c. Withholding for unpaid wages and liquidated damages: The DEPARTMENT 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 CONSULTANT or the subcontractor under any such contract or any other Federal contract with CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which

is held by CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of CONSULTANT or such subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (5)(b) of this section.

- d. **Subcontracts:** CONSULTANT or the subcontractor shall insert in any subcontracts the clauses set forth in paragraph (5)(a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONSULTANT shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (5)(a) through (d) of this section.
6. In addition to the clauses contained in paragraph (5)(a) through (d), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, CONSULTANT or any subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by CONSULTANT or the subcontractor for inspection, copying, or transcription by authorized representatives of the City of Hickory, the DEPARTMENT, and the Department of Labor, and CONSULTANT or the subcontractor will permit such representatives to interview employees during working hours on the job.
7. **CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED:** If the Contract is in excess of \$150,000, CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the FHWA and the Regional Office of the Environmental Protection Agency (EPA).
8. **ENERGY EFFICIENCY:** CONSULTANT agrees to comply with applicable mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
9. **DEBARMENT AND SUSPENSION (Executive Orders 12549 and 12689)**
- a. The Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such CONSULTANT is required to verify that CONSULTANT, none of its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - b. CONSULTANT agrees to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - c. This certification is a material representation of fact relied upon by the City of Hickory. If it is later determined that CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Hickory and the DEPARTMENT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - d. CONSULTANT agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C. CONSULTANT further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352):** If the Contract is in excess of \$100,000, CONSULTANT must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

If the Contract is in excess of \$100,000, CONSULTANT agrees to comply with 49 CFR part 20 and submit certification to the City of Hickory.

11. **PROCUREMENT OF RECOVERED MATERIALS:** CONSULTANT and any subcontractors agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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PROFESSIONAL SERVICES CONTRACT PROVISIONS UNDER FEDERAL AWARDS

1. **REPORTING REQUIREMENTS:** CONSULTANT agrees to submit all reports, certifications or other documents required by any of the provisions in the General Contract Provisions Under Federal Awards or Professional Service Contract Provisions Under Federal Awards sections of the Contract to the City of Hickory for transmission to the DEPARTMENT or other Federal agency as required.
2. **RELEASE OF PATENTS AND COPYRIGHTS:** CONSULTANT agrees to relinquish ownership and exclusive rights to the City of Hickory for any patents and/or copyrights for any process, discovery, invention, design or document which arises or is developed in the course of the Contract. All plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by CONSULTANT as part of the Contract, with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by CONSULTANT and/or the professional design industry in the normal course of business, shall be deemed to be the property of the City of Hickory. Any reuse or modification of such documents for purposes other than those intended by CONSULTANT shall be at the City of Hickory's sole risk and without liability to CONSULTANT.
3. **ACCESS TO RECORDS**
 - c) CONSULTANT agrees to provide, upon request, the City of Hickory, the DEPARTMENT, the FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - d) CONSULTANT agrees to permit any of the foregoing parties to reproduce records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. **RETENTION OF RECORDS:** CONSULTANT agrees to retain all required records pertaining to the Contract for no less than three (3) years after final payment is made and all other pending matters are closed.
5. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCE:** The newest version of the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.
 - a. The Contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)], and Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note.

The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is 0.0%.
 - b. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONSULTANT to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as the City of Hickory or the DEPARTMENT deems appropriate. Each subcontract CONSULTANT signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

CONSULTANT will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. CONSULTANT must promptly notify the City of Hickory whenever a DBE subcontractor performing work related to the Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. CONSULTANT may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Hickory.
6. **PROMPT PAY REQUIREMENTS:** CONSULTANT agrees to comply with prompt pay requirements, as specified in 49 CFR 26.29. CONSULTANT is required to pay its subcontractors performing work related to the Contract for satisfactory performance of that work no later than thirty (30) days after CONSULTANT's receipt of payment for that work from the City of Hickory. In addition, these may apply:
- i. CONSULTANT may not hold retainage from its subcontractors; or
 - ii. CONSULTANT is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to the Contract is satisfactorily completed; or
 - iii. CONSULTANT is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the City of Hickory and CONSULTANT's receipt of the partial retainage payment related to the subcontractor's work.
7. **DETERMINATION OF ALLOWABLE COSTS:** Determination of allowable costs shall be in accordance with the Federal cost principles established in OMB CIRCULAR A-87 REVISED.
8. **ERRORS AND OMISSIONS:** CONSULTANT agrees to procure and maintain Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under the Contract caused by negligent acts, errors, or omissions for which CONSULTANT is legally liable. CONSULTANT agrees to indemnify and save harmless the City of Hickory for claims to the extent caused by CONSULTANT's negligent acts, errors or omissions. However, neither Party to the Contract shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Contract from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.
9. **CONFLICT OF INTEREST**
- a. The Contract is subject to the provisions of City of Hickory's Ethics and Conflict of Interest Policy, which are herein incorporated by reference in the Contract. CONSULTANT must disclose 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, CONSULTANT must disclose the name of any City of Hickory employee who owns, directly or indirectly, an interest of five percent (5%) or more in the CONSULTANT's firm or any of its branches.
 - b. The Contract is also subject to the provisions of 23 CFR 1.33 and the requirements thereof, which are herein incorporated by reference in the Contract.

GENERAL CONTRACT

The undersigned, as AUTHORIZED AGENT of CONSULTANT, 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, and that it is in all respects, fair and in good faith, without collusion or fraud.

AUTHORIZED AGENT further declares that he has informed himself fully about all conditions regarding this proposal, that the AUTHORIZED AGENT has reviewed all related documents for the above mentioned Project and that he has satisfied himself about performance required by this proposal.

AUTHORIZED AGENT agrees that if this proposal is accepted, to contract with the City of Hickory in the form of a **Professional Services Construction Engineering and Inspections** contract, 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 Contract documents, to the full and entire satisfaction of the City of Hickory.

AUTHORIZED AGENT warrants that prices, terms and conditions quoted in the proposal will be firm for a period of sixty (60) days from the date included with AUTHORIZED AGENT's signature.

By submitting this proposal, CONSULTANT agrees to coordinate their schedule with the City of Hickory forces working on the Project to the fullest extent possible.

The City of Hickory reserves the right to deduct any item(s) as deemed in the best interest of the City of Hickory. CONSULTANT further proposes and agrees hereby to commence work under the Contract on the date to be specified in a written Notice to Proceed by the City of Hickory and to complete all work within the time stipulated in Exhibit A.

The City of Hickory reserves the right to reject any and all proposals; and reject any quoted items that fail to meet the needs of the City of Hickory.

Do not include Federal tax or NC State and local sales or use taxes in your proposal. The City of Hickory is exempt from federal tax. CONSULTANT shall submit a certified Sales Tax Report for reimbursement of sales taxes by the City of Hickory.


SIGNATURE OF AUTHORIZED AGENT

Shad W. Walters, PE, Vice President
PRINT/TYPE NAME/TITLE

EXHIBIT A

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Civil & Environmental Consultants, Inc.

October 27, 2020

Mr. Shawn Pennell, PE
Public Services Director
City of Hickory
1441 9TH Avenue SE
Hickory, North Carolina 28601

Dear Mr. Pennell:

Subject: Trivium Court and Trivium Parkway NCDOT U-6238 – Phase II
Bidding and Construction Administration Services
Startown Road, Hickory, NC
CEC Project 196-663

Per your request, Civil & Environmental Consultants, Inc. (CEC) is pleased to present a scope of professional services to assist with the Construction Administration services related to the construction of Trivium Court and Trivium Parkway (NCDOT U-6238) in the southern development area of the Trivium Corporate Center located on Startown Road in Hickory, North Carolina.

1.0 PROJECT UNDERSTANDING

The City of Hickory is moving forward with the proposed construction of Trivium Court Phase II (approximately 400 lf) roadway project to serve Project Enzyme and Lot 11. The bidding and construction administration services will be coordinated with the NCDOT in anticipation of receiving reimbursement for the construction costs associated with the project.

2.0 SCOPE OF SERVICES

CEC will provide survey, design, bidding and construction administration services for the proposed extension of Trivium Court in the southern development area of Trivium Corporate Center. The following is the anticipated scope of services:

Survey/Design Updates Phase Services:

CEC will provide the following survey and design update related services for the project:

1. Due to the grading of the unopened portion of the Trivium Court r/w by the Phase I roadway contractor and the southern development area mass grading project, CEC recommends updating the existing based mapping within the proposed project area in order to reflect the current site conditions. The surveying services will include updated/supplemented topographic within the undeveloped portions of the Trivium Court roadway project suitable for base mapping of the civil and roadway design plans. The

Mr. Shawn Pennell- City of Hickory
 CEC Project 196-663
 Page 2
 October 27, 2020

- base mapping will include 1-foot contour intervals and the vertical datum will be based on NAVD 88, as determined by CEC using survey grade GPS measurements and OPUS Post-Processing.
2. CEC will utilize the updated topographic information to generate cross sections of the roadway extension in accordance with NCDOT standards. Cut/fill quantities will be calculated and be updated within the proposed bid set of plans.
 3. CEC will remove the Phase I portion of the design plans and update the proposed project stationing to reflect the as-built condition of the project. Updates will also include the addition of plans to reflect the placement of the final asphalt surface and any remaining trees to be installed to complete the Phase I roadway portion of the project. Updated plans/specifications will be submitted to the NCDOT for final review and approval.
 4. CEC will endeavor to coordinate with Duke Energy, Piedmont Natural Gas and Centurylink for future locations of utilities and locations/quantities of conduits required for this section of the project.
 5. CEC will develop Bid Forms with updated quantities and also prepare an opinion of probable cost.

Bid Phase Services:

CEC will provide the following services for the bidding of the project:

1. Prepare bid documents and solicit a minimum of three competitive bids from Contractors in accordance with NCDOT requirements. It is assumed that the work will be bid and constructed within one bid package and a single contractor;
2. Assist the Owner in developing an agenda for and conducting a pre-bid meeting for the project. Upon completion of the pre-bid meeting, CEC will prepare and distribute meeting minutes;
3. CEC will coordinate with bidders and develop Addendums as required to clarify the bidding documents;
4. Assist the Owner in receiving bids from qualified contractors, provide a certified bid tab documenting the bids and make a recommendation for the award of the contract for the work; and
5. Assist the City with developing formal agreements, insurance certificates and related bonds for the preparation of the contracts.

Construction Administration Services:

CEC will provide the following construction administration services the project:

1. Prepare an agenda for and conduct a preconstruction conference with representatives from the City of Hickory, NCDOT, the Contractor and CEC engineers/field representatives. CEC will issue meeting minutes;
2. Provide full-time site observations during the active construction phase of the project, including critical elements such as the installation of erosion control measures and undercutting/stabilization. It is anticipated that the construction phase will be approximately three and a half months. At the end of each week, CEC will provide the

Mr. Shawn Pennell- City of Hickory
 CEC Project 196-663
 Page 3
 October 27, 2020

- NCDOT weekly field report documenting the current status of the project and outstanding issues with the quality of work;
3. Issue instructions of the Owner to the Contractor; prepare work directives and/or routine change orders as required, and act as interpreter of the requirements of the contract documents and judge the performance thereunder of parties thereto and make recommendations on claims of the Owner and Contractor related to the execution, performance, progress of the work and other matters and questions related thereto, for final decision by the Owner;
 4. Based upon CEC's on-site observations the contractor's applications for payments and accompanying data, and schedule, CEC will determine the amount owed to the contractor and submit to the Owner a written requests for payment to the Contractor;
 5. Prepare for and conduct a monthly progress meeting with applicable parties including the Owner, NCDOT, the Contractor and applicable Trivium staff members if required. Meeting minutes will be provided;
 6. Conduct a punch list inspection to determine if the project has been completed in accordance with the contract documents. A punch list will be provided for use by the Contractor to fully complete the project;
 7. Upon notification by the Contractor that the project is complete, CEC will perform a final inspection. CEC will provide a statement of completion to the Owner/NCDOT when the Contractor has fulfilled obligations of the contract by preparing final project certifications to authorities having jurisdiction, including NCDWR PWSS, for permit close-out;
 8. Provide one set of full size paper Record Drawings, and a PDF set of documents for the record; and
 9. After the construction is complete and the final pay estimate is complete, CEC will conduct a project closeout conference with the Contractor, NCDOT and the City to discuss any outstanding issues and claims, DBE/MB/WB reported payment and review the final claims process in accordance with NCDOT standards.

3.0 DELIVERABLES

CEC will provide the City of Hickory two combined sets of applicable contract documents, one set for the Contractor and plans/specifications in PDF format for use in construction of the complete project as listed above.

4.0 ASSUMPTIONS AND ADDITIONAL SERVICES

The following has been assumed in the preparation of this proposal:

1. CEC will provide a field representative to be on site during the contractor's active construction phase. It is anticipated that the active construction phase will be from mid-April until June 30, 2021. Field observation services outside that window will be considered additional services; and
2. It is assumed that the City of Hickory will continue the use of Catawba Valley Engineering and Testing (CVET) for construction/materials testing services, therefore

Mr. Shawn Pennell- City of Hickory
 CEC Project 196-663
 Page 4
 October 27, 2020

those services are not included in this proposal. CEC will obtain testing reports from CVET and combine with CEC’s daily/weekly observations reports and final project close-out documentation to NCDOT.

5.0 SCHEDULE

The following outlines our anticipated schedule for the survey/design updates, bidding and construction phase services:

- Survey and Updated Design.....Nov 15 – Dec 30, 2020
- NCDOT Review and ApprovalJan 2 – Jan 15, 2021
- Bid Phase.....Jan 15 – Feb 15, 2021
- Council Review of Bids/Award.....March 2, 2021
- Preconstruction Conference.....March 18, 2021
- Construction Phase to Intermediate Contract Milestone.....June 30, 2021
- Project Close-outDec 30, 2021

6.0 PROFESSIONAL FEES

Based on our current understanding of the project, our past experience on similar projects, and the assumptions contained within this agreement, CEC will perform the above services for the following Lump Sum fees:

| | |
|---|--------------------|
| Survey..... | \$1,200.00 |
| Update of Design Plans..... | \$3,000.00 |
| Bidding Services..... | \$4,000.00 |
| Construction Administration Services..... | <u>\$53,800.00</u> |
| Total Lump Sum Fee: | \$62,000.00 |

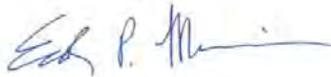
The total Lump Sum fee will not be exceeded without written authorization by the City. Any additional work as a result of expanded scope will be performed in accordance with CEC’s General Fee Schedule, Attachment A. It is our understanding that this project will be a new task order under the existing Trivium Court and Trivium Parkway NCDOT U-6238 project and the agreed to Terms and Conditions will also apply to this task. The previously agreed to terms and conditions are included as Attachment B.

Mr. Shawn Pennell- City of Hickory
CEC Project 196-663
Page 5
October 27, 2020

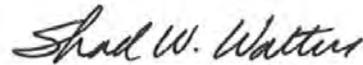
CEC appreciates the opportunity to propose on this work and is looking forward to continuing to work with the City of Hickory. If you have any questions regarding this proposal, please feel free to contact Shad at (980) 237-2827.

Sincerely,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.



Erik P. Messina, P.E.
Project Manager



Shad W. Walters, P.E.
Vice President

Attachments

**ATTACHMENT A
FEE SCHEDULE**



GENERAL CHARLOTTE – 2020 FEE SCHEDULE
Professional and Technical Services

| | |
|---|-------------|
| A. Personnel Services | |
| 1. Senior Principal, per hour | \$225.00 |
| 2. Principal, per hour | \$212.00 |
| 3. Senior Project Manager, per hour..... | \$200.00 |
| 4. Senior Consultant, per hour..... | \$197.00 |
| 5. Project Manager III, per hour | \$162.00 |
| 6. Project Manager II, per hour | \$148.00 |
| 7. Senior Source Testing Scientist, per hour | \$141.00 |
| 8. Project Manager I, per hour..... | \$138.00 |
| 9. Senior Land Surveyor, per hour | \$125.00 |
| 10. Construction Services Coordinator, per hour | \$120.00 |
| 11. Senior Designer, per hour..... | \$119.00 |
| 12. Assistant Project Manager, per hour | \$118.00 |
| 13. Project Consultant, per hour..... | \$112.00 |
| 14. Project Scientist, per hour | \$98.00 |
| 15. Senior CADD Technician, per hour..... | \$97.00 |
| 16. Survey Technician IV, per hour | \$95.00 |
| 17. Civil Designer, per hour | \$95.00 |
| 18. Designer, per hour..... | \$86.00 |
| 19. Staff Consultant, per hour | \$86.00 |
| 20. Administrative Manager, per hour | \$85.00 |
| 21. Survey Technician III, per hour..... | \$83.00 |
| 22. Technician III, per hour..... | \$79.00 |
| 23. GIS Analyst II, per hour..... | \$75.00 |
| 24. Technician II, per hour | \$72.00 |
| 25. Survey Technician II, per hour..... | \$72.00 |
| 26. GIS Analyst I, per hour | \$66.00 |
| 27. Staff Scientist, per hour..... | \$65.00 |
| 28. Administrative Assistant, per hour | \$63.00 |
| 29. Technician I, per hour | \$61.00 |
| 30. Survey Technician I, per hour | \$49.00 |
| B. Other Expenses | |
| 1. Overnight Living Expenses* | Cost + 10% |
| 2. Commercial Travel/Transportation | Cost + 10% |
| 3. Courier Service..... | Cost + 10% |
| 4. Printing & Reproduction | Cost + 10% |
| 5. Photo Copies, each (No charge for initial 2 copies of reports) | \$ 0.10 |
| 6. Wide Format Printing Services (per sq. ft.)..... | \$ 0.40 |
| 7. Other Expendables | Cost + 10% |
| 8. Subcontractor Costs | Cost + 10% |
| 9. Subcontract Laboratory Costs | Cost + 10% |
| 10. Word Processing Equipment, per hour..... | \$ 5.00 |
| 11. CADD Equipment, per hour | \$ 10.00 |
| 12. Mileage, vehicle | \$0.59/mile |
| 13. Vehicle Usage, per day..... | \$110.00 |
| 14. Vehicle Usage-towing, per day..... | \$120.00 |

*Option: Per diem living expenses (hotel and meals), quoted by project

Note: Field equipment cost schedules will be provided upon request

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

CITY OF HICKORY,
A North Carolina Municipal Corporation

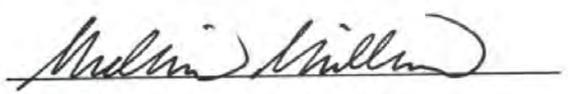
(SEAL)

Hank Guess, Mayor

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:

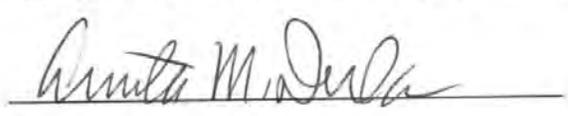

Arnita M. Dula, Deputy City Attorney

EXHIBIT B

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City of Hickory
 Contract Number: _____
 Project Name: _____

EXHIBIT B

Terms and Conditions for Professional Service

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement.



City of Hickory

Contract Number: _____

Project Name: _____

5. CONTROLLING LAW

This Agreement is to be governed by the state of NC. Jurisdiction and Venue shall lie with the courts of Catawba County, NC.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project. In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

Upon payment of all amounts rightfully owed by Owner to the Engineer for services rendered with respect to the Services provided under this Agreement, all plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by the Engineer as part of its performance of such Services hereunder (hereinafter the "Design Documents"), with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by the Engineer and/or the professional design industry in the normal course of business, shall be deemed to be the property of Owner. Any reuse or modification of such documents for purposes other than those intended by the Engineer shall be at the Owner's sole risk and without liability to the Engineer.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving ten (10) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination.



City of Hickory
 Contract Number: _____
 Project Name: _____

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments within 30 days in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of receipt by OWNER. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after ten (10) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment may be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.



City of Hickory

Contract Number: _____

Project Name: _____

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

ENGINEER shall comply with NC's e-verify program.

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.



City of Hickory

Contract Number: _____

Project Name: _____

17. ALLOCATION OF RISK

OWNER and ENGINEER have evaluated the risks and rewards associated with this project, including ENGINEER'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of Engineer (and its related corporations, subconsultants, and employees) to OWNER and third parties granted reliance is limited to THE FEE, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of ENGINEER'S services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. This limitation shall not apply to the extent the damage is paid under Engineer's commercial general liability insurance policy.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party or negligent in the performance of services rendered, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER'S property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked.

20. PROFESSIONAL LICENSURE

All work shall be sealed by a properly licensed design professional in North Carolina doing business in the state of North Carolina. These shall include but not be limited to: Engineer, Landscape Architect, Surveyor, Architect, Geologist, etc.

21. IRAN DIVESTMENT ACT

By executing this Agreement/Contract, Contractor hereby certifies that Contractor is not listed on the Iran Final Divestment List ("List") created by the State Treasurer pursuant to N.C.G.S. 147-86.58, Iran Divestment Act ("Act"). In compliance with the Act's requirement and N.C.G.S. § 147- 86.59, Contractor shall not utilize in the performance of this agreement/contract any subcontractor that is identified on the List. The List can be found on the State Treasurer's website at the address www.nctreasurer.com/iran and should be updated at least every 180 days.

8

COUNCIL AGENDA MEMOS

Exhibit VIII.E.

To: City Manager's Office
From: Shawn Pennell, Assistant Public Services Director
Contact Person: Shawn Pennell, Assistant Public Services Director
Date: November 17, 2020
Re: Pond View Apartments Sanitary Sewer Easement

REQUEST

Staff requests acceptance of permanent sewer easement and partial abandonment of existing easement for the property of Pond View, LLC, described as a 7.72 acre tract in the Town of Hildebran, 304 Main Ave E, Hildebran, NC 28637.

BACKGROUND

The City of Hickory owns and operates the sanitary sewer system in the Town of Hildebran. The City of Hickory PUD is responsible for all facets of this system including permitting, operation and maintenance.

ANALYSIS

This easement is necessary for Pond View, LLC. to turn over ownership to the City of Hickory. The infrastructure was built according to the Hickory PUD standards and has been tested and verified. These sewer lines and easement will be a donation to the City of Hickory.

RECOMMENDATION

Staff recommends acceptance of permanent sewer easement and partial abandonment of existing easement for the property of Pond View, LLC, described as a 7.72 acre tract in the Town of Hildebran, 304 Main Ave E, Hildebran, NC 28637.

Prepared by: James F. Goodwin
Return to: Blanco Tackabery & Matamoros, P.A.
P.O. Drawer 25008
Winston-Salem, NC 27114-5008

STATE OF NORTH CAROLINA)
)
COUNTY OF BURKE)

**GRANT OF EASEMENT
AND
DEDICATION OF SEWER FACILITIES**

THIS GRANT OF EASEMENT AND DEDICATION OF SEWER FACILITIES (this “Instrument”) is made as of this ____ day of _____, 2020, by and between Pond View, LLC (the “Owner”) and the City of Hickory, North Carolina (the “City”).

R E C I T A L S:

WHEREAS, Owner owns a 7.721 acre +/- tract of land in the Town of Hildebran, Burke County, North Carolina, as further described on Exhibit A attached hereto (the “Property”); and

WHEREAS, simultaneous with or prior to the recordation of this Instrument, the Owner has recorded a plat entitled “Easement Plat Pond View Apartments” prepared by Borum, Wade and Associates, P.A. (the “Plat”) in the Register of Deeds of Burke County at Plat Book ____, Page ____; and

WHEREAS, among other matters, the Plat depicts a second sanitary sewer easement running across the property and labeled as “TO BE DEDICATED 20’ SAN. SEWER EASEMENT” (the “Sewer Easement”); and

WHEREAS, the parties are entering into this Instrument for the purposes of granting the Sewer Easement and dedicating all sanitary sewer lines and related facilities located within the Sewer Easement to the City.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agrees as follows:

1. Dedication of Sewer Facilities. Owner hereby dedicates all sanitary sewer lines and related equipment located within the Sewer Easement (the "Sewer Facilities) to the City.

2. Grant of Easement. Owner hereby grants to the City, subject to current taxes and all easements, the Sewer Easement, being a non-exclusive and perpetual easement as shown on the Plat for access to and maintenance and repair of the Sewer Facilities.

3. Acceptance of Dedication. The City hereby accepts dedication of the Sewer Facilities and assumes responsibility for the maintenance and repair thereof, and the Owner is hereby released from any obligations with respect thereto.

4. Successors and Assigns. This Instrument shall be binding upon the parties hereto and their successors and assigns.

5. Counterparts. This Instrument may be executed in any number of counterparts, which, when taken together, shall constitute a complete and original instrument.

6. Non-Exclusive Easements. The easements granted herein are not exclusive, and the Owner hereby reserves unto itself and to the other present and future owners of the property the right to utilize the area of said easements for such purposes as do not unreasonably endanger or interfere with the easements granted herein.

7. Amendment; Modification. This Instrument may not be amended or modified except by written agreement signed by both parties.

8. Severability. In the event that any provisions of this Instrument shall be held invalid, the same shall not affect in any respect the validity of the remainder of this Instrument.

[SEPARATE SIGNATURE PAGES ATTACHED]

**SEPARATE SIGNATURE PAGE TO
GRANT OF EASEMENT
AND
DEDICATION OF SEWER FACILITIES**

IN WITNESS WHEREOF, the undersigned Owner has caused this Instrument to be duly executed as of the day and year first above written.

POND VIEW, LLC, a North Carolina limited liability company

By: Pond View Manager, LLC, a North Carolina limited liability company, Managing Member

By: _____
Mark C. Morgan, Manager

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public of the County of _____ and State aforesaid, certify that Mark C. Morgan, Manager of Pond View Manager, LLC, Managing Member of Pond View, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial stamp or seal, this ____ day of _____, 2020.

(Affix Seal)

My Commission Expires: _____

Notary Public

Notary's Printed or Typed Name

**SEPARATE SIGNATURE PAGE TO
GRANT OF EASEMENT
AND
DEDICATION OF SEWER FACILITIES**

IN WITNESS WHEREOF, the undersigned City has caused this Instrument to be duly executed as of the day and year first above written.

CITY OF HICKORY, NORTH
CAROLINA

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public of the County of _____ and State aforesaid, certify that _____, as _____ of the City of Hickory, North Carolina, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial stamp or seal, this ____ day of _____, 2020.

(Affix Seal)

My Commission Expires: _____

Notary Public

Notary's Printed or Typed Name

EXHIBIT A

**TO GRANT OF EASEMENT
AND
DEDICATION OF SEWER FACILITIES**

ALL that certain piece, parcel or tract of land lying and being in the Town of Hildebran, Icard Township, Burke County, North Carolina, and being more particularly described as follows:

BEGINNING at a new iron pipe in the southern margin of Old N.C. Highway 10, also known as Main Street East, a 60' public right-of-way, said point being the northeast corner of Larry H. Brittain and Debra C Brittain, either now or formerly, as described in instrument recorded in Deed Book 805, Page 902, in the Burke County Registry, and having parcel no. 15290 ("The Brittain Property"), said point also being South 10 deg. 47 min. 44 sec. West 9.12 feet from a control point, existing iron pipe, said control point being North 29 deg. 17 min. 51 sec. West 3,631.40 feet from a published NCGS monument, "Wilma", having NAD 83\2011 coordinates of, Northing = 720,584.146 and Easting = 1,281,662.630; and running thence from the **Point of Beginning**, along the southern margin Main Street East, South 75 deg. 07 min. 27 sec. East 321.25 feet to a point, the northwest corner of Barton L. Cook, Tamora C. Cook, Todd Gibbs and Aimee Gibbs, either now or formerly, as described in instrument recorded in Deed Book 2273, Page 678, in the Burke County Registry, and having parcel no. 24465 ("The Cook-Gibbs Property"); thence leaving the southern margin of Main Street East and along the western and southern lines of The Cook-Gibbs Property, the following two (2) courses and distances: (i) South 12 deg. 24 min. 03 sec. West 173.58 feet to an existing iron pipe; (ii) South 68 deg. 27 min. 58 sec. East 121.41 feet to an existing iron pipe in the western line of Defeet Properties, LLC, either now or formerly, as described in instrument recorded in Deed Book 1209, Page 266, in the Burke County Registry, and having parcel no. 15307 ("The Defeet Property, 15307"); thence with the western line of The Defeet Property, 15307, South 13 deg. 19 min. 42 sec. West 45.75 feet to an existing iron pipe, the northwest corner of Defeet Properties, LLC, either now or formerly, as described in instrument recorded in Deed Book 1209, Page 266, in the Burke County Registry, and having parcel no. 37481 ("The Defeet Property, 37481"); thence with the western line of The Defeet Property, 37481, South 16 deg. 41 min. 54 sec. East 211.59 feet to an existing iron pipe, said iron pipe is the northwest terminus of a 60' ingress, egress easement, described in instrument recorded in Deed Book 686, Page 805, in the Burke County Registry, said point is also the northwest corner of Wayne M. Huffman and Rhonda G. Huffman, either now or formerly, as described in instrument recorded in Deed Book 1024, Page 338, in the Burke County Registry, and having parcel no. 42646 ("The Huffman Property"); thence with the western line of The Huffman Property, South 01 deg. 35 min. 53 sec. East 343.41 feet to an existing iron rod in the northern line of David L. Reep and Ramona H. Reep, either now or formerly, as described in instrument recorded in Deed Book 550, Page 262, in the Burke County Registry, and having parcel no. 17943 ("The Reep Property"); thence with The Reep Property, the following five (5) courses and distances: (i) North 68 deg. 42 min. 15 sec. West 133.64 feet to a point; (ii) North 83 deg. 48 min. 49 sec. West 63.00 feet to an existing iron pipe; (iii) North 65 deg. 48 min. 49 sec. West 105.00 feet to a point; (iv) North 75 deg. 48 min. 49 sec. West 52.00 feet to a point; (v) North 81 deg. 48 min. 15 sec. West 136.18 feet to an existing iron pipe,

the southeast corner of David J. Carswell and Sandra P. Carswell, either now or formerly, as described in instrument recorded in Deed Book 785, Page 1216, in the Burke County Registry, and having parcel no. 35593 ("The Carswell Property, 35593"); thence with eastern line of The Carswell Property, 35593, North 11 deg. 47 min. 21 sec. West 178.89 feet to an existing iron pipe, the southeast corner of David J. Carswell and Sandra P. Carswell, either now or formerly, as described in instrument recorded in Deed Book 572, Page 689, in the Burke County Registry, and having parcel no. 35687 ("The Carswell Property, 35687"); thence with eastern line of The Carswell Property, 35687, North 12 deg. 47 min. 09 sec. West 198.39 feet to an existing iron pipe, the southeast corner of David J. Carswell, either now or formerly, as described in instrument recorded in Deed Book 2138, Page 647, in the Burke County Registry, and having parcel no. 61130 ("The Carswell Property, 61130"); thence with eastern line of The Carswell Property, 61130, North 16 deg. 26 min. 14 sec. East 27.90 feet to a point, the southeast corner of James S. Board and Erica L. Board, either now or formerly, as described in instrument recorded in Deed Book 2138, Page 680, in the Burke County Registry, and having parcel no. 15289 ("The Board Property"); thence with eastern line of The Board Property, North 16 deg. 26 min. 14 sec. East 180.28 feet to a point, the southeast corner of The Brittain Property; thence with The Brittain Property, the following three (3) courses and distances: (i) North 16 deg. 26 min. 14 sec. East 72.70 feet to an existing iron pipe; (ii) North 16 deg. 26 min. 14 sec. East 5.30 feet to a point; (iii) North 10 deg. 47 min. 44 sec. East 115.51 feet to the **Point and Place of Beginning** and containing **7.721 acres**, more or less, as shown on that certain survey entitled "Pond View Apartments" prepared by Borum, Wade and Associates, P.A. dated December 20, 2017.

Prepared by: James F. Goodwin
Return to: Blanco Tackabery & Matamoros, P.A.
P.O. Drawer 25008
Winston-Salem, NC 27114-5008

STATE OF NORTH CAROLINA)
)
COUNTY OF BURKE)

PARTIAL ABANDONMENT OF EASEMENT

THIS PARTIAL ABANDONMENT OF EASEMENT (this "Instrument") is made as of this ____ day of _____, 2020, by and among Pond View, LLC (the "Owner"), the Town of Hildebran, North Carolina (the "Town"), and the City of Hickory, North Carolina (the "City").

RECITALS:

WHEREAS, Owner owns a 7.721 acre +/- tract of land in the Town of Hildebran, Burke County, North Carolina, as further described on Exhibit A attached hereto (the "Property"); and

WHEREAS, simultaneous with or prior to the recordation of this Instrument, the Owner has recorded a plat entitled "Easement Plat Pond View Apartments" prepared by Borum, Wade and Associates, P.A. (the "Plat") in the Register of Deeds of Burke County at Plat Book ____, Page ____; and

WHEREAS, among other matters, the Plat depicts an existing sanitary sewer easement in favor of the Town recorded in Deed Book 904, Page 2317, Burke County Registry (the "Sewer Easement") running across the Property; and

WHEREAS, subsequent to the granting of the Sewer Easement to the Town, the Town assigned to the City all of its right, title, and interest in and to all sanitary sewer lines and related equipment located within the area of the Sewer Easement (the "Sewer Facilities"); and

WHEREAS, the parties are entering into this Instrument for the purposes of abandoning a portion of the Sewer Easement as further described below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agrees as follows:

1. Partial Abandonment of Sewer Easement. The Town hereby abandons that portion of the Sewer Easement depicted on the Plat and labeled as "25' SANITARY SEWER EASEMENT DB. 904, PG. 2317 TO BE ABANDONED" (the "Abandoned Sewer Easement Portion") and terminates any and all easements and rights, express or implied, which they may have to use the Abandoned Sewer Easement Portion. The Town acknowledges and agrees that: (a) any and all current or future owners of the Property may rely upon this Instrument as proof of the Town's intent to abandon any implied right they may have by prior use or otherwise to use the Abandoned Sewer Easement Portion; and (b) any party acquiring title to the Property shall do so free and clear of any future claim by the Town of an implied easement over the Property.

2. Relinquishment of the Sewer Facilities. In consideration of Owner granting to the City a new non-exclusive and perpetual easement as shown on the Plat and labeled "TO BE DEDICATED 20' SAN. SEWER EASEMENT" (the "New Easement"), which New Easement shall be granted by a separate instrument to be recorded subsequent to this Instrument in the Register of Deeds of Burke County, the City hereby assigns to Owner all of its right, title, and interest in and to any Sewer Facilities lying within the Abandoned Sewer Easement Portion, and forever relinquishes any claim the City may have to such facilities. In connection therewith, the City hereby abandons any easement rights it may hold with respect to the Abandoned Sewer Easement Portion, of whatever kind or nature, which may have arisen by prescription or operation of law in connection with its ownership of the Sewer Facilities.

3. Successors and Assigns. This Instrument shall be binding upon the parties hereto and their successors and assigns.

4. Counterparts. This Instrument may be executed in any number of counterparts, which, when taken together, shall constitute a complete and original instrument.

5. Sewer Easement Unaffected. Except for the abandonment of the Abandoned Sewer Easement Portion as provided herein, the Sewer Easement shall remain in full force and effect.

6. Amendment; Modification. This Instrument may not be amended or modified except by written agreement signed by both parties.

7. Severability. In the event that any provisions of this Instrument shall be held invalid, the same shall not affect in any respect the validity of the remainder of this Instrument.

[SEPARATE SIGNATURE PAGES ATTACHED]

**SEPARATE SIGNATURE PAGE TO
PARTIAL ABANDONMENT OF EASEMENT**

IN WITNESS WHEREOF, the undersigned Owner has caused this Instrument to be duly executed as of the day and year first above written.

POND VIEW, LLC, a North Carolina limited liability company

By: Pond View Manager, LLC, a North Carolina limited liability company, Managing Member

By: _____
Mark C. Morgan, Manager

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public of the County of _____ and State aforesaid, certify that Mark C. Morgan, Manager of Pond View Manager, LLC, Managing Member of Pond View, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial stamp or seal, this ____ day of _____, 2020.

(Affix Seal)

My Commission Expires: _____

Notary Public

Notary's Printed or Typed Name

**SEPARATE SIGNATURE PAGE TO
PARTIAL ABANDONMENT OF EASEMENT**

IN WITNESS WHEREOF, the undersigned Town has caused this Instrument to be duly executed as of the day and year first above written.

TOWN OF HILDEBRAN, NORTH
CAROLINA

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public of the County of _____ and State aforesaid, certify that _____, as _____ of the Town of Hildebran, North Carolina, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial stamp or seal, this ____ day of _____, 2020.

(Affix Seal)

My Commission Expires: _____

Notary Public

Notary's Printed or Typed Name

**SEPARATE SIGNATURE PAGE TO
PARTIAL ABANDONMENT OF EASEMENT**

IN WITNESS WHEREOF, the undersigned City has caused this Instrument to be duly executed as of the day and year first above written.

CITY OF HICKORY, NORTH
CAROLINA

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

I, the undersigned Notary Public of the County of _____ and State aforesaid, certify that _____, as _____ of the City of Hickory, North Carolina, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial stamp or seal, this ____ day of _____, 2020.

(Affix Seal)

My Commission Expires: _____

Notary Public

Notary's Printed or Typed Name

EXHIBIT A

**TO GRANT OF EASEMENTS,
DEDICATION OF SEWER FACILITIES,
AND
PARTIAL ABANDONMENT OF EASEMENT**

ALL that certain piece, parcel or tract of land lying and being in the Town of Hildebran, Icard Township, Burke County, North Carolina, and being more particularly described as follows:

BEGINNING at a new iron pipe in the southern margin of Old N.C. Highway 10, also known as Main Street East, a 60' public right-of-way, said point being the northeast corner of Larry H. Brittain and Debra C Brittain, either now or formerly, as described in instrument recorded in Deed Book 805, Page 902, in the Burke County Registry, and having parcel no. 15290 ("The Brittain Property"), said point also being South 10 deg. 47 min. 44 sec. West 9.12 feet from a control point, existing iron pipe, said control point being North 29 deg. 17 min. 51 sec. West 3,631.40 feet from a published NCGS monument, "Wilma", having NAD 83\2011 coordinates of, Northing = 720,584.146 and Easting = 1,281,662.630; and running thence from the **Point of Beginning**, along the southern margin Main Street East, South 75 deg. 07 min. 27 sec. East 321.25 feet to a point, the northwest corner of Barton L. Cook, Tamora C. Cook, Todd Gibbs and Aimee Gibbs, either now or formerly, as described in instrument recorded in Deed Book 2273, Page 678, in the Burke County Registry, and having parcel no. 24465 ("The Cook-Gibbs Property"); thence leaving the southern margin of Main Street East and along the western and southern lines of The Cook-Gibbs Property, the following two (2) courses and distances: (i) South 12 deg. 24 min. 03 sec. West 173.58 feet to an existing iron pipe; (ii) South 68 deg. 27 min. 58 sec. East 121.41 feet to an existing iron pipe in the western line of Defeet Properties, LLC, either now or formerly, as described in instrument recorded in Deed Book 1209, Page 266, in the Burke County Registry, and having parcel no. 15307 ("The Defeet Property, 15307"); thence with the western line of The Defeet Property, 15307, South 13 deg. 19 min. 42 sec. West 45.75 feet to an existing iron pipe, the northwest corner of Defeet Properties, LLC, either now or formerly, as described in instrument recorded in Deed Book 1209, Page 266, in the Burke County Registry, and having parcel no. 37481 ("The Defeet Property, 37481"); thence with the western line of The Defeet Property, 37481, South 16 deg. 41 min. 54 sec. East 211.59 feet to an existing iron pipe, said iron pipe is the northwest terminus of a 60' ingress, egress easement, described in instrument recorded in Deed Book 686, Page 805, in the Burke County Registry, said point is also the northwest corner of Wayne M. Huffman and Rhonda G. Huffman, either now or formerly, as described in instrument recorded in Deed Book 1024, Page 338, in the Burke County Registry, and having parcel no. 42646 ("The Huffman Property"); thence with the western line of The Huffman Property, South 01 deg. 35 min. 53 sec. East 343.41 feet to an existing iron rod in the northern line of David L. Reep and Ramona H. Reep, either now or formerly, as described in instrument recorded in Deed Book 550, Page 262, in the Burke County Registry, and having parcel no. 17943 ("The Reep Property"); thence with The Reep Property, the following five (5) courses and distances: (i) North 68 deg. 42 min. 15 sec. West 133.64 feet to a point; (ii) North 83 deg. 48 min. 49 sec. West 63.00 feet to an existing iron pipe; (iii) North 65 deg. 48 min. 49 sec. West 105.00 feet to a point; (iv) North 75 deg. 48 min. 49 sec. West

52.00 feet to a point; (v) North 81 deg. 48 min. 15 sec. West 136.18 feet to an existing iron pipe, the southeast corner of David J. Carswell and Sandra P. Carswell, either now or formerly, as described in instrument recorded in Deed Book 785, Page 1216, in the Burke County Registry, and having parcel no. 35593 ("The Carswell Property, 35593"); thence with eastern line of The Carswell Property, 35593, North 11 deg. 47 min. 21 sec. West 178.89 feet to an existing iron pipe, the southeast corner of David J. Carswell and Sandra P. Carswell, either now or formerly, as described in instrument recorded in Deed Book 572, Page 689, in the Burke County Registry, and having parcel no. 35687 ("The Carswell Property, 35687"); thence with eastern line of The Carswell Property, 35687, North 12 deg. 47 min. 09 sec. West 198.39 feet to an existing iron pipe, the southeast corner of David J. Carswell, either now or formerly, as described in instrument recorded in Deed Book 2138, Page 647, in the Burke County Registry, and having parcel no. 61130 ("The Carswell Property, 61130"); thence with eastern line of The Carswell Property, 61130, North 16 deg. 26 min. 14 sec. East 27.90 feet to a point, the southeast corner of James S. Board and Erica L. Board, either now or formerly, as described in instrument recorded in Deed Book 2138, Page 680, in the Burke County Registry, and having parcel no. 15289 ("The Board Property"); thence with eastern line of The Board Property, North 16 deg. 26 min. 14 sec. East 180.28 feet to a point, the southeast corner of The Brittain Property; thence with The Brittain Property, the following three (3) courses and distances: (i) North 16 deg. 26 min. 14 sec. East 72.70 feet to an existing iron pipe; (ii) North 16 deg. 26 min. 14 sec. East 5.30 feet to a point; (iii) North 10 deg. 47 min. 44 sec. East 115.51 feet to the **Point and Place of Beginning** and containing **7.721 acres**, more or less, as shown on that certain survey entitled "Pond View Apartments" prepared by Borum, Wade and Associates, P.A. dated December 20, 2017.

COUNCIL AGENDA MEMOS

To: City Manager's Office
From: Shawn Pennell, Assistant Public Services Director - Public Utilities
Contact Person: John Marshall, Transportation Planning Manager
Date: November 17, 2020
Re: Riverwalk NCDOT portion EB-5939 - Gannett Fleming, Inc. - Construction Engineering and Inspection (CEI) Services

REQUEST

Staff requests Council approval and acceptance of an Agreement for Professional Services with Gannett Fleming, Inc. for CEI Services related to the Riverwalk Project (EB-5939) in the amount of cost plus not to exceed \$618,264.52.

BACKGROUND

The City of Hickory Bond Commission and City Council approved a group of projects that were voted on by the citizens of Hickory to complete with a \$40 Million Bond Referendum. These projects are intended to identify Hickory as a prospering and vibrant City to enjoy, do business in and hopefully move to. The Riverwalk Bond Project is one of the core projects of the Bond Referendum and the third to move forward in construction. The Riverwalk will offer on-land connections to existing and future amenities, including the Lake Hickory Trails, paved greenway and Boy Scout Cabin at Rotary-Geitner Park, future Deidra Lackey Memorial Park, and the future pedestrian bridge across Lake Hickory.

ANALYSIS

The Riverwalk NCDOT Portion project will contain an entrance from Old Lenoir Road, parking and access to the trail system, as well as an elevated walkway over Lake Hickory that interacts with existing City of Hickory amenities. Lighting on the bridge, retaining walls and all necessary drainage piping are included in this project.

The funding for this project is apportioned 80/20, NCDOT and City respectively. NCDOT requires that recipients hire an Engineering firm separate from the Design firm to perform Construction Engineering and Inspection services for oversight, materials testing and record keeping.

Gannett Fleming, Inc. was selected based on qualifications-based proposals with NCDOT concurrence. Gannett Fleming's fees were negotiated by City of Hickory staff and NCDOT staff.

RECOMMENDATION

Staff recommends Council approval and acceptance of an Agreement for Professional Services with Gannett Fleming, Inc. for CEI Services related to the Riverwalk Project (EB-5939) in the amount of cost plus not to exceed \$618,264.52.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

**Project# B1R002
061-7503-577.23-04**

Reviewed by:

WSS
Shawn Pennell 11-05-2020
Initiating Department Head Date

Rodney Miller 11-9-20
Asst. City Manager, R. Miller Date

Melissa Miller 11/9/20
Finance Officer, Melissa Miller Date

Amanda M. Dula 11-6-20
Deputy City Attorney, A. Dula Date

R. Beasley 11/9/20
Asst. City Manager, R. Beasley Date

Date

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

WW
City Manager, Warren Wood

11-10-20
Date

IMPORTANT INFORMATION AND INSTRUCTIONS

SECTIONS WITHIN THIS AGREEMENT:

Contact Information

Important Information and Instructions

Professional Services Contract Provisions

Special Conditions

General Contract Provisions Under Federal Awards

Professional Services Contract Provisions Under Federal Awards

General Contract

Exhibit A

Exhibit B

1. **SUBMIT ALL PAGES:** All pages and exhibits of this document will be used as the Contract. CONSULTANT shall submit *all* pages of this document with completed information.
2. **GENERAL CONTRACT:** AUTHORIZED AGENT of CONSULTANT must sign before proposal is submitted to the City of Hickory. Upon acceptance of the proposal, the City of Hickory will sign the page following EXHIBIT A and the Contract shall be fully executed.
3. **EXHIBIT A:** Insert the proposed scope and associated costs for services behind this page.
4. **CONTRACT TIME:** 2 years from date of execution
5. **EXHIBIT B:** Insert completed E-verify form and all required certificates of insurance behind this page.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

PROFESSIONAL SERVICES CONTRACT PROVISIONS

1. **ACCEPTANCE OF CONTRACT:** This document constitutes only the CONSULTANT's offer until it is accepted on behalf of the City of Hickory and is fully executed by both parties.
2. **EXECUTION OF CONTRACT:** Contract documents must contain the original signature(s) of the authorized representative(s) in the space(s) provided. Contract must be typed or printed in ink. Use of erasable ink is not permitted. The Contract, including the exhibits made part hereof, constitute the entire Contract between CONSULTANT and the City of Hickory, supersedes and controls over all prior written or oral understandings. The Contract may be amended, supplemented or modified only by a written instrument duly executed by the Parties in the same manner as the Contract.
3. **CONTROLLING AGREEMENT:** The Contract shall take precedence over any inconsistent or contradictory provisions contained in any proposal, purchase order, requisition, notice-to-proceed, or like document.
4. **CONTROLLING LAW AND VENUE:** The Contract is to be governed by the state of North Carolina. Jurisdiction and Venue shall lie with the courts of Catawba County, NC.
5. **COMPLIANCE WITH LAWS:** CONSULTANT, at his own expense, shall obtain and maintain all licenses, permits, liability insurance and 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 CONSULTANT and the City of Hickory. Any such requirement specifically set forth in any contract document between CONSULTANT and the City of Hickory shall be supplementary to this section and not in substitution thereof.
6. **DISTRIBUTION OF CONTRACT:** One (1) copy of the Contract shall be furnished to CONSULTANT. It shall be CONSULTANT's responsibility to reproduce and distribute copies of the Contract as needed to employees/subcontractors of CONSULTANT. No additions, deletions or changes of any kind shall be made to the Contract by CONSULTANT.
7. **DELIVERY OF NOTICES:** Any notices required or permitted by the Contract will be considered sufficient if hand delivered, emailed with read receipt requested, 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 email, the Party entitled to receive the notice may request the original to be hand delivered or sent by certified mail. 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.
8. **CHANGES:** The City of Hickory and CONSULTANT agree that no change or modification to the Contract, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of the Contract. The execution of the change shall be authorized and signed in the same manner as the Contract. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of the Contract. Any proposed fees by CONSULTANT are estimates to perform the services required to complete the Project as CONSULTANT understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. CONSULTANT will inform the City of Hickory of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment may be made, and the Contract modified accordingly.

9. **WAIVER:** The City of Hickory reserves the right to waive any general provision, special provision or minor specification deviation when considered to be in the best interest of the City of Hickory. One or more waivers by the City of Hickory of any provision or specification shall not be construed by CONSULTANT as a waiver of any subsequent breach of the same provision or specification.
10. **SEVERABILITY:** If any provision under the Contract 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 the Contract or its application that can be given effect without the invalid provision or application.
11. **TERMINATION FOR CAUSE OR FOR CONVENIENCE BY THE CITY OF HICKORY**
- a. The performance of work and/or delivery of services under the Contract may be terminated by the City of Hickory, in whole or in part, in instances where CONSULTANT is found to violate or breach the Contract or whenever it is determined to be in the best interest of the City of Hickory.
 - b. Any such termination shall be effected by the delivery to CONSULTANT of a Notice of Termination specifying the extent to which performance of work and/or delivery of services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a Notice of Termination, CONSULTANT 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.
 - d. CONSULTANT may invoice the City of Hickory for any work performed or services delivered up to the date specified in the Notice of Termination. Invoicing and payment shall be done in accordance with the invoicing and payment provision(s) of the Contract.
12. **REMEDIES:** In instances where CONSULTANT is found to violate or breach the Contract, the City of Hickory is authorized to seek replacement services elsewhere and to seek legal remedies against CONSULTANT as appropriate.
13. **BANKRUPTCY:** If CONSULTANT becomes bankrupt or insolvent, or if a petition of bankruptcy is filed against CONSULTANT, or if a receiver is appointed for CONSULTANT, the City of Hickory shall have the right to terminate the Contract upon written notice to CONSULTANT without prejudice to any claim for damages or any other right of the City of Hickory under the Contract to the time of such termination.
14. **ADVERTISING:** In executing the Contract, CONSULTANT agrees not to use the results therefrom as a part of any commercial advertising.
15. **ASSIGNMENT:** The Contract shall not be assigned by CONSULTANT without written consent of the City of Hickory.
16. **MISTAKES:** CONSULTANT is expected to examine the Contract, scope, delivery schedule, costs, all instructions and documents pertaining to services. Failure to do so will be at CONSULTANT's risk.
17. **INDEPENDENT CONTRACTOR:** CONSULTANT agrees that CONSULTANT 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 or its employee(s) as an agent(s) or employee(s) of the City of Hickory.
18. **CONFLICT OF INTEREST:** The Contract is subject to the provisions of City of Hickory's *Ethics Policy* and *Conflict of Interest Policy*, which are herein incorporated by reference in the Contract. CONSULTANT must disclose 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, CONSULTANT must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the CONSULTANT's firm or any of its branches.

19. **PROFESSIONAL LICENSURE:** All work shall be sealed by a professional properly licensed in North Carolina and doing business in the state of North Carolina. These shall include but not be limited to: Engineer, Landscape Architect, Surveyor, Architect, Geologist, etc.
20. **SERVICE AND WARRANTY:** The standard of care for all professional engineering, consulting and related services performed or furnished by CONSULTANT and its employees under the Contract will be the care and skill ordinarily used by members of CONSULTANT's profession. CONSULTANT makes no warranties, express or implied, under the Contract or otherwise, in connection with CONSULTANT's services.
21. **OPINIONS OF PROBABLE COST (COST ESTIMATES):** Any opinions of probable project cost or probable construction cost provided by CONSULTANT are made on the basis of information available to CONSULTANT and on the basis of CONSULTANT's experience and qualifications, and represents its judgment as an experienced and qualified professional. However, since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost CONSULTANT prepares.
22. **CONSTRUCTION PROCEDURES:** CONSULTANT's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. CONSULTANT shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. CONSULTANT shall not be responsible for the acts or omissions of the construction contractor or other parties on the Project. Any construction contract documents shall not contain provisions that extend the duties or liabilities of CONSULTANT beyond those set forth in the Contract.
23. **SAFETY STANDARDS:** Unless otherwise stipulated, all work performed pursuant to the Contract shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder, which are herein incorporated by reference in the Contract.
24. **SERVICES AND INFORMATION**
- a. The City of Hickory will provide all criteria and information pertaining to the City of Hickory's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. The City of Hickory will also provide copies of any City of Hickory-furnished Standard Details, Standard Specifications, Standard Bidding Documents or other documents which are to be incorporated into the Project.
 - b. In performing professional services hereunder, it is understood by the City of Hickory that CONSULTANT is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the City of Hickory's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the City of Hickory's legal and financial interests. To that end, the City of Hickory agrees to have an appropriate representative examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by CONSULTANT, and will obtain the advice of an attorney, insurance counselor or other consultant as the City of Hickory deems necessary to protect the City of Hickory's interests before the City of Hickory takes action or forebears to take action based upon or relying upon the services provided by CONSULTANT.

25. **LIABILITY:** CONSULTANT shall indemnify and save harmless the City of Hickory, its departments, boards, commissions, agencies, institutions and all employees of the aforementioned against the claims by third parties resulting from CONSULTANT's breach of the Contract or CONSULTANT's negligent acts, errors or omissions. However, neither Party to the Contract shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Contract from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.
26. **INSURANCE:** CONSULTANT agrees to procure and maintain, at its expense, the insurances listed below. The City of Hickory shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance shall be furnished to the City of Hickory and included in EXHIBIT B. CONSULTANT agrees to indemnify and save harmless the City of Hickory for claims to the extent caused by CONSULTANT's negligent acts, errors or omissions.
- a. Worker's Compensation insurance as required by statute;
 - b. Employer's Liability insurance of \$250,000;
 - c. Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles;
 - d. Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and
 - e. Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under the Contract caused by negligent acts, errors, or omissions for which CONSULTANT is legally liable.
27. **PATENTS AND ROYALTIES:** CONSULTANT, 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, design, or materials manufactured or used in the performance of the Contract including its use by the City of Hickory. If CONSULTANT uses any invention, process, design, or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the prices in EXHIBIT A shall include all royalties or cost rising from the use of such invention, process, design, or materials in any way involved in the work or service.
28. **RELEASE OF PATENTS AND COPYRIGHTS:** CONSULTANT agrees to relinquish ownership and exclusive rights to the City of Hickory for any patents and/or copyrights for any process, discovery, invention, design or document which arises or is developed in the course of the Contract. All plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by CONSULTANT as part of the Contract, with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by CONSULTANT and/or the professional design industry in the normal course of business, shall be deemed to be the property of the City of Hickory. Any reuse or modification of such documents for purposes other than those intended by CONSULTANT shall be at the City of Hickory's sole risk and without liability to CONSULTANT.
29. **ACCESS TO RECORDS**
- a) CONSULTANT agrees to provide, upon request, the City of Hickory or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

b) CONSULTANT agrees to permit any of the foregoing parties to reproduce records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

30. **RETENTION OF RECORDS:** CONSULTANT agrees to retain all records pertaining to the Contract for no less than three (3) years after final payment is made and all other pending matters are closed.

31. **TIME OF ESSENCE:** Unless otherwise stated, time shall be considered of the essence to the Contract. CONSULTANT specifically agrees that it shall be liable for failure to deliver or delay in delivery. This includes without limitations: strikes, lockouts, inability to obtain material, lack of shipping space, breakdowns, delays of carriers or suppliers, and pre-existing governmental regulations of the federal and state government or any subdivision thereof; unless governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of CONSULTANT prior to the execution of the Contract.

It is further agreed that time is of the essence to each and every portion of the 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 the Contract.

32. **ACCEPTANCE OF PURCHASE ORDERS:** CONSULTANT is to accept only those purchase orders issued by the City of Hickory, prepared on Finance Department forms, unless instructed otherwise in the Contract.

33. **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, nor may CONSULTANT withdraw or cancel the Contract, or any part of the Contract for these reasons. CONSULTANT may only cancel the Contract pursuant to the cancellation clause, if one is included as a part of the Contract, and then only if the contractual obligation has been fulfilled by CONSULTANT in accordance with the terms stated.

34. **FEES:** CONSULTANT shall be responsible for paying all fees related to regulatory or other governing authority submittal, review, permitting, etc. These fees shall be requested as a reimbursement from the City of Hickory at the direct cost with no markup.

35. **PAYMENT/INVOICING:**

a. The CONSULTANT shall be paid within a reasonable time, not to exceed thirty (30) calendar days, after the submission of proper certified invoices to the City of Hickory at the prices stipulated in EXHIBIT A of the Contract. Invoices shall contain the Project name and purchase order number. Failure to follow these instructions may result in delay of processing invoices for payment. CONSULTANT shall be the only office authorized to receive purchase order, do the billing and invoicing, and receive payment.

b. CONSULTANT will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by the City of Hickory's auditors upon request.

c. If the City of Hickory disputes any item(s) in CONSULTANT's invoice for any reason, including the lack of supporting documentation, the City of Hickory may temporarily delete the disputed item(s) and pay the remaining amount of the invoice. The City of Hickory will promptly notify CONSULTANT of the dispute and request clarification and/or correction. After any dispute has been settled, CONSULTANT will include the disputed item(s) on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item(s) only.

36. **PARTIAL PAYMENTS:**

- a. Partial payments may be made once each month as the work progresses. CONSULTANT shall submit a partial payment request for work completed by the 25th of each month. Said payments will be based upon estimates prepared by CONSULTANT and approved by the City of Hickory for the value of the work performed or service provided in accordance with the Contract.
- b. From the total of the amount determined to be payable on a partial payment, five percent (5%) of such total will be deducted and retained by the City of Hickory until the final payment is made. Ninety-five percent (95%) of the amount payable, less all previous payments, shall be certified for payment.
- c. CONSULTANT shall not receive partial payment based on quantities of work or services in excess of those provided in EXHIBIT A or covered by approved change orders, except when such excess quantities have been determined by the City of Hickory to be a part of the final quantity for the item of work or service in question.
- d. No partial payment shall bind the City of Hickory to the acceptance of any work or service as to quality or quantity.

37. EQUAL EMPLOYMENT OPPORTUNITY (under 41 C.F.R. Part 60): During the performance of the Contract, CONSULTANT agrees as follows:

- a) CONSULTANT 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. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment.
- c) CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONSULTANT's legal duty to furnish information.
- d) CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representatives of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- e) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City of Hickory and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g) In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further City of Hickory contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h) CONSULTANT will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
38. **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 and shall be included with EXHIBIT B.

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SPECIAL CONDITIONS

1. **ALLOCATION OF RISK:** The City of Hickory and CONSULTANT have evaluated the risks and rewards associated with the Project, including CONSULTANT's fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of CONSULTANT (and its related corporations, subcontractors, and employees) to the City of Hickory and third parties granted reliance is limited to **the Fee** for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of CONSULTANT's services or the Contract regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. This limitation shall not apply to the extent the damage is paid under CONSULTANT's Commercial General Liability insurance policy.
2. **LIQUIDATED DAMAGES:** If CONSULTANT should neglect, fail, or refuse to complete the services within the time stipulated in EXHIBIT A, then CONSULTANT does hereby agree, as a part of the consideration for the Contract to pay to the City of Hickory the sum of **\$0.00** per day, not as a penalty, but as compensation to the City of Hickory for delays, damages, and additional expenses for such breach of contract as hereinafter set forth, for each and every calendar day that CONSULTANT shall be in default after the time stipulated in the Contract for completing the services. The said amount is fixed and agreed upon by and between CONSULTANT and the City of Hickory because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City of Hickory would, in such event, sustain.
3. **REPORTING REQUIREMENTS:** CONSULTANT is responsible for submitting weekly Project reports detailing the progress achieved to date for the Project. CONSULTANT agrees to submit all reports, certifications or other documents required by any of the provisions in the Contract to the City of Hickory.
4. **EXTENSIONS:** The Contract may be extended by properly executed change order.
5. **APPLICABILITY OF FEDERAL REGULATIONS TO FEDERALLY FUNDED PROJECTS:** The Contract includes federal funding from the Federal Highway Administration (FHWA) and dispersed through the North Carolina Department of Transportation (NCDOT), hereinafter referred to as the "DEPARTMENT", and, therefore, is subject to the provisions required for non-federal entity contracts under federal awards. These provisions are provided in the following section(s) and are herein incorporated by reference in the Contract.

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GENERAL CONTRACT PROVISIONS UNDER FEDERAL AWARDS

1. **REMEDIES:** In instances where CONSULTANT is found to violate or breach the Contract, the City of Hickory is authorized to seek replacement services elsewhere and to seek legal remedies against CONSULTANT as appropriate.

2. **TERMINATION FOR CAUSE OR FOR CONVENIENCE BY THE CITY OF HICKORY**
 - a. The performance of work and/or delivery of services under the Contract may be terminated by the City of Hickory, in whole or in part, in instances where CONSULTANT is found to violate or breach the Contract or whenever it is determined to be in the best interest of the City of Hickory.
 - b. Any such termination will be effected by the delivery to CONSULTANT of a Notice of Termination specifying the extent to which performance of work and/or delivery of services are terminated, and the date upon which such termination becomes effective.
 - c. After receipt of a Notice of Termination, CONSULTANT will stop work and/or place no further orders under the Contract on the date and to the extent specified in the Notice of Termination.
 - d. CONSULTANT may invoice the City of Hickory for any work performed or services delivered up to the date specified in the Notice of Termination. Invoicing and payment will be done in accordance with the invoicing and payment provision(s) of the Contract.

3. **EQUAL EMPLOYMENT OPPORTUNITY (under 41 C.F.R. Part 60):** During the performance of the Contract, CONSULTANT agrees as follows:
 - a) CONSULTANT 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. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - b) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive considerations for employment without regard to race, creed, color, sex, sexual orientation or affectation, national origin, ancestry, or physical or mental impairment.
 - c) CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONSULTANT's legal duty to furnish information.

- d) CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representatives of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - e) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - f) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the City of Hickory, the DEPARTMENT, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - g) In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further City of Hickory and/or DEPARTMENT contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - h) CONSULTANT will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
4. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148):** If the Contract is in excess of \$2,000 and is for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 CFR § 5.1, CONSULTANT must comply with the following clauses:
- a. Minimum Wages
 - i. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), 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 CONSULTANT 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 paragraph (4)(a)(iv) of this section; 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 paragraph (4)(a)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by CONSULTANT 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. CONSULTANT shall classify, in conformance with the wage determination, any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract.
 1. The City of Hickory shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - a. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - b. The classification is utilized in the area by the construction industry; and
 - c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 2. If CONSULTANT and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the City of Hickory 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 the City of Hickory to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the City of Hickory or will notify the City of Hickory within the 30-day period that additional time is necessary.
 3. In the event CONSULTANT, the laborers or mechanics to be employed in the classification or their representatives, and the City of Hickory do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the City of Hickory shall refer the questions, including the views of all interested parties and the recommendation of the City of Hickory, to the Administrator for determination. The Administrator, or an authorized

representative, will issue a determination within 30 days of receipt and so advise the City of Hickory or will notify the City of Hickory within the 30-day period that additional time is necessary.

4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (4)(a)(ii) (2) or (3) of this section, shall be paid to all workers performing work in the classification under the 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, CONSULTANT 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 CONSULTANT does not make payments to a trustee or other third person, CONSULTANT 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 CONSULTANT, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require CONSULTANT to set aside in a separate account assets for the meeting of obligations under the plan or program.
- b. Withholding: The DEPARTMENT 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 CONSULTANT under the Contract or any other Federal contract with CONSULTANT, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by CONSULTANT, 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 CONSULTANT 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the DEPARTMENT may, after written notice to the City of Hickory and CONSULTANT, 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.
- c. Payrolls and Basic Records
- i. Payrolls and basic records relating thereto shall be maintained by CONSULTANT during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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, CONSULTANT 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.

ii.

1. CONSULTANT shall submit weekly, for each week in which any Contract work is performed, a copy of all payrolls to the DEPARTMENT if the agency is a Party to the Contract, but if the agency is not such a Party, CONSULTANT will submit the payrolls to the City of Hickory, as the case may be, for transmission to the DEPARTMENT. 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 website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. CONSULTANT is responsible for the submission of copies of payrolls by all subcontractors. CONSULTANT and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the DEPARTMENT if the agency is a Party to the Contract, but if the agency is not such a Party, CONSULTANT will submit them to the City of Hickory, as the case may be, for transmission to the DEPARTMENT, 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 section for a contractor to require a subcontractor to provide addresses and social security numbers to CONSULTANT for its own records, without weekly submission to the City of Hickory.
2. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by CONSULTANT or the subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - a. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - b. 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 Regulations, 29 CFR part 3;

- c. 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.
 - 3. 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 paragraph (4)(c)(ii)(2) of this section.
 - 4. The falsification of any of the above certifications may subject CONSULTANT or the subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
 - iii. CONSULTANT or the subcontractor shall make the records required under paragraph (4)(c)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City of Hickory, the DEPARTMENT, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If CONSULTANT or the subcontractor fails to submit the required records or to make them available, the DEPARTMENT may, after written notice to the City of Hickory and CONSULTANT, 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.
- d. 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 ninety (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 CONSULTANT 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 CONSULTANT's or the 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, CONSULTANT 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 classification of 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, CONSULTANT 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 this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30, which are herein incorporated by reference in the Contract.
- e. Compliance with Copeland Act Requirements: CONSULTANT shall comply with the requirements of 29 CFR Part 3, which are herein incorporated by reference in the Contract.
- f. Subcontracts: CONSULTANT or the subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the City of Hickory or the DEPARTMENT may, by appropriate instructions, require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONSULTANT shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- g. 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.

- h. 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 the Contract.
 - i. Disputes concerning labor standards: Disputes arising out of the labor standards provisions of the Contract shall not be subject to the general disputes clause of the 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 CONSULTANT (or any of its subcontractors) and the City of Hickory, the DEPARTMENT, the U.S. Department of Labor, or the employees or their representatives.
 - j. Certification of eligibility
 - i. By entering into the Contract, CONSULTANT certifies that neither it (nor he or she) nor any person or firm who has an interest in CONSULTANT'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).
 - ii. No part of the 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).
 - iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
5. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** If the Contract is in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act, CONSULTANT must comply with the following clauses, in addition to the clauses required by 29 CFR § 5.5(a). As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
- a. Overtime requirements: CONSULTANT or any subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (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 forty hours in such workweek.
 - b. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (5)(a) of this section, CONSULTANT and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, CONSULTANT and such 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 paragraph (5)(a) of this section, in the sum of twenty-seven dollars (\$27) for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (5)(a) of this section.
 - c. Withholding for unpaid wages and liquidated damages: The DEPARTMENT 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 CONSULTANT or the subcontractor under any such contract or any other Federal contract with CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which

is held by CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of CONSULTANT or such subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (5)(b) of this section.

- d. Subcontracts: CONSULTANT or the subcontractor shall insert in any subcontracts the clauses set forth in paragraph (5)(a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONSULTANT shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (5)(a) through (d) of this section.
6. In addition to the clauses contained in paragraph (5)(a) through (d), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR § 5.1, CONSULTANT or any subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by CONSULTANT or the subcontractor for inspection, copying, or transcription by authorized representatives of the City of Hickory, the DEPARTMENT, and the Department of Labor, and CONSULTANT or the subcontractor will permit such representatives to interview employees during working hours on the job.
 7. **CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED**: If the Contract is in excess of \$150,000, CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the FHWA and the Regional Office of the Environmental Protection Agency (EPA).
 8. **ENERGY EFFICIENCY**: CONSULTANT agrees to comply with applicable mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
 9. **DEBARMENT AND SUSPENSION (Executive Orders 12549 and 12689)**
 - a. The Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such CONSULTANT is required to verify that CONSULTANT, none of its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - b. CONSULTANT agrees to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - c. This certification is a material representation of fact relied upon by the City of Hickory. If it is later determined that CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City of Hickory and the DEPARTMENT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - d. CONSULTANT agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C. CONSULTANT further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352):** If the Contract is in excess of \$100,000, CONSULTANT must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

If the Contract is in excess of \$100,000, CONSULTANT agrees to comply with 49 CFR part 20 and submit certification to the City of Hickory.

11. **PROCUREMENT OF RECOVERED MATERIALS:** CONSULTANT and any subcontractors agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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PROFESSIONAL SERVICES CONTRACT PROVISIONS UNDER FEDERAL AWARDS

1. **REPORTING REQUIREMENTS:** CONSULTANT agrees to submit all reports, certifications or other documents required by any of the provisions in the General Contract Provisions Under Federal Awards or Professional Service Contract Provisions Under Federal Awards sections of the Contract to the City of Hickory for transmission to the DEPARTMENT or other Federal agency as required.
2. **RELEASE OF PATENTS AND COPYRIGHTS:** CONSULTANT agrees to relinquish ownership and exclusive rights to the City of Hickory for any patents and/or copyrights for any process, discovery, invention, design or document which arises or is developed in the course of the Contract. All plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by CONSULTANT as part of the Contract, with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by CONSULTANT and/or the professional design industry in the normal course of business, shall be deemed to be the property of the City of Hickory. Any reuse or modification of such documents for purposes other than those intended by CONSULTANT shall be at the City of Hickory's sole risk and without liability to CONSULTANT.
3. **ACCESS TO RECORDS**
 - c) CONSULTANT agrees to provide, upon request, the City of Hickory, the DEPARTMENT, the FHWA, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - d) CONSULTANT agrees to permit any of the foregoing parties to reproduce records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. **RETENTION OF RECORDS:** CONSULTANT agrees to retain all required records pertaining to the Contract for no less than three (3) years after final payment is made and all other pending matters are closed.
5. **DISADVANTAGED BUSINESS ENTERPRISE (DBE) ASSURANCE:** The newest version of the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.
 - a. The Contract is subject to the requirements of U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 [U.S. DOT published final rule, "Disadvantaged Business Enterprise: Program Improvements," 49 C.F.R. Part 26, on January 28, 2011 (see 76 Fed. Reg. 5083)], and Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, as amended by Section 451 of the Hiring Incentives to Restore Employment (HIRE) Act, Pub. L. 111-147, March 18, 2010, 23 U.S.C. § 101 note.

The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is 0.0%.
 - b. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONSULTANT to carry out these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as the City of Hickory or the DEPARTMENT deems appropriate. Each subcontract CONSULTANT signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

CONSULTANT will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. CONSULTANT must promptly notify the City of Hickory whenever a DBE subcontractor performing work related to the Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. CONSULTANT may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Hickory.
6. **PROMPT PAY REQUIREMENTS:** CONSULTANT agrees to comply with prompt pay requirements, as specified in 49 CFR 26.29. CONSULTANT is required to pay its subcontractors performing work related to the Contract for satisfactory performance of that work no later than thirty (30) days after CONSULTANT's receipt of payment for that work from the City of Hickory. In addition, these may apply:
 - i. CONSULTANT may not hold retainage from its subcontractors; or
 - ii. CONSULTANT is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to the Contract is satisfactorily completed; or
 - iii. CONSULTANT is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the City of Hickory and CONSULTANT's receipt of the partial retainage payment related to the subcontractor's work.
 7. **DETERMINATION OF ALLOWABLE COSTS:** Determination of allowable costs shall be in accordance with the Federal cost principles established in OMB CIRCULAR A-87 REVISED.
 8. **ERRORS AND OMISSIONS:** CONSULTANT agrees to procure and maintain Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under the Contract caused by negligent acts, errors, or omissions for which CONSULTANT is legally liable. CONSULTANT agrees to indemnify and save harmless the City of Hickory for claims to the extent caused by CONSULTANT's negligent acts, errors or omissions. However, neither Party to the Contract shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Contract from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.
 9. **CONFLICT OF INTEREST**
 - a. The Contract is subject to the provisions of City of Hickory's Ethics and Conflict of Interest Policy, which are herein incorporated by reference in the Contract. CONSULTANT must disclose 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, CONSULTANT must disclose the name of any City of Hickory employee who owns, directly or indirectly, an interest of five percent (5%) or more in the CONSULTANT's firm or any of its branches.
 - b. The Contract is also subject to the provisions of 23 CFR 1.33 and the requirements thereof, which are herein incorporated by reference in the Contract.

GENERAL CONTRACT

The undersigned, as AUTHORIZED AGENT of CONSULTANT, 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, and that it is in all respects, fair and in good faith, without collusion or fraud.

AUTHORIZED AGENT further declares that he has informed himself fully about all conditions regarding this proposal, that the AUTHORIZED AGENT has reviewed all related documents for the above mentioned Project and that he has satisfied himself about performance required by this proposal.

AUTHORIZED AGENT agrees that if this proposal is accepted, to contract with the City of Hickory in the form of a **Professional Services Construction Engineering and Inspections** contract, 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 Contract documents, to the full and entire satisfaction of the City of Hickory.

AUTHORIZED AGENT warrants that prices, terms and conditions quoted in the proposal will be firm for a period of sixty (60) days from the date included with AUTHORIZED AGENT's signature.

By submitting this proposal, CONSULTANT agrees to coordinate their schedule with the City of Hickory forces working on the Project to the fullest extent possible.

The City of Hickory reserves the right to deduct any item(s) as deemed in the best interest of the City of Hickory. CONSULTANT further proposes and agrees hereby to commence work under the Contract on the date to be specified in a written Notice to Proceed by the City of Hickory and to complete all work within the time stipulated in Exhibit A.

The City of Hickory reserves the right to reject any and all proposals; and reject any quoted items that fail to meet the needs of the City of Hickory.

Do not include Federal tax or NC State and local sales or use taxes in your proposal. The City of Hickory is exempt from federal tax. CONSULTANT shall submit a certified Sales Tax Report for reimbursement of sales taxes by the City of Hickory.

SIGNATURE OF AUTHORIZED AGENT

PRINT/TYPE NAME/TITLE

EXHIBIT A

INSERT EXHIBIT A BEHIND THIS PAGE

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Excellence Delivered As Promised

October 21, 2020

John Marshall
City of Hickory
76 North Center Street
Hickory, NC 28601

RE: Construction Services Scope – Riverwalk Project

Dear John,

Gannett Fleming, with the attached estimate, is proposing to provide Construction Engineering and Inspection Services on the Riverwalk Project. The scope shall be the traditional Construction Administration and Inspection required to provide NCDOT/Federal Project Certification. Services included in this scope include:

- **Meetings** – the Project Manager and team will conduct meetings as deemed appropriate, to include a Pre-Construction, Monthly Progress, Issue Resolution and Client Coordination meetings.
- **Submittals** – the Project Manager will route all project submittals to the appropriate approval authority.
- **Daily Inspection and Documentation** – to include daily dairies and all other required paperwork as outline by the Construction Manual
- **On-Site Materials Testing** – This includes providing an inspector capable of testing concrete and soil, with all necessary NCDOT certifications for Soil, Concrete, Asphalt and Erosion Control.
- **Davis Bacon Compliance** – this includes performing wage rate interviews as well as checking certified payrolls.
- **Monthly and Final Estimate Processing** – this includes assembling quantities for monthly estimates and verifying materials received. Staff will assemble, check and approve estimate for City of Hickory to process for payment.
- **Materials Received Tracking** – this includes ensuring all materials are properly received, which includes appropriate certifications and/or testing/samples. Will ensure compliance with Minimum Sampling Guide
- **Claims Avoidance and Mitigation** – Staff with proactively work with Contractor and City Officials to facilitate and/or brainstorm ideas to avoid costly claims. If unavoidable, staff will keep cost records and work with all parties to mitigate costs.

Gannett Fleming, Inc.

www.gannettfleming.com

- **Construction Management** – Staff will interface with the contractor to enforce the contract and specifications and will make field decisions that are appropriate based on the relevant documents. Staff will route RFI's to appropriate personnel (City, Design Engineer and/or NCDOT) when the contract and plans are ambiguous. Staff will evaluate and make appropriate recommendations for any change orders that develop during construction.
- **Schedule Review** – The Project Manager will review progress each month utilizing methods outlined in NCDOT's construction manual and follow up accordingly.

The estimate attached represents a cost-plus proposal and is based on an estimated duration. Early or late completion will serve to either reduce or increase the cost respectively. Gannett Fleming will provide the necessary services for Project Certification and will monitor the budget and advise if there is to be a projected overrun due to changes in the contractor's approach or schedule.

Exclusions:

- Gannett Fleming is specifically excluding any and all laboratory testing services from this Scope. Gannett Fleming is assuming NCDOT laboratories will perform necessary testing which may or may not be charged back directly to the City of Hickory. Gannett Fleming will not be responsible for cost incurred by utilizing NCDOT labs. Outside laboratory services may be provided through Gannett Fleming at an additional cost (direct pass through cost).
- Any on site testing required to satisfy "Special Inspection" requirements for the County Building Permit that are outside of the testing scope outlined above.
- Based on conversations with NCDOT we are assuming the ability to utilize a Nuclear gauge "leased" to Gannett Fleming from NCDOT to perform all Nuclear Density Testing. If this ability changes and a rental gauge is required that cost would be extra.

Sincerely,



Steven Kelly Marshall, PE, MBA
Western NC CEI Manager - NC Construction Services
Gannett Fleming, Inc.

Attachments:

- Attachment A – Duties of Personnel / Inspection and Testing Detail
- Attachment B – NCDOT CEI Cost Spreadsheet
- Attachment C – Gannett Fleming’s Overhead Rate Letter
- Attachment D – NCDOT’s Billable Rate Memo
- Attachment E – NCDOT’s Vehicle Rate Memo
- Attachment F – Nuclear Gauge Rental Invoice (provide as cost backup)

Attachment A – Duties of Personnel / Inspection and Testing Detail

The cost proposal attached (Attachment B) is prepared using standard NCDOT CEI estimate practices. This includes utilizing NCDOT's most recent CEI cost spreadsheet. To populate the spreadsheet, Gannett Fleming proposes utilizing two Construction Inspectors, one full time Transportation Technician III and one part time Transportation Technician II.

Project Manager Duties:

- Contract Administration
 - Submittal Review and Routing
 - Ensuring all project communication travels through proper channels in a timely manner
 - Claim Avoidance and Management
 - Review, investigation, recommendation and response
 - Estimate Assembly
 - Progress Evaluations
- Project Certification
 - Materials Received Management and Tracking
 - Verification of material quantities in correlation to work complete
 - Review and Management of Testing
 - Verification that results meet requirements
 - Correlation of results with materials received and samples for accuracy
 - Internal material received audits
 - Ensuring minimum sampling guidelines are followed
- Other duties
 - Staff Management
 - Coordination of staff to ensure necessary coverage of operations
 - Scheduling and Chairing and Recording Meetings
 - Preconstruction
 - Monthly Progress
 - Issue Resolution
 - Client Coordination
 - Others as required
 - Ensuring overall project meets requirements set forth by all agencies, stakeholders and reference materials
 - Site visits

- Attendance of high priority operations
- Documentation audits
- Schedule Review in accordance with NCDOT standard practices

Transportation Technician IV Duties:

- Ensuring project compliance with contract, plans, specifications, construction manual and all other reference materials pertinent
 - Weekly site visits
 - Attendance of high priority operations
- Assisting with review of project documentation for compliance
 - Review of daily diaries to ensure critical information is not being omitted
 - Review of materials receive documentation for lack of required documentation
 - Review of testing documentation to ensure efficiency and accuracy
- Management and verification of Davis Bacon Act required items
 - Tracking, review and assembly of certified payrolls
 - Wage Rate interviews
- Ensuring all project communication travels through proper channels in a timely manner
- Ensuring a safe worksite
- NPDES compliance

Transportation Technician III Duties:

- Primary individual responsible for overall/ day-to-day inspection and project compliance with contract, plans, specifications, construction manual and all other reference materials pertinent
 - Daily Diaries
 - Onsite materials received documentation
 - Material Testing
- NPDES compliance
 - Weekly (and rain event when necessary) reporting with contractor
 - Ensuring corrective actions indicated on reports are completed in the required timeframe
- Worksite safety audits
- Onsite communication and coordination

Transportation Technician II Duties:

- Ensuring project compliance with contract, plans, specifications, construction manual and all other reference materials pertinent
 - Daily Diaries
 - Onsite materials received documentation
 - Material Testing
- Ensuring paving operation compliance with QMS requirements
- NPDES compliance
- Onsite communication

Testing and Inspection Requirements:

- General
 - Write daily dairies of the work and report quantities
 - Complete Material received reports as required
 - Complete other necessary reports as outline by the NCDOT Construction Manual
 - Conduct all inspection and testing required by the NCDOT Construction
- Erosion Control
 - Inspect proper installation and maintenance
 - NPDES reporting and timely resolution of corrective actions
- Grading and Drainage
 - Verification of slope and grade staking
 - Conventional Density testing of all embankment and subgrade fill materials
 - Verification of drainage locations, alignments and invert elevations
- Drilled Shafts and Bents
 - Drill Shaft Reports
 - Verification of depth, cleanliness and water impediment
 - Inspection of rebar for plan conformity and clearances
 - Test and Sample concrete according to NCDOT requirements
- Superstructure
 - Verify Erection in accordance with plans
 - Inspect bolt connections and report outcomes of necessary bolt tension tests
- Curb and Gutter
 - Verification of form/stringline layout and installation to plan conformity
 - Testing of Concrete
- Paving
 - Ticket compilation and review

- Rate verifications
- Temperature verifications
- Evaluation of mix consistency
- Asphalt Daily Reports
- QC/QA sampling per QMS requirements

This is a list of major operations and associated tasks, but it is not meant to replace the requirements of the NCDOT Construction Manual. The project will be inspected and documented in accordance with all NCDOT Specifications, Construction Manual, Minimum Sampling Guide and other relevant NCDOT documents.

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CEI and ALL TECHNICIAN SCORE and ESTIMATE (WITH SHIFT PREMIUM) for 85% Sub-Stand-Alone or On-Call

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
 PROFESSIONAL SERVICES MANAGEMENT UNIT

Construction Engineering and Inspection (CEI)

Hickory Riverwalk

Choose YES or NO to Hide/Unhide Appropriate Estimate Sheets as dictated by Task Order Scope.

ENGINEERING AND INSPECTION TECHNICIANS

| | | Regular Direct Labor | |
|--|---|----------------------|---------------|
| PRIME CONTRACTOR NAME | Prime Contractor Technicians | | \$ 217,050.59 |
| PRIME CONTRACTOR NAME | Prime Contractor Overhead Audited – FIELD | 135.17% | \$ 293,387.28 |
| SUBCONTRACTOR1 NAME | Subcontractor1 Technicians | | \$ - |
| SUBCONTRACTOR1 NAME | Subcontractor1 Overhead Audited – FIELD | | \$ - |
| SUBCONTRACTOR2 NAME | Subcontractor2 Technicians | | \$ - |
| SUBCONTRACTOR2 NAME | Subcontractor2 Overhead Audited – FIELD | | \$ - |
| SUBCONTRACTOR3 NAME | Subcontractor3 Technicians | | \$ - |
| SUBCONTRACTOR3 NAME | Subcontractor3 Overhead Audited – FIELD | | \$ - |
| Sub total | | | \$ 510,437.87 |
| Operating Margin (Fixed Fee Rate) (Usually 9%) | | 9.00% | \$ 45939.41 |
| Sub total | | | \$ 556,377.28 |
| PRIME CONTRACTOR NAME | TOTAL PREMIUM LABOR - Prime Contractor | | \$ 6,625.50 |
| SUBCONTRACTOR1 NAME | TOTAL PREMIUM LABOR - Subcontractor1 | | \$ - |
| SUBCONTRACTOR2 NAME | TOTAL PREMIUM LABOR - Subcontractor2 | | \$ - |
| SUBCONTRACTOR3 NAME | TOTAL PREMIUM LABOR - Subcontractor3 | | \$ - |
| TOTAL DIRECT SALARY COST CEI TECHNICIANS | | | \$ 563,002.78 |

PROJECT MANAGEMENT/CONTRACT ADMINISTRATION

| | | Position | Direct Labor |
|--|----------------------------------|----------|--------------|
| PRIME CONTRACTOR NAME | Prime Contractor Project Manager | | \$ 5,184.00 |
| PRIME CONTRACTOR NAME | Prime Contractor Overhead | 160.64% | \$ 8,327.58 |
| SUBCONTRACTOR1 NAME | Subcontractor1 Project Manager | | \$ - |
| SUBCONTRACTOR1 NAME | Subcontractor1 Overhead | | \$ - |
| SUBCONTRACTOR2 NAME | Subcontractor2 Project Manager | | \$ - |
| SUBCONTRACTOR2 NAME | Subcontractor2 Overhead | | \$ - |
| SUBCONTRACTOR3 NAME | Subcontractor3 Project Manager | | \$ - |
| SUBCONTRACTOR3 NAME | Subcontractor3 Overhead | | \$ - |
| Sub total | | | \$ 13,511.58 |
| Operating Margin (Fixed Fee Rate) (Usually 9%) | | 9.00% | \$ 1,216.04 |
| TOTAL DIRECT SALARY COST PM/CA | | | \$ 14,727.62 |

| APPENDIX D (continued) | | | |
|--|--|-----------|-------------------|
| PROJECT DIRECT EXPENSES | | | |
| | TOTAL DIRECT EXPENSES | \$ | 40,301.00 |
| AGREEMENT COSTS AND FEES SUMMARY | | | |
| | Direct Salary Cost CEI Technicians | \$ | 563,002.78 |
| | Direct Salary Cost Project Management/Contract Administration | \$ | 14,727.62 |
| | Project Direct Expenses | \$ | 40,301.00 |
| | TOTAL AGREEMENT COSTS AND FEES | \$ | 618,031.40 |
| PRIME CONTRACTOR NAME | Facilities Cost of Capital (Prime Contractor TECHNICIANS) FIELD | 0.100% | \$ 217.05 |
| PRIME CONTRACTOR NAME | Facilities Cost of Capital (Prime Contractor PROJECT MANAGER) HOME | 0.340% | \$ 16.07 |
| SUBCONTRACTOR1 NAME | Facilities Cost of Capital (Subcontractor 1 TECHNICIANS) FIELD | | \$ - |
| SUBCONTRACTOR1 NAME | Facilities Cost of Capital (Subcontractor 1 PROJECT MANAGER) HOME | | \$ - |
| SUBCONTRACTOR2 NAME | Facilities Cost of Capital (Subcontractor 2 TECHNICIANS) FIELD | | \$ - |
| SUBCONTRACTOR2 NAME | Facilities Cost of Capital (Subcontractor 2 PROJECT MANAGER) HOME | | \$ - |
| SUBCONTRACTOR3 NAME | Facilities Cost of Capital (Subcontractor 3 TECHNICIANS) FIELD | | \$ - |
| SUBCONTRACTOR3 NAME | Facilities Cost of Capital (Subcontractor 3 PROJECT MANAGER) HOME | | \$ - |
| | TOTAL Non-DIRECT SALARY COST CEI TECHNICIANS & PM/CA | \$ | 233.12 |
| | TOTAL DIRECT and NON-DIRECT SALARY COST CEI TECHs & PM/CA | \$ | 577,963.52 |
| | TOTAL AGREEMENT AMOUNT | \$ | 618,264.52 |
| FOR STAND-ALONE PURCHASE ORDERS ONLY (ADDITIVE) | | | |
| STAND-ALONE PO WILL BE WRITTEN FOR THIS AMOUNT | | | |
| | MANHOURS TECHNICIANS | 6319 | |
| | MANHOURS PROJECT MANAGEMENT | 72 | |
| | TOTAL MANHOURS | 6391 | |
| | LABOR COSTS | \$ | 577,963.52 |
| | DIRECT EXPENSES | \$ | 40,301.00 |
| | TOTAL COSTS | \$ | \$618,264.52 |

Total Labor Cost
\$223,676.09

**ENGINEERING AND INSPECTION - TECHNICIANS
 DIRECT LABOR COST SUMMARY
 Hickory Riverwalk
 PRIME CONTRACTOR NAME**

CALENDAR YEAR 2021

| Personnel Classification / Employee Name | Regular Hours ¹ | Overtime Hours ² | Total Hours | Regular Rate ³ | Regular Labor Cost | Overtime Hours | Overtime Rate | Overtime Labor Cost | Shift Premium Hours | Shift Premium Rate | Shift Premium Labor Cost | Total Labor Cost |
|--|----------------------------|-----------------------------|-------------|---------------------------|----------------------|----------------|---------------|---------------------|---------------------|--------------------|--------------------------|----------------------|
| Transportation Technician II | 1155 | 115 | 1270 | \$ 29.99 | \$ 38,067.30 | 115 | \$ 15.00 | \$ 1,725.00 | | \$ 3.00 | \$ - | \$ 39,812.30 |
| Transportation Technician III | 1980 | 198 | 2178 | \$ 32.99 | \$ 71,852.22 | 198 | \$ 16.50 | \$ 3,267.00 | | \$ 3.30 | \$ - | \$ 75,119.22 |
| Transportation Technician IV | 792 | | 792 | \$ 37.32 | \$ 29,557.44 | 0 | \$ 18.66 | \$ - | | \$ 3.73 | \$ - | \$ 29,557.44 |
| PROJECT MANAGER (Jeremy Sawicki) | 396 | | 396 | \$ 45.20 | \$ 17,899.20 | 0 | \$ 22.60 | \$ - | | \$ 4.52 | \$ - | \$ 17,899.20 |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| TOTALS | 4323 | 313 | 4636 | | \$ 157,396.16 | 313 | | \$ 4,992.00 | 0 | | \$ - | \$ 162,388.16 |

TOTAL PREMIUM LABOR \$ 4,992.00

NOTES:

¹ Estimated 165 hours / month

² Estimated 10% of Regular Hours

³ Rates shown are Maximum Allowable Rates for purposes of establishing the Project CEI budget.

Actual Reimbursable Rates will be approved by the DEPARTMENT for each technician and shall not exceed the maximum allowable rates established for the classification.

**ENGINEERING AND INSPECTION - TECHNICIANS
 DIRECT LABOR COST SUMMARY
 Hickory Riverwalk
 PRIME CONTRACTOR NAME**

CALENDAR YEAR 2022

| Personnel Classification / Employee Name | Regular Hours ¹ | Overtime Hours ² | Total Hours | Regular Rate ³ | Regular Labor Cost | Overtime Hours | Overtime Rate | Overtime Labor Cost | Shift Premium Hours | Shift Premium Rate | Shift Premium Labor Cost | Total Labor Cost |
|--|----------------------------|-----------------------------|-------------|---------------------------|--------------------|----------------|---------------|---------------------|---------------------|--------------------|--------------------------|------------------|
| Transportation Technician II | | | 0 | \$ 29.99 | \$ - | 0 | \$ 15.00 | \$ - | | \$ 3.00 | \$ - | \$ - |
| Transportation Technician III | 990 | 99 | 1089 | \$ 32.99 | \$ 35,926.11 | 99 | \$ 16.50 | \$ 1,633.50 | | \$ 3.30 | \$ - | \$ 37,559.61 |
| Transportation Technician IV | 398 | | 398 | \$ 37.32 | \$ 14,778.72 | 0 | \$ 18.66 | \$ - | | \$ 3.73 | \$ - | \$ 14,778.72 |
| PROJECT MANAGER (Jeremy Sawicki) | 198 | | 198 | \$ 45.20 | \$ 8,949.60 | 0 | \$ 22.60 | \$ - | | \$ 4.52 | \$ - | \$ 8,949.60 |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| | | | 0 | \$ - | \$ - | 0 | \$ - | \$ - | | \$ - | \$ - | \$ - |
| TOTAL \$ | 1564 | 99 | 1663 | | \$ 59,654.43 | 99 | | \$ 1,633.50 | 0 | | \$ - | \$ 61,287.93 |

TOTAL PREMIUM LABOR \$ 1,633.50

NOTES:

¹ Estimated 165 hours / month

² Estimated 10% of Regular Hours

³ Rates shown are Maximum Allowable Rates for purposes of establishing the Project CEI budget.

Actual Reimbursable Rates will be approved by the DEPARTMENT for each technician and shall not exceed the maximum allowable rates established for the classification.

**ENGINEERING AND INSPECTION - TECHNICIANS
DIRECT LABOR COST SUMMARY**
Hickory Riverwalk
PRIME CONTRACTOR NAME

GRAND TOTAL FOR ALL CALENDAR YEARS 2021 TO 0

| Personnel Classification / Employee Name | Regular Hours ¹ | Overtime Hours ² | Total Hours | Regular Rate ³ | Regular Labor Cost | Overtime Hours | Overtime Rate | Overtime Labor Cost | Shift Premium Hours | Shift Premium Rate | Shift Premium Labor Cost | Total Labor Cost |
|--|----------------------------|-----------------------------|-------------|---------------------------|--------------------|----------------|---------------|---------------------|---------------------|--------------------|--------------------------|------------------|
| TOTALS | 5907 | 412 | 6319 | | \$217,050.59 | 412 | | \$6,625.50 | 0 | | \$ - | \$223,676.09 |

TOTAL PREMIUM LABOR \$ 6,625.50

NOTES:

¹ Estimated 165 hours / month

² Estimated 10% of Regular Hours

³ Rates shown are Maximum Allowable Rates for purposes of establishing the Project CEI budget.

Actual Reimbursable Rates will be approved by the DEPARTMENT for each technician and shall not exceed the maximum allowable rates established for the classification.

| |
|-------------------------|
| Total Labor Cost |
| \$ 5,184.00 |

Robert J. Stroup:
Overtime is not allowed
for PROJECT MANAGERS.

**ENGINEERING MANAGEMENT/CONTRACT ADMINISTRATION
DIRECT LABOR COST
Hickory Riverwalk
PRIME CONTRACTOR NAME**

CALENDAR YEAR **2020**

| Personnel Classification / Employee Name ¹ | Regular Hours | Overtime Hours | Total Hours | Regular Rate | Regular Labor Cost | Overtime Hours | Overtime Rate | Overtime Labor Cost | Total Labor Cost |
|---|---------------|----------------|-------------|--------------|--------------------|----------------|-----------------|---------------------|--------------------|
| | | | 0 | | \$ - | 0 | \$ - | \$ - | \$ - |
| PROJECT PRINCIPLE (Steven Kelly Marshall) | 48 | | 48 | \$ 72.00 | \$ 3,456.00 | 0 | \$ 36.00 | \$ - | \$ 3,456.00 |
| | | | 0 | | \$ - | 0 | \$ - | \$ - | \$ - |
| | | | 0 | | \$ - | 0 | \$ - | \$ - | \$ - |
| TOTALS | 48 | 0 | 48 | | \$ 3,456.00 | 0 | \$ 36.00 | \$ - | \$ 3,456.00 |

¹ One Management visit for prime firm is reimbursable every quarter
One Management visit from subcontractors is reimbursable two times per year

Robert J. Stroup:
Overtime is not allowed
for PROJECT MANAGERS.

**ENGINEERING MANAGEMENT/CONTRACT ADMINISTRATION
DIRECT LABOR COST
Hickory Riverwalk
PRIME CONTRACTOR NAME**

CALENDAR YEAR 2021

| Personnel Classification / Employee Name ¹ | Regular Hours | Overtime Hours | Total Hours | Regular Rate | Regular Labor Cost | Overtime Hours | Overtime Rate | Overtime Labor Cost | Total Labor Cost |
|---|---------------|----------------|-------------|--------------|--------------------|----------------|---------------|---------------------|------------------|
| | | | 0 | | \$ - | 0 | \$ - | \$ - | \$ - |
| PROJECT PRINCIPLE (Steven Kelly Marshall) | 24 | | 24 | \$ 72.00 | \$ 1,728.00 | 0 | \$ 36.00 | \$ - | \$ 1,728.00 |
| | | | 0 | | \$ - | 0 | \$ - | \$ - | \$ - |
| | | | 0 | | \$ - | 0 | \$ - | \$ - | \$ - |
| TOTALS | 24 | 0 | 24 | \$ 72.00 | \$ 1,728.00 | 0 | \$ 36.00 | \$ - | \$ 1,728.00 |

¹ One Management visit for prime firm is reimbursable every quarter
One Management visit from subcontractors is reimbursable two times per year

**ENGINEERING MANAGEMENT/CONTRACT ADMINISTRATION
DIRECT LABOR COST SUMMARY
Hickory Riverwalk
PRIME CONTRACTOR NAME**

CALENDAR YEAR 2020 TO 0

| Personnel Classification / Employee Name ¹ | Regular Hours | Overtime Hours | Total Hours | Regular Rate | Regular Labor Cost | Overtime Hours | Overtime Rate | Overtime Labor Cost | Total Labor Cost |
|---|---------------|----------------|-------------|--------------|--------------------|----------------|---------------|---------------------|------------------|
| TOTALS | 72 | 0 | 72 | | \$ 5,184.00 | 0 | | \$ - | \$ 5,184.00 |

¹ One Management visit for prime firm is reimbursable every quarter
One Management visit from subcontractors is reimbursable two times per year

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CONTRACT ENGINEERING AND INSPECTION
 DIRECT EXPENSES
 FIELD EQUIPMENT AND SUPPLIES FURNISHED BY
 Hickory Riverwalk

TOTAL DIRECT COSTS: \$ 40,301.00

* Vehicle Base Rates per E. B. Tharrington, PE memo dated July 24, 2020 entitled "Vehicle Base Rates for Construction Engineering & Inspection".

Phones, Computers, iPads, Data Plans, Wifi, ...etc, are In Overhead.

** Nuclear Oeuge monthly reimbursement rate per M. L. Sylvester, PE memo dated May 13, 2018 entitled "Reimbursement for Private Engineering Firm Furnished Nuclear Gauge".

| Item No. | Description | Months | Quantity | Unit | Unit Price | Unit Tax | Total Unit Cost | Salvage Value | Total Cost |
|----------|--|--------|----------|-----------------------------|------------|----------|-----------------|---------------|--------------|
| 1 | Project Vehicles - 2 wheel drive - # Vehicles * | | | veh-mo | \$835.00 | | \$ 835.00 | | |
| 2 | Gas Reimbursement: 2-WD @ \$0.13 per mile Gas reimbursement based on \$2.01/gal/16 mpg. | | | miles | \$0.13 | | | | |
| 3 | Project Vehicles - 4 wheel drive - # Vehicles * | | | veh-mo | \$915.00 | | \$ 915.00 | | \$ 29,250.00 |
| 4 | Gas Reimbursement: 4-WD @ \$0.14 per mile Gas reimbursement based on \$2.01/gal/14mpg. | 32 | 1 | miles | \$0.14 | | | | 2,240.00 |
| 5 | Project Vehicles - Survey Vehicle - # Vehicle | | | veh-mo | | | \$ - | | |
| 6 | Gas Reimbursement: Survey Vehicle @ \$180 per mile Gas reimbursement based on \$180/gal/180 mpg | | | miles | | | | | |
| 7 | Communication (# mobile phones). - - RECOVERED THROUGH FIRM'S OVERHEAD. | | | mo | | | \$ - | | |
| 8 | Survey Equipment | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 9 | Troder 3400 Thick Nuclear Gauges (Rent/Purchase) - MONTHLY REIMBURSEMENT RATE = \$400/month. ** | | | gauge-month | \$ 400.00 | | \$ - 400.00 | | |
| 10 | Leak Test, Calibration, Cleaning and Lubrication - INCLUDED IN MONTHLY REIMBURSEMENT RATE ABOVE. ** | | | yr | | | \$ - | | |
| 11 | Yearly NCDENR License Fee of - INCLUDED IN MONTHLY REIMBURSEMENT RATE ABOVE. ** | | | yr | | | \$ - | | |
| 12 | Quarterly Testing of 10 Badges per test - INCLUDED IN MONTHLY REIMBURSEMENT RATE ABOVE. ** | | | yr | | | \$ - | | |
| 13 | Mounted Transportation Box - INCLUDED IN MONTHLY REIMBURSEMENT RATE ABOVE. ** | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 14 | Safety Harness w/ 2 Lanyards | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 15 | Field Office (Rent Monthly) | | | mo | | | \$ - | | |
| 16 | Field Office Set up | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 17 | Utilities (Monthly) | | | mo | | | \$ - | | |
| 18 | Office Furniture | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 19 | Monthly Office Supplies (\$50 per month) - IF PEF PROVIDES A FIELD OFFICE - - RECOVERED THROUGH FIRM'S OVERHEAD. | | | mo | | | \$ - | | |
| 20 | Computer (LAPTOP) - HAS A \$300.00 SALVAGE VALUE (CALCULATED AUTOMATICALLY) - - RECOVERED THROUGH FIRM'S OVERHEAD. | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 21 | Concrete Air Pol | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 22 | Concrete Slump Cone | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 23 | Conventional Density Equipment Set | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 24 | Copier | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 25 | Capint Maintenance (yearly) | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 26 | Fax | | | Actual Cost (Not-to-Exceed) | | | \$ - | | |
| 27 | Trips by Project Management | | | | | | | | |
| 28 | Project Principal = 1 trip per quarter @ 140 miles (18 total trips) | | 640 | mi | \$ 0.575 | | \$ 0.575 | | \$ 483.00 |
| 29 | Project Manager = 2 trips per month @ 140 miles (Total 36 of Trips) | | 5040 | mi | \$ 0.575 | | \$ 0.575 | | \$ 2,898.00 |
| 30 | PEF Subconsultant = 2 trips per year @ miles (Total # of Trips) | | | mi | \$ 0.575 | | \$ 0.575 | | |
| 31 | PEF Subconsultant = 2 trips per year @ miles (Total # of Trips) | | | mi | \$ 0.575 | | \$ 0.575 | | |
| 32 | - Miscellaneous Direct Costs, etc. - | | | | | | | | |
| 33 | Monthly Testing Equipment Charge (flat fee to cover cost of concrete and density equipment and other supplies) | 18 | 1 | month | \$ 300.00 | | \$ 300.00 | | \$ 5,400.00 |
| 34 | | | | | | | \$ - | | |
| 35 | | | | | | | \$ - | | |
| 36 | | | | | | | \$ - | | |
| 37 | | | | | | | \$ - | | |
| 38 | | | | | | | \$ - | | |
| 39 | Miscellaneous | | | | | | \$ - | | |
| 40 | Miscellaneous | | | | | | \$ - | | |
| 41 | Miscellaneous | | | | | | \$ - | | |
| 42 | Miscellaneous | | | | | | \$ - | | |

TOTAL DIRECT COSTS: \$ 40,301.00



STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

September 30, 2020

Ms. Lillian Schreier
Senior Manager – Government Contract Compliance
Gannett Fleming Engineering Companies
207 Senate Ave.
Camp Hill PA 17011

RE: Approved Overhead Rate and Certification of Costs for FYE 12/31/19

Dear Ms. Schreier:

North Carolina DOT has reviewed the FYE 12/31/19 Indirect Cost Schedule as performed by Stambaugh Ness, PC and Certification of Final Indirect Costs.

The following rates are approved for FYE 12/31/19:

| | | | |
|-----------------------------|----------------|------------------------------|----------------|
| Home Rate | 160.64% | Field Rate | 135.17% |
| Home Cost of Capital | 0.31% | Field Cost of Capital | 0.10% |

North Carolina DOT approved these rates after performing a Risk Assessment.

Acceptance of your overhead rates does not constitute “establishment of a rate by a cognizant agency” for the purposes of applying the rules published in Title 23, CFR §172.7. NCDOT retains the right to audit the above rates or adjust them should a cognizant approval occur after this date. This approval letter was prepared for, and is intended for the use of NCDOT and its subrecipients. This letter will be provided to other governmental entities upon request, in accordance with 23 U.S.C. §112(b)(2)(E).

As a reminder, audit reports or indirect cost schedules must be certified and submitted annually within 180 days of the end of the firm’s fiscal year.

If you have any questions or need additional information, please do not hesitate to contact me at 919-707-4582 or by e-mail at lwraylor@ncdot.gov.

Sincerely,

Handwritten signature of Lonna Raynor in cursive.

Lonna Raynor, Manager
Consultant, Utility, Rail and Turnpike



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

July 29, 2020

REVISED

MEMORANDUM TO: Prequalified Private Engineering Firms

FROM: for E. B. Tharrington, PE
State Construction Engineer

DocuSigned by:
Sherell Williams
6A8093F8F0E94A1...

SUBJECT: Technician Level Reimbursable Ranges

The Department has determined that an 1.5% increase in the technician reimbursable ranges is warranted based on a review of Consumer Price Index data for Civil Engineering Technicians. The increase in reimbursable salaries for Private Engineering Firm technicians is effective August 1, 2020. The new allowable hourly salary ranges for technician level positions are as follows:

| Level | Range |
|-------------------------------|-------------------|
| Transportation Technician I | \$19.48 - \$27.26 |
| Transportation Technician II | \$21.43 - \$29.99 |
| Transportation Technician III | \$23.57 - \$32.99 |
| Transportation Technician IV | \$24.89 - \$37.32 |
| Transportation Technician V | \$27.87 - \$41.81 |

This information is being provided to Private Engineering Firms to assist in managing reimbursable rates for their personnel. The increase of technician ranges does not automatically change the hourly salaries of the Firm's personnel. It only changes the range in which the Department compensates the Private Engineering Firm.

When a Private Engineering Firm makes a request for a salary increase and it is approved, the increase may be made effective August 1, 2020 in accordance with the following criteria:

- 1. The salary increase does not exceed 1.5% of the employee's current reimbursable salary.**
- 2. The requested salary rate does not exceed the maximum state rate for the Transportation Technician classification as included above.**

Prequalified Private Engineering Firms

July 29, 2020

Page 2 of 2

If you have any questions or require additional information, please contact Ms. Sherell Williams of the Construction Unit at (919) 707-2422 or via e-mail at sherellwilliams@ncdot.gov.

EBT:srw

cc: Mr. T. M. Little, PE
Mr. C. A. Peoples, PE
Mr. R. L. Keeter, Jr., PE
Mr. L. L. Mitchell, PE
Mr. M. L. Sylvester, PE
Mr. R. J. Stroup, PE
Division Engineers
Resident Engineers
Ms. Sherell Williams
Ms. Mary Morton, C.P.A.



STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

July 24, 2020

MEMORANDUM TO: Prequalified Private Engineering Firms

FROM: for E. B. Tharrington, PE
State Construction Engineer

DocuSigned by:
Sherrill Williams
0A8083F8F8CB4A1...

SUBJECT: Vehicle Base Rates for Construction Engineering & Inspection

The Department of Transportation periodically reviews specific construction engineering and inspection (CEI) contract limits to ensure applicability with current costs.

The Department has reviewed the vehicle base rates that are currently used to negotiate monthly vehicle rental rates for all CEI contracts and found that an adjustment is necessary as follows. The two-wheel drive monthly vehicle base rate is increased from \$770.00 to \$835.00 and the four-wheel drive monthly base rate is increased from \$840.00 to \$915.00. The vehicle base rates have not been revised since July 2016. The new base rates will be effective for new CEI contracts and task orders established on or after August 1, 2020 and will remain in effect until modified by the Department in writing.

Firms will continue to be reimbursed for mileage based on actual mileage logs, in accordance with the July 30, 2014 memorandum from Mr. R. A. Hancock. The semi-annual review of gas prices for mileage reimbursement was performed in July 2020. Effective July 1, 2020 the mile reimbursements will be as follows, for 2WD - \$0.13 per mile and for 4WD - \$0.14 per mile. The new mileage reimbursement rates and monthly vehicle reimbursement will be updated on the Maximum Allowable Non-Salary Direct Costs form on August 1, 2020.

The Maximum Allowable Non-Salary Direct Cost form is located on the NCDOT website at the web address below. Base vehicle rates will not be adjusted during the life of the contract. Gasoline rates will be periodically adjusted at intervals allowed by the contract.

<https://connect.ncdot.gov/business/consultants/Pages/Guidelines-Forms.aspx>

Prequalified Private Engineering Firms
July 24, 2020
Page 2 of 2

If you have any questions, please contact Ms. Sherell Williams of my staff at (919) 707-2400 or sherellwilliams@ncdot.gov.

EBT/SRW

cc: Mr. T. M. Little, PE
Mr. C. A. Peoples, PE
Mr. M. L. Sylvester, PE
Ms. Mary Morton, C.P.A.
Mr. R. J. Stroup, PE
Division Engineers
Division Construction Engineers
District Engineers
Resident Engineers
Area Construction Engineers

Sincerely,

E. B. Tharrington, PE
State Construction Engineer

Attachment F

Exhibit VIII.F.

North East Technical Services, Inc.

75 Aileron Ct., Suite 4
Westminster, MD 21157
Tax ID# 20-0655476

(410) 751-5090



Invoice

| Date | Invoice # |
|------------|-----------|
| 11/19/2019 | 50017 |

| |
|--|
| Bill To |
| Gannett Fleming, Inc. P.O. Box 67100 Harrisburg, PA 17106-7100 |

| |
|--|
| Ship To |
| Gannett Fleming, Inc. 209 S. Glenburnie Rd. New Bern, NC 28560 |

| W.O. Number | PO Number | Terms | Serial Number | Model |
|-------------|--|--------|---------------|--------|
| 21270 | Martin Mandato | Net 30 | 896 | 3450 |
| Item | Description | Qty | Rate | Amount |
| Rental | Rental of Gauge (10/12/19 to 11/12/19) | 1 | 650.00 | 650.00 |

| | | |
|--|--------------------|----------|
| <i>Thank you for your business.</i> | Subtotal | \$650.00 |
| "Innovative Products for the Construction Industry" www.netsnukes.com | Sales Tax (6.0%) | \$0.00 |
| | Total | \$650.00 |
| | Payments/Credits | \$0.00 |
| | Balance Due | \$650.00 |

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

CITY OF HICKORY,
A North Carolina Municipal Corporation

(SEAL)

Hank Guess, Mayor

Attest:

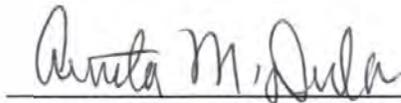
Debbie D. Miller, City Clerk

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, Deputy City Attorney

EXHIBIT B

INSERT EXHIBIT B BEHIND THIS PAGE

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK



EXHIBIT B

Terms and Conditions for Professional Service

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$3,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s') methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement.



5. CONTROLLING LAW

This Agreement is to be governed by the state of NC. Jurisdiction and Venue shall lie with the courts of Catawba County, NC.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project. In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

Upon payment of all amounts rightfully owed by Owner to the Engineer for services rendered with respect to the Services provided under this Agreement, all plans, drawings, specifications, elements of design, models, reports, submissions, mock-ups and other documents and materials that are produced by the Engineer as part of its performance of such Services hereunder (hereinafter the "Design Documents"), with the exception of those documents that constitute standard details, specifications, and/or other data and/or materials that are regularly used by the Engineer and/or the professional design industry in the normal course of business, shall be deemed to be the property of Owner. Any reuse or modification of such documents for purposes other than those intended by the Engineer shall be at the Owner's sole risk and without liability to the Engineer.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving ten (10) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination.



10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments within 30 days in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of receipt by OWNER. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after ten (10) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment may be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.



14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

ENGINEER shall comply with NC's e-verify program.

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.



17. ALLOCATION OF RISK

OWNER and ENGINEER have evaluated the risks and rewards associated with this project, including ENGINEER'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of Engineer (and its related corporations, subconsultants, and employees) to OWNER and third parties granted reliance is limited to _____, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of ENGINEER'S services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity, or other recovery. This limitation shall not apply to the extent the damage is paid under Engineer's commercial general liability insurance policy.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party or negligent in the performance of services rendered, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked.

20. PROFESSIONAL LICENSURE

All work shall be sealed by a properly licensed design professional in North Carolina doing business in the state of North Carolina. These shall include but not be limited to: Engineer, Landscape Architect, Surveyor, Architect, Geologist, etc.

21. IRAN DIVESTMENT ACT

By executing this Agreement/Contract, Contractor hereby certifies that Contractor is not listed on the Iran Final Divestment List ("List") created by the State Treasurer pursuant to N.C.G.S. 147-86.58, Iran Divestment Act ("Act"). In compliance with the Act's requirement and N.C.G.S. § 147- 86.59, Contractor shall not utilize in the performance of this agreement/contract any subcontractor that is identified on the List. The List can be found on the State Treasurer's website at the address www.nctreasurer.com/iran and should be updated at least every 180 days.



Contract Number: _____

Project Name: _____

**CITY OF HICKORY
E-VERIFY EMPLOYER COMPLIANCE STATEMENT**

E-Verify for Public Contracts: HB 786 (S.L. 2013-418)

The legislation referenced prohibits governmental units from awarding to or entering into contracts unless the contractor and the contractor's subcontractors comply with the E-Verify requirements of Article 2 of Chapter 64 of the NC General Statutes.

Contractor, hereafter Employer, understands that 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. Employer is defined as: Any person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. This term does not include State agencies, counties, municipalities, or other governmental bodies.

Employer understands that Employers, as Defined Herein, Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).

Therefore, all employers must be in compliance with the E-Verify requirements to enter into contracts with the City of Hickory.

Employer affirms that if the answer to question B below is "yes" then after hiring an employee to work in the United States it shall verify the work authorization of said employee through E-Verify in accordance with North Carolina General Statute §64-26(a).

Employer acknowledges that a subcontractor that transacts business in the State of North Carolina and employs 25 or more employees in this State must comply with E-Verify.

Employer will ensure that any subcontractor subsequently hired by Contractor will comply with E-Verify.

Below check with the type of employer and complete the information.

A) Employer with less than 25 employees, not required to use E-verify: _____

Company Name

Signature and Title

Date

OR:

B) Employer with 25 or more employees required by NCS.L.213-418 to use E-verify:

Yes, we comply: _____

Company Name

Signature and Title

Date

BUDGET REVISION # 9

BE IT ORDAINED by the Governing Board of the City of Hickory that, pursuant to N.C. General Statutes 159.15 and 159.13.2, the following revision be made to the annual budget ordinance for the fiscal year ending June 30, 2021.

SECTION 1. To amend the General Fund within the FY 2020-21 Budget Ordinance, the expenditures are to be changed as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|------------------------|----------|----------|
| Culture and Recreation | 12,329 | |
| TOTAL | 12,329 | - |

To provide funding for the above, the General Fund revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|------------------------|----------|----------|
| Miscellaneous Revenues | 12,329 | |
| TOTAL | 12,329 | - |

SECTION 2. To amend the Water and Sewer Fund within the FY 2020-21 Budget Ordinance, the expenditures are to be changed as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|--------------------------|-----------|----------|
| Environmental Protection | 1,926,420 | |
| TOTAL | 1,926,420 | - |

To provide funding for the above, the Water and Sewer revenues will be amended as follows:

| FUNCTIONAL AREA | INCREASE | DECREASE |
|-------------------------|-----------|----------|
| Other Financing Sources | 1,926,420 | |
| TOTAL | 1,926,420 | - |

SECTION 3. Copies of the budget revision 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 _____, 2020

Mayor

Clerk

3

COUNCIL AGENDA MEMOS

To: City Manager's Office

From: Office of Business Development, Planning Division

Contact Person: Brian Frazier, Planning Director

Date: November 5, 2020

Re: Voluntary Non-Contiguous Annexation of Property Owned by Futuro, LLC & Corbin Harline.

REQUEST

Consideration of the voluntary non-contiguous annexation of 18.264 acres (which includes street right-of-way) of property located at the northeastern and southeastern corners of Snow Creek Road and 25th Street Place NE and 25th Street NE. This property is identified as PIN 3724-06-48-2558.

BACKGROUND

Futuro, LLC and Corbin Harline have petitioned for the voluntary non-contiguous annexation of 18.264 acres of property located at the northeastern and southeastern corners of Snow Creek Road and 25th Street Place NE and 25th Street NE. The subject property is currently located within Catawba County's zoning jurisdiction, and zoned R-20 Residential. The annexation is being requested in order to connect to the City's sewer system.

ANALYSIS

The subject property is currently zoned R-20 by Catawba County. Under Catawba County's current zoning the property may be developed for one and two family residential uses at an intensity of two (2) dwelling units per acre, which could potentially yield thirty-six (36) new single-family or two-family dwelling units (duplexes).

Should the property be annexed, and rezoned to R-2 (Residential), the property could be developed for single-family residential, at a density of four (4) dwelling units per acre, which theoretically could yield seventy-one (71) single-family dwelling units. This theoretical number is not likely achievable due to the configuration of the property, as well as topographical challenges. The property developer has indicated they would like to yield at least sixty (60) single-family residential lots for future development. The differences between the existing zoning (R-20), and the proposed zoning (R-2); is that duplexes are not permitted, and Hickory's density is greater.

The current tax value of the property is \$215,000. If annexed with its present value, the property would immediately generate additional tax revenues of \$1,263.12. The future tax revenues generated by the development of the property is currently unknown.

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 petition.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Brian Frazier 11/5/2020
Initiating Department Head Date

Robyn Miller 11/9/20
Asst. City Manager R. Miller Date

Melvin Miller 11/9/20
Finance Officer, M. Miller Date

Date

Annita M. Dula 11-6-20
Deputy City Attorney, A. Dula Date

Paul Beasley 11/9/20
Asst. City Manager, R. Beasley Date

Deputy Finance Officer, S. Guy Date

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

WW
City Manager, Warren Wood

11-10-20
Date

**CITY OF HICKORY
APPLICATION FOR VOLUNTARY ANNEXATION**

DATE SUBMITTED: 9-17-20

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 SNOW CREEK ROAD
~~25th ST PL NE~~ between 25th ST PL NE and
26th ST CT NE and is shown in more detail on the attached survey.

PIN NO. (S): 37240648 2538

Physical (Street) Address: N/A

2. The property is owned by: (please print) FUTURO, LLC ^{Corbin Harline} & ~~Harbin~~
(Attach a copy of the most recent deed, contract for purchase or other legal interest demonstrating an interest in the property.)

Owner Information:

Name: FUTURO, LLC (OSCAR VASQUEZ) & ^{Corbin Harline} ~~Harbin~~

Address: 220 17th AVE NE / PO Box 1468 HICKORY, NC 28603

Phone Number: 828-312-3765

3. The petition is submitted by: FUTURO, LLC (OSCAR VASQUEZ)
(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:

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 R-3 zoning district.

5. WATER AND SEWER AVAILABILTY AND CONNECTIONS

We, the undersigned property owner(s), herby understand and agree we shall be responsible for all costs associated with providing for extensions and/or connections to the City of Hickory public utility system (water and sewer). This includes all design, permitting, construction, legal and applicable City of Hickory Tap Fees. Furthermore, we shall be responsible for obtaining any and all necessary easements and encroachment agreements needed to provide for such extensions or connections and provide those to the City of Hickory as appropriate.

The undersigned owner further acknowledges, they shall be responsible for any future utility extensions required to serve the property due to subdivision of the property.

6. APPLICANT'S AFFIDAVIT

We, the undersigned property owners(s), 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.

Futuro LLC
Printed Name of Property Owner(s)

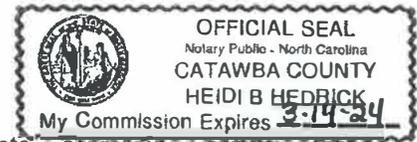
Oscar Vasquez
Signature of Property Owner(s)

Address of Property Owner(s)

Telephone Number of Property Owner(s)

(Please choose the appropriate notary block)

State of North Carolina – County of Catawba



I, the undersigned Notary Public of the County and State aforesaid, certify that Oscar Vasquez - Carbin Harbinger 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 17th day of September, 2020.

My Commission Expires: March 14, 2024 Heidi B. Hedrick
Notary Public

State of North Carolina – County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day an acknowledged the he / she is the _____ of _____ 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 name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this _____ day of _____, 20_____.

My Commission Expires: _____
Notary Public

3571-0589

FILED ELECTRONICALLY
CATAWBA COUNTY NC
DONNA HICKS SPENCER

FILED May 11, 2020
AT 03:14:00 PM
BOOK 03571
START PAGE 0589
END PAGE 0590
INSTRUMENT # 08824
EXCISE TAX \$320.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$320.00

Parcel Identifier No. _____ Verified by _____ County on the _____ day of _____, 20____
By: _____

Mail/Box to: Fleischer Law Office, PLLC 7 14th St SW Suite 100 Hickory, NC 28602

This instrument was prepared by: Fleischer Law Office, PLLC 7 14th St SW Suite 100 Hickory, NC 28602

Brief description for the Index: PIN 372406482558 17.84 acres +/- * NO title exam *

THIS DEED made this 11 day of May, 2020, by and between

| GRANTOR | GRANTEE |
|---|--|
| <p>Futuro, LLC</p> <p>PO Box 1468 Hickory, NC 28603</p> | <p>Corbin Harline , an undivided 48% interest</p> <p>3046 44TH AVE DR NE Hickory, NC 28601</p> |

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Hickory, Clines _____ Township, Catawba County, North Carolina and more particularly described as follows:

Beginning at a stone on the dower line, corner of Lot No 4 of the S Killian land division and runs with said dower line North 10 degrees East 3/5 poles to a stone on LS Hefner's line; thence with his line North 86 1/2 degrees West 35 1/2 poles to a stone; thence South 10 degrees West 82 1/2 poles to a stone on Elisehar Killian's line; thence with his line South 67 1/2 degrees East 28 poles to a pine stump; thence South 85 degrees East 9 poles to the beginning. Being Lot 5 of the division of the S. Killian land allotted to Ida Killian, containing 19 1/2 acres, Catawba County Registry.

LESS AND EXCEPTING that certain property conveyed in Deed Book 940, Page 634, Catawba County Registry.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3558 page 608.

All or a portion of the property herein conveyed includes or does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book page .

submitted electronically by "Fleischer Law Office, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Catawba County Register of Deeds.

3571-0590

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Grantor conveys herewith a 48% undivided interest to Grantee,

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Futuro, LLC (SEAL)

By: [Signature] (Entity Name) Print/Type Name: _____

Print/Type Name & Title: Oscar Vasquez, Manager (SEAL) Print/Type Name: _____

By: _____ (SEAL)

Print/Type Name & Title: _____ Print/Type Name: _____

By: _____ (SEAL)

Print/Type Name & Title: _____ Print/Type Name: _____

State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____

personally appeared before me this day and

acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or

seal this _____ day of _____, 20____.

My Commission Expires: _____ Notary Public

(Affix Seal) _____ Notary's Printed or Typed Name

State of NC - County or City of Catawba

I, the undersigned Notary Public of the County or City of Catawba and State aforesaid, certify that _____

Oscar Vasquez personally came before me this day and acknowledged that he is the

Manager of Futuro, LLC, a North Carolina or _____

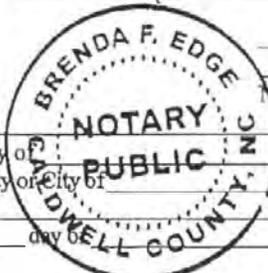
corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority

duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness

my hand and Notarial stamp or seal, this 11 day of May, 2020.

My Commission Expires: 06/09/23 Brenda F. Edge Notary Public

(Affix Seal) _____ Notary's Printed or Typed Name



State of _____ - County or City of _____

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____

Witness my hand and Notarial stamp or seal, this _____ day of _____, 20____.

My Commission Expires: _____ Notary Public

(Affix Seal) _____ Notary's Printed or Typed Name

FILED Catawba County
 on Mar 05, 2020 at 03:16:00 pm
 Excise Tax \$274.00 (AT)
 INST. # 04327
 DONNA HICKS SPENCER,
 Register of Deeds
 Bk 03558 Pg 0608-0612

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$274.00

Parcel Identifier No. 372406482558

✓ Mail/Box to: Hamby & Hamby, P.A., P.O. Drawer A, Granite Falls, N.C. 28630 (515)

This instrument was prepared by: Dale L. Hamby

Brief description for the Index: 17.840 acres, Snow Creek Road NE

THIS DEED made this 2nd day of March, 2020, by and between

| GRANTOR | GRANTEE |
|--|--|
| FRANK T. WAGNER, JR., widower, owner of a 20 percent interest; OREN HARRY WAGNER, owner of a Fifty Percent Interest and wife, BETTY B. WAGNER; and CARL B. WAGNER, widower, owner of a Thirty Percent Interest | FUTURO, LLC P.O. Box 1468 Hickory, NC 28603-1468 |

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Clines Township, Catawba County, North Carolina and more particularly described as follows:

BEGINNING at a stone on the dower line, corner of Lot No. 4, of the S. Killian land division and runs with said dower line North 10 degrees East 3/5 poles to a stone on L.S. Hefner's line; thence with his line North 86 1/2 degrees West 35 1/2 poles to a stone; thence South 10 degrees West 82 1/2 poles to a stone on Elisehar Killian's line; thence with his line South 67 1/2 degrees East 28 poles to a pine stump; thence South 85 degrees East 9 poles to the beginning.

Being Lot No. 5 of the division of the S. Killian land allotted to Ida Killian, containing 19 1/2 acres, more or less.

LESS AND EXCEPTING that certain property conveyed in Deed Book 940, Page 634, Catawba County Registry.

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002
 Printed by Agreement with the NC Bar Association - 1981 - Chicago Title Insurance Company

It is the intent of the Grantors to convey all of the property described on the Catawba County Tax Records as Parcel Identification Number 372406482558.

0609

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

All or a portion of the property herein conveyed does not include the primary residence of a Grantor.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

WEB

0610

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

[Signature] (SEAL)
FRANK T. WAGNER, JR.

_____(SEAL)



State of NORTH CAROLINA - County of MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that FRANK T. WAGNER, JR. personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 4 day of MAY, 2020.

My Commission Expires:
NOVEMBER 4, 2022

[Signature]
Notary Public

WEB

0611

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

Carl B. Wagner (SEAL)
CARL B. WAGNER

_____(SEAL)

State of North Carolina - County of Caldwell

SEAL-STAMP

I, the undersigned Notary Public of the County and State aforesaid, certify that CARL B. WAGNER personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 5th day of March, 2020.

My Commission Expires: 8/8/2020

[Signature]
Notary Public

WEB



IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

Oren Harry Wagner (SEAL)
OREN HARRY WAGNER

Betty B. Wagner (SEAL)
BETTY B. WAGNER

State of North Carolina - County of Caldwell

SEAL-STAMP

I, the undersigned Notary Public of the County and State aforesaid, certify that OREN HARRY WAGNER and BETTY B. WAGNER personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 5th day of March, 2020.

My Commission Expires: 8/8/2020

Dale L. Hamby
Notary Public

WEB



**Satellite Annexation
of the
Futuro, LLC
Property**

That certain tract or parcel of land lying and being about 5.12 miles north northeast of the center of the City of Hickory. Bounded on the west by the right-of-way of 25th Street NE and 25th Street Place NE; on the north by the lands of Billy E. Isenhour as described in Deed Book 1020 at Page 123 and Brandon S. Berry as described in Deed Book 3453 at Page 1446; on the east by the lands of Larry M. Day as described in Deed Book 1912 at Page 1042, Dianne Weaver Propst as described in Deed Book 3487 at Page 983 and Deed Book 2277 at Page 1046, the right-of-way of Snow Creek Road NE, M. Louise Eckard as described in Deed Book 2403 at Page 1202, John Mark Eckard as described in Deed Book 2403 at Page 1205, Richard Hicks Jr. as described in Deed Book 3475 at Page 122, an undeveloped 60' right-of-way and Jeffrey Alan Lingle as described in Deed Book 1762 at Page 192; on the south by the lands of Clee A. Ellis as described in Deed Book 1563 at Page 687 and 25th Street NE and more particularly described as follows to wit.

Beginning at a point in Snow Creek Road NE, said point being located North 85 degrees 18 minutes 51 seconds East 31.64 feet from an existing nail in the intersection of Snow Creek Rd. NE and 25th Street NE and running thence, as new City of Hickory city limit lines the following calls: with Snow Creek Road NE, North 85 degrees 18 minutes 51 seconds East 17.90 feet to a computed point; thence, leaving Snow Creek Road NE, North 08 degrees 41 minutes 23 seconds East 30.18 feet to a 1 ¼" pipe at the intersection of the north right-of-way of Snow Creek Road NE and the east right-of-way of 25th Street Place NE; thence, with the east right-of-way of 25th Street Place NE, the same bearing 355.14 feet to a ½" rebar, the southwest corner of Billy E. Isenhour, Deed Book 1020 at Page 123; thence, with the south line of Isenhour, South 87 degrees 56 minutes 01 seconds East 134.90 feet to a 1 1/8" pipe, the southwest corner of Brandon S. Berry, Deed Book 3453 at Page 1446; thence, with the south line of Berry, the same bearing 390.52 feet to a ¾" pipe in said line, the northwest corner of Larry M. Day, Deed Book 1912 at Page 1042; thence, with the west line of Day, South 07 degrees 54 minutes 30 seconds West 135.85 feet to a ¾" pipe, the northwest corner of Dianne Weaver Propst, Deed Book 3487 at Page 983; thence, with the west line of Propst, South 08 degrees 18 minutes 32 seconds West 99.01 feet to a ¾" pipe, the northwest corner of Propst, Deed Book 2277 at Page 1046; thence, with the west line of Propst, South 08 degrees 05 minutes 41 seconds West 185.23 feet to a 1" pipe on the north right-of-way of Snow Creek Road NE, the southwest corner of Propst; thence, crossing Snow Creek Road NE, South 08 degrees 36 minutes 19 seconds West 59.98 feet to a 1" pipe on the south right-of-way of Snow Creek Road NE, the northwest

corner of M. Louise Eckard, Deed Book 2403 at Page 1202; thence, with the west line of Eckard, South 08 degrees 32 minutes 03 seconds West 248.34 feet to a 1" pipe, the northwest corner of the John Mark Eckard, Deed Book 2403 at Page 1205; thence, with the west line of Eckard, South 07 degrees 19 minutes 41 seconds West 259.91 feet to a 1" pipe, the northwest corner of Richard Hicks Jr., Deed Book 3475 at Page 122; thence, with the west line of Hicks, South 07 degrees 59 minutes 42 seconds West 235.76 feet to a 1" pipe, the northeast corner of an undeveloped 60' right-of-way and the southwest corner of Hicks; thence, crossing said right-of-way, South 07 degrees 54 minutes 27 seconds West 60.26 feet to a 1" pipe, the northwest corner of Jeffrey Alan Lingle, Deed Book 1762 at Page 192; thence, with the west line of Lingle, South 07 degrees 58 minutes 39 seconds West 234.62 feet to an existing stone in the north line of Cleo A. Ellis, Deed Book 1563 at Page 687, the southwest corner of Lingle; thence, with the north line of Ellis, North 87 degrees 01 minutes 51 seconds West 138.11 feet to a 7/8" pipe in the north line of Ellis; thence, continuing with the north line of Ellis, North 70 degrees 30 minutes 04 seconds West 98.56 feet to a 7/8" pipe on the north side of 25th Street NE, the northwest corner of Ellis; thence, continuing along the north side of 25th Street NE, North 69 degrees 06 minutes 41 seconds West 328.62 feet to a 1 1/2" pipe on the west right-of-way of 25th Street NE; thence, with the west right-of-way of 25th Street NE, North 08 degrees 34 minutes 54 seconds East 963.88 feet to a 1 1/4" pipe at the intersection of said right-of-way with the south right-of-way of Snow Creek Road NE; thence, continuing the same bearing, 30.71 feet to the point of beginning. Containing 18.264 acres more or less.

VOLUNTARY NON-CONTIGUOUS ANNEXATION ANALYSIS

APPLICANT: Futuro, LLC and Corbin Harline

PROPERTY LOCATION (See Map 1): Northeastern and Southern corners of Snow Creek Road and 25th Street Place NE and 25th Street NE

PIN NUMBER: 3724-06-48-2558

WARD: If annexed, the subject property will be located in Ward 2 (Councilwoman Williams).

REQUESTED ACTION: The request is for voluntary non-contiguous annexation.

ACREAGE: 18.264 acres (This includes street rights-of-way).

DEVELOPMENT POTENTIAL: The subject property is currently zoned R-20 by Catawba County. Under Catawba County’s current zoning, the property may be developed for one and two family residential uses at an intensity of two (2) dwelling units per acre, which could potentially yield thirty-six (36) new single-family dwelling units, or eighteen (18) two-family dwelling units (duplexes).

Should the property be annexed, and rezoned to R-2 (Residential), the property could be developed for single-family residential, at a density of four (4) dwelling units per acre, which theoretically could yield seventy-one (71) single-family dwelling units. This theoretical number is not likely achievable due to the configuration of the property, as well as topographical challenges. The property developer has indicated they would like to yield at least sixty (60) single-family residential lots for future development. The differences between the existing zone (R-20, and the proposed zoning (R-2); is that duplexes are not permitted, and Hickory’s density is greater.

TAX VALUE: The current tax value of the property is \$215,000. If annexed with its present value, the property would immediately generate additional tax revenues of \$1,263.12. The future tax revenues generated by the development of the property is currently unknown.

POPULATION INCREASES: The subject property is proposed to be utilized for single-family residences. Current estimates for Hickory indicate single-family residences contain 2.46 occupants. If the property is developed as the developer intends, approximately one-hundred-forty-seven (147) new residents could be added to Hickory’s population.

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 | Snow Creek | 0.21 | 60 | 12.6 |
| Middle | Arndt | 0.09 | 60 | 5.4 |
| High | St. Stephens | 0.13 | 60 | 7.8 |

**Note: The student multipliers above reflect numbers for single-family dwellings only.*

SURROUNDING LAND USE AND ZONING (See Maps 2 & 3):

- **North:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses;
- **South:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses;
- **East:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses; and
- **West:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses.

UTILITY SERVICE: Water and sewer are in the vicinity of the property. Any extensions will be the responsibility of the developer.

ACCESS: Access to the subject property is available from 25th Street Place NE, 25th Street NE, and Snow Creek Road; all of which are NCDOT maintained roadways. After consultation with NCDOT, the developer has agreed not to pursue driveways onto Snow Creek Road.

DISTANCE FROM CITY LIMITS (See Map 1): The proposed annexation area is located approximately 0.8 of a mile from the Hickory's proper municipal boundary.

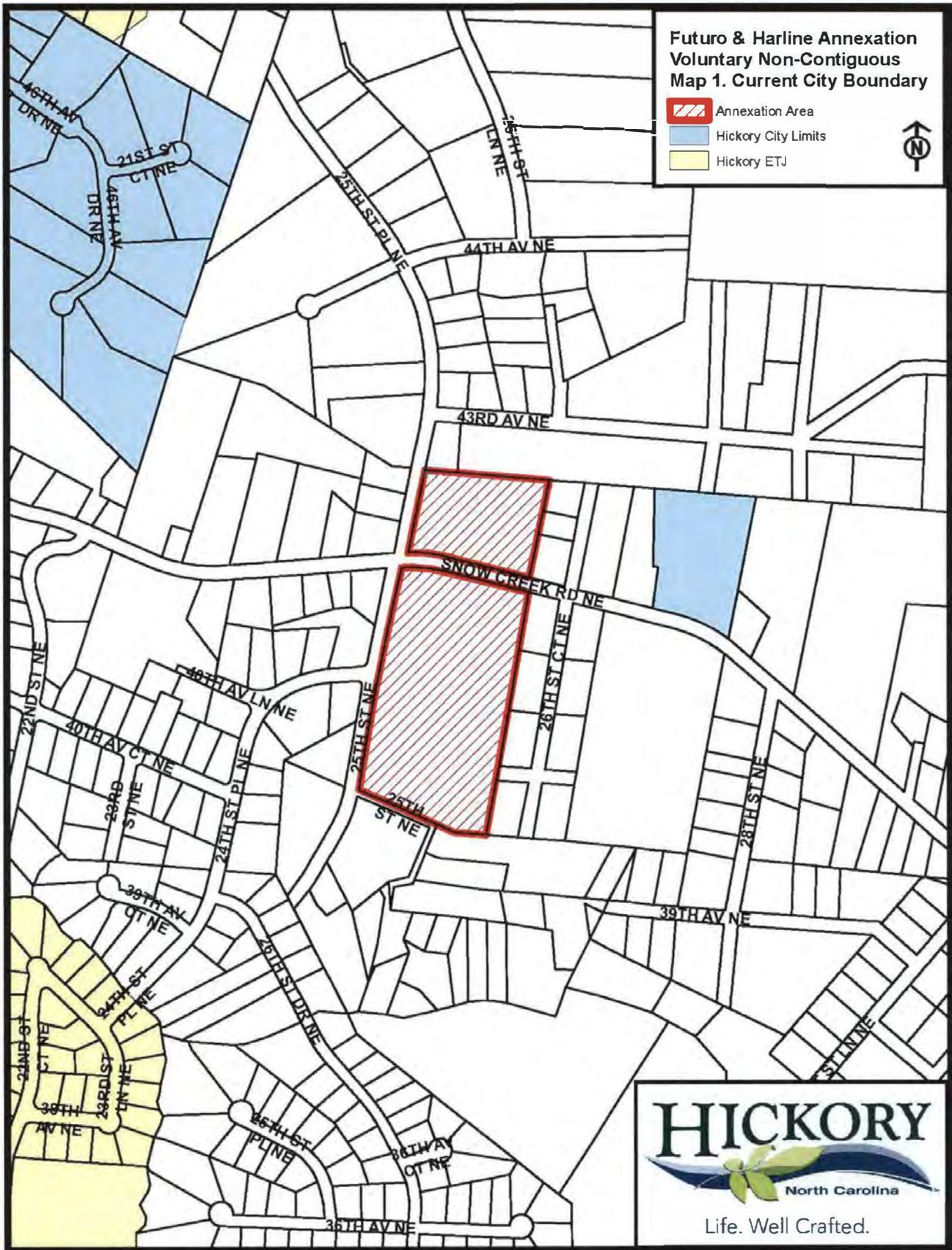
STAFF COMMENTS:

- **Fire:** Annexation of this property would not adversely affect the operations of the fire department at this time. The property is currently in HFD Station 6's response area and will remain in such with no changes.
- **Police Department:** Annexation would not adversely affect the police department. The properties, upon annexation, would be in Baker PACT.
- **Engineering:** No objections.
- **Planning:** No objections.
- **Public Services:** Driveway locations and configurations are deferred to the NCDOT. Sanitation can provide services to this area. The service vehicle turn-around may need to be reinforced to accommodate the weight of service vehicles
- **Public Utilities:** Water and sewer are in the vicinity of the property. Any extensions will be the responsibility of the developer.
- **Legal:** No objections.
- **City Manager's Office:** No objections.

STAFF RECOMMENDATION: Upon evaluation staff has found the following:

1. The voluntary non-contiguous annexation petition complies with all applicable statutes regarding the voluntary annexation of non-contiguous properties;
2. Adequate public services are available in sufficient quantities to properly serve the subject properties; and
3. The annexation of the properties will not cause available public services to fall below acceptable levels.

Based upon the findings provided above, staff recommends City Council approve the voluntary non-contiguous annexation petition.





Prepared by: Arnita Dula, Deputy City Attorney, City of Hickory
P.O. Box 398, Hickory, NC 28603-0398

ANNEXATION ORDINANCE NO. 461

VOLUNTARY ANNEXATION ORDINANCE (NON-CONTIGUOUS)

Futuro, LLC & Corbin Harline

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
CITY OF HICKORY, NORTH CAROLINA, PURSUANT TO
GENERAL STATUTES 160A-58.1, AS AMENDED (NON-CONTIGUOUS)**

WHEREAS, the City Council of the City of Hickory desires to annex the area described herein, under G.S. 160A-58.1, as amended; and

WHEREAS, the City Council has by resolution directed the City Clerk to investigate the sufficiency of said annexation; and

WHEREAS, the City Clerk has certified to the sufficiency of said request, and a public hearing on the question of this annexation was held in the Council Chamber of the Julian G. Whitener Municipal Building, located at 76 North Center Street, Hickory, North Carolina, at 7:00 p.m. on the 17th day of November, 2020; and

WHEREAS, the City Council of the City of Hickory further finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three miles from the corporate limits of the City of Hickory.
- b. No point on the proposed satellite corporate limits is closer to another city than to the City of Hickory.
- c. The areas described are so situated that the City will be able to provide services on the same basis within the proposed satellite corporate limits that it provides within the primary corporate limits.
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation.

WHEREAS, the City Council of the City of Hickory does hereby find as a fact that said petition has been signed by all the owners of real property in the area who are required by law to sign and all other requirements of G.S. 160A-58.1, as amended have been complied with; and

WHEREAS, the City Council further finds that the annexation is otherwise valid, and that the public health, safety and welfare of the City of Hickory and of the areas proposed for annexation will be best served by annexing the area herein described.

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-58.2, as amended, the following-described non-contiguous territory is hereby annexed and made a part of the City of Hickory as of the 30th day of November, 2020:

SATELLITE ANNEXATION
BY THE CITY OF HICKORY
OF THE PROPERTY OF
FUTURO, LLC AND CORBIN HARLINE

That certain tract or parcel of land lying and being about 5.12 miles north northeast of the center of the City of Hickory. Bounded on the west by the right-of-way of 25th Street NE and 25th Street Place NE; on the north by the lands of Billy E. Isenhour as described in Deed Book 1020 at Page 123 and Brandon S. Berry as described in Deed Book 3453 at Page 1446; on the east by the lands of Larry M. Day as described in Deed Book 1912 at Page 1042, Dianne Weaver Propst as described in Deed Book 3487 at Page 983 and Deed Book 2277 at Page 1046, the right-of-way of Snow Creek Road NE, M. Louise Eckard as described in Deed Book 2403 at Page 1202, John Mark Eckard as described in Deed Book 2403 at Page 1205, Richard Hicks Jr. as described in Deed Book 3475 at Page 122, an undeveloped 60' right-of-way and Jeffrey Alan Lingle as described in Deed Book 1762 at Page

192; on the south by the lands of Cleo A. Ellis as described in Deed Book 1563 at Page 687 and 25th Street NE and more particularly described as follows to wit.

Beginning at a point in Snow Creek Road NE, said point being located North 85 degrees 18 minutes 51 seconds East 31.64 feet from an existing nail in the intersection of Snow Creek Rd. NE and 25th Street NE and running thence, as new City of Hickory city limit lines the following calls: with Snow Creek Road NE, North 85 degrees 18 minutes 51 seconds East 17.90 feet to a computed point; thence, leaving Snow Creek Road NE, North 08 degrees 41 minutes 23 seconds East 30.18 feet to a 1 ¼" pipe at the intersection of the north right-of-way of Snow Creek Road NE and the east right-of-way of 25th Street Place NE; thence, with the east right-of-way of 25th Street Place NE, the same bearing 355.14 feet to a ½" rebar, the southwest corner of Billy E. Isenhour, Deed Book 1020 at Page 123; thence, with the south line of Isenhour, South 87 degrees 56 minutes 01 seconds East 134.90 feet to a 1 1/8" pipe, the southwest corner of Brandon S. Berry, Deed Book 3453 at Page 1446; thence, with the south line of Berry, the same bearing 390.52 feet to a ¾" pipe in said line, the northwest corner of Larry M. Day, Deed Book 1912 at Page 1042; thence, with the west line of Day, South 07 degrees 54 minutes 30 seconds West 135.85 feet to a ¾" pipe, the northwest corner of Dianne Weaver Propst, Deed Book 3487 at Page 983; thence, with the west line of Propst, South 08 degrees 18 minutes 32 seconds West 99.01 feet to a ¾" pipe, the northwest corner of Propst, Deed Book 2277 at Page 1046; thence, with the west line of Propst, South 08 degrees 05 minutes 41 seconds West 185.23 feet to a 1" pipe on the north right-of-way of Snow Creek Road NE, the southwest corner of Propst; thence, crossing Snow Creek Road NE, South 08 degrees 36 minutes 19 seconds West 59.98 feet to a 1" pipe on the south right-of-way of Snow Creek Road NE, the northwest corner of M. Louise Eckard, Deed Book 2403 at Page 1202; thence, with the west line of Eckard, South 08 degrees 32 minutes 03 seconds West 248.34 feet to a 1" pipe, the northwest corner of the John Mark Eckard, Deed Book 2403 at Page 1205; thence, with the west line of Eckard, South 07 degrees 19 minutes 41 seconds West 259.91 feet to a 1" pipe, the northwest corner of Richard Hicks Jr., Deed Book 3475 at Page 122; thence, with the west line of Hicks, South 07 degrees 59 minutes 42 seconds West 235.76 feet to a 1" pipe, the northeast corner of an undeveloped 60' right-of-way and the southwest corner of Hicks; thence, crossing said right-of-way, South 07 degrees 54 minutes 27 seconds West 60.26 feet to a 1" pipe, the northwest corner of Jeffrey Alan Lingle, Deed Book 1762 at Page 192; thence, with the west line of Lingle, South 07 degrees 58 minutes 39 seconds West 234.62 feet to an existing stone in the north line of Cleo A. Ellis, Deed Book 1563 at Page 687, the southwest corner of Lingle; thence, with the north line of Ellis, North 87 degrees 01 minutes 51 seconds West 138.11 feet to a 7/8" pipe in the north line of Ellis; thence, continuing with the north line of Ellis, North 70 degrees 30 minutes 04 seconds West 98.56 feet to a 7/8" pipe on the north side of 25th Street NE, the northwest corner of Ellis; thence, continuing along the north side of 25th Street NE, North 69 degrees 06 minutes 41 seconds West 328.62 feet to a 1 ½" pipe on the west right-of-way of 25th Street NE; thence, with the west right-of-way of 25th

Street NE, North 08 degrees 34 minutes 54 seconds East 963.88 feet to a 1 ¼" pipe at the intersection of said right-of-way with the south right-of-way of Snow Creek Road NE; thence, continuing the same bearing, 30.71 feet to the point of beginning. Containing 18.264 acres more or less.

Section 2. Upon and after the 30th day of November, 2020, 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 and shall be entitled to the same privileges and benefits as other parts of the City of Hickory. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10, as amended.

Section 3. The newly-annexed territory described herein shall become part of Ward No. 2 of the City of Hickory.

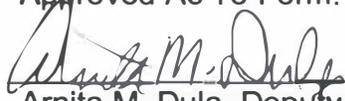
Section 4. The Mayor of the City of Hickory shall cause to be recorded in the Office of the Register of Deeds of Catawba County, and in the Office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 hereof, together with duly certified copy of this Ordinance. Such a map shall also be delivered to the County Board of Elections, as required by G.S. 163-288.1.

ADOPTED THIS 17TH DAY OF NOVEMBER, 2020.

Hank Guess, Mayor

Warren Wood, City Manager

Approved As To Form:



Arnita M. Dula, Deputy City Attorney

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 Futuro, LLC & Corbin Harline was adopted at a regular meeting of the Hickory City Council held on November 17, 2020, and that said Ordinance is in full force and effective on November 30, 2020.

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 for 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 _____, 2020.

Notary Public

My Commission Expires: _____

4

COUNCIL AGENDA MEMOS

To: City Manager's Office

From: Office of Business Development – Planning and Development

Contact Person: Brian Frazier, Planning Director

Date: November 5, 2020

Re: Consideration of Rezoning Petition 20-03

REQUEST

Conduct a public hearing to consider Rezoning Petition 20-03.

BACKGROUND

Futuro, LLC and Corbin Harline have petitioned for the rezoning of 18.264 acres of property located at the northeast and southeast corner of Snow Creek Road and 25th Street Place NE and 25th Street NE. The request is to rezone the properties from R-20 Residential to Medium Density Residential (R-2).

The subject property is currently zoned R-20 Residential by Catawba County, and is currently vacant. This property was recently annexed into the City of Hickory in anticipation of single-family residential development.

ANALYSIS

The general area is classified as Low Density Residential by the Hickory By Choice 2030 Comprehensive Plan. This classification is intended to provide an area of transition between higher density housing and the surrounding area by offering development at two (2) to four (4) units per acre. The R-2 zoning district's permissible density is four (4) units per acre, which adheres to the recommendations for areas classified as Low Density Residential by the Hickory by Choice 2030.

RECOMMENDATION

The Hickory Regional Planning Commission conducted a public hearing on October 28, 2020 to consider the petition. During the public hearing, the property owners spoke in favor of the petition, while thirteen (13) spoke in opposition. Those who spoke in opposition cited concerns over the residential density, traffic, driveway locations, stormwater, schools, lack of transparency, property values, privacy, and noise.

Upon closing the public hearing, the Hickory Regional Planning Commission voted unanimously (6-0) to affirm the petition's consistency with the Hickory by Choice 2030 Comprehensive Plan, and recommended City Council approval of the petition.

As of November 3, 2020, staff has received twenty-two (22) inquiries regarding this petition.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Reviewed by:

Brian M. Frazier 11/05/2020
Initiating Department Head Date

Rodney Miller 11/9/20
Asst. City Manager, R. Miller Date

Mubin Miller 11/9/20
Finance Officer, M. Miller Date

Aurita M. Dula 11-6-20
Deputy City Attorney, A. Dula Date

R. Beasley 11/9/20
Asst. City Manager R. Beasley Date

Date

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

W. Wood
City Manager, W. Wood

11-11-20
Date

CITY OF HICKORY
APPLICATION FOR REZONING (NON PD OR CZ)

DATE SUBMITTED: 9/17/20

TO THE PLANNING COMMISSION AND THE CITY COUNCIL OF THE CITY OF HICKORY, NORTH CAROLINA:

I (We), the undersigned, do hereby respectfully make application and petition to amend the Land Development Code and change the Zoning Map of the City of Hickory, as hereinafter requested, and in support of this application, the following facts are shown of the application and all required materials):

1. The property proposed to be rezoned is located on SNOW CREEK ROAD
 between 25TH ST PL NE and 26TH ST CT NE.

PIN NO. (S): 372406482558

Physical (Street) Address: NA

2. The property is owned by: (please print) FUTURO, LLC ; Harline Corbin
~~Harline Corbin~~

(Attach a copy of the most recent deed, contract for purchase or other legal interest demonstrating an interest in the property.)

Owner Information:

Name: FUTURO, LLC (OSCAR VASQUEZ)

Address: 220 17TH AVE NE / PO BOX 1468 HICKORY, NC 28603

Phone Number: 828-312-3765

Email Address: OSCARVV5@ME.COM

3. The petition is submitted by: FUTURO, LLC (OSCAR VASQUEZ)

(If the Petition is submitted by someone other than the owner, a letter from the owner(s) authorizing the agent to act on his or her behalf must be submitted with the application. This authorization must be signed and notarized by all owners having an interest in the subject property.)

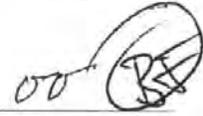
Agent Information:

Name: _____

Address: _____

Phone Number: _____

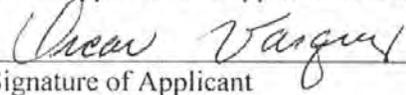
4. It is desired and requested that the foregoing property be REZONED;

FROM: R-20 TO: ~~R-20~~ R2-00 

5. Please list the current use(s) of the property: VACANT LAND

Applicant's Affidavit

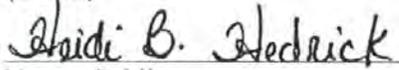
I (We), the undersigned Applicant, hereby certify that the information contained herein and submitted in support of this application is true and correct.


Signature of Applicant

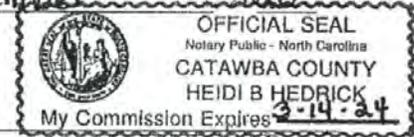


Sworn and subscribed to before me this 17th day of September 2020

(SEAL)


Notary Public

March 14, 2024
My Commission Expires



This Application must be submitted to the Planning Department by 5:00 p.m. on the last regular working day of the month preceding the meeting at which it is to be considered by the Planning Commission. Only complete applications will be accepted.

NOTICE TO APPLICANTS AND/OR AGENTS REGARDING ADVERTISING FEES

In addition to the application fees required at the time of application submittal, the applicant and/or agents is responsible for remitting payment to the City of Hickory to cover legal advertising/notices costs. Advertising costs are billed by the City of Hickory after the rezoning process concludes.

Requests for rezoning require two public hearings (Hickory Regional Planning Commission and Hickory City Council). State law and the Hickory Land Development Code requires specific notices of public hearing be provided prior to the public hearing. These requirements are necessary for each of the two public hearings. The notices required by law include the following:

- Posting of property (sign);
- First class mailed notices sent to all property owners within 500 feet of the subject property; and
- A legal notice published in the local newspaper (the notice must run two consecutive weeks).

The average costs of such required legal advertising range from \$400.00 to \$700.00 depending on the size of the property and the complexity of the request.

3571-0589

FILED ELECTRONICALLY
CATAWBA COUNTY NC
DONNA HICKS SPENCER

FILED May 11, 2020
AT 03:14:00 PM
BOOK 03571
START PAGE 0589
END PAGE 0590
INSTRUMENT # 08824
EXCISE TAX \$320.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$320.00

Parcel Identifier No. _____ Verified by _____ County on the _____ day of _____, 20____
By: _____

Mail/Box to: Fleischer Law Office, PLLC 7 14th St SW Suite 100 Hickory, NC 28602

This instrument was prepared by: Fleischer Law Office, PLLC 7 14th St SW Suite 100 Hickory, NC 28602

Brief description for the Index: PIN 372406482558 17.84 acres +/- * NO title exam *

THIS DEED made this 11 day of May, 2020, by and between

| GRANTOR | GRANTEE |
|----------------------------------|---|
| Futuro, LLC | Corbin Harline, an undivided 48% interest |
| PO Box 1468 Hickory, NC 28603 | 3046 44TH AVE DR NE Hickory, NC 28601 |

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Hickory, Clines Township, Catawba County, North Carolina and more particularly described as follows:

Beginning at a stone on the dower line, corner of Lot No 4 of the S Killian land division and runs with said dower line North 10 degrees East 3/5 poles to a stone on LS Hefner's line; thence with his line North 86 1/2 degrees West 35 1/2 poles to a stone; thence South 10 degrees West 82 1/2 poles to a stone on Elisehar Killian's line; thence with his line South 67 1/2 degrees East 28 poles to a pine stump; thence South 85 degrees East 9 poles to the beginning. Being Lot 5 of the division of the S. Killian land allotted to Ida Killian, containing 19 1/2 acres, Catawba County Registry.

LESS AND EXCEPTING that certain property conveyed in Deed Book 940, Page 634, Catawba County Registry.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 3558 page 608.

All or a portion of the property herein conveyed ___ includes or does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book _____ page _____.

submitted electronically by "Fleischer Law Office, PLLC" in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Catawba County Register of Deeds.

3571-0590

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Grantor conveys herewith a 48% undivided interest to Grantee,

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Futuro, LLC _____ (SEAL)

By: Oscar Vasquez (Entity Name) _____ Print/Type Name: _____

Print/Type Name & Title: Oscar Vasquez, Manager _____ Print/Type Name: _____ (SEAL)

By: _____ Print/Type Name & Title: _____ Print/Type Name: _____ (SEAL)

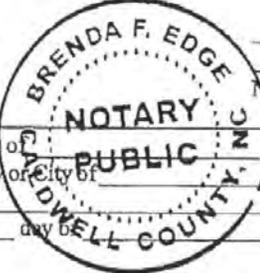
By: _____ Print/Type Name & Title: _____ Print/Type Name: _____ (SEAL)

State of _____ - County or City of _____
I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20____.

My Commission Expires: _____ Notary Public
(Affix Seal) _____ Notary's Printed or Typed Name

State of NC - County or City of Catawba
I, the undersigned Notary Public of the County or City of Catawba and State aforesaid, certify that Oscar Vasquez personally came before me this day and acknowledged that he is the Manager of Futuro, LLC, a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 11 day of May, 2020.

My Commission Expires: 06/09/23 Notary Public
(Affix Seal) Brenda F. Edge Notary's Printed or Typed Name



State of _____ - County or City of _____
I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____
Witness my hand and Notarial stamp or seal, this _____ day of _____, 20____.

My Commission Expires: _____ Notary Public
(Affix Seal) _____ Notary's Printed or Typed Name



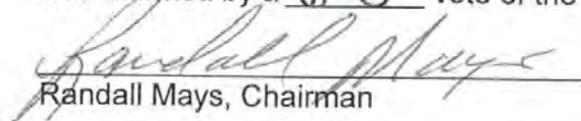
Life. Well Crafted.

**HICKORY REGIONAL PLANNING COMMISSION
ZONING MAP AMENDMENT CONSISTENCY STATEMENT**

On October 28, 2020 the Hickory Regional Planning Commission conducted a Public Hearing for the purpose of considering Rezoning Petition 20-03. Upon consideration, the Hickory Regional Planning Commission found:

1. The general area is classified as Low Density Residential by the Hickory By Choice 2030 Comprehensive Plan, and the rezoning of the property to Medium Density Residential (R-2) is in keeping with the plan's recommended density for area classified as Low Density Residential;
2. The Low Density Residential classification is intended to provide an area of transition between higher density housing and the surrounding area by offering development at two (2) to four (4) units per acre;
3. The R-2 zoning district's permissible density adheres to the recommendations for areas classified as Low Density Residential by the Hickory by Choice 2030 Comprehensive Plan;
4. Any and all improvements that are to take place on the property will be required to follow all applicable development regulations;
5. Public infrastructure currently in place in the area is sufficient to handle the type of development possible on the subject property;
6. Any future development that takes place on the subject property will be regulated by current and future development standards duly adopted by the City of Hickory and the State of North Carolina; and
7. Any future development occurring on the subject property will be required to adhere to all state and local building, fire, and flood zone related development regulations. Such regulations will ensure proper protections are provided to ensure surrounding residents, and property owners are properly protect as prescribed by law.

Based upon these findings, the Hickory Regional Planning Commission has found Rezoning Petition 20-03 to be consistent with the findings and recommendations of the Hickory by Choice 2030 Comprehensive Plan, and recommends Hickory City Council approval of the petition. This recommendation was affirmed by a 6-0 vote of the Hickory Regional Planning Commission.


Randall Mays, Chairman

10-28-20
Date

REZONING ANALYSIS

PETITION: 20-03

APPLICANT: Futuro, LLC & Corbin Harline

OWNERS: Futuro, LLC & Corbin Harline

PROPERTY LOCATION: Northeast and southeast corners of Snow Creek Road and 25th Street Place NE and 25th Street NE.

PIN: 3724-06-48-2558 (The property appears on the Catawba County tax maps as two parcels, but the property is all contained on one deed, thus only one PIN number.)

WARD: The property is currently in the annexation process. Should the property be annexed, it will be located in Ward 3 (Councilwoman Williams).

ACREAGE: 18.264 acres

REQUESTED ACTION: Rezone the property from Catawba County R-20 Residential to City of Hickory R-2 Residential.

BACKGROUND: The subject property is currently in the process of being annexed into the City of Hickory. The subject property is currently zoned R-20 by Catawba County. Under Catawba County's current zoning, the property may be developed for one and two family residential uses at an intensity of two (2) dwelling units per acre, which could potentially yield thirty-six (36) new single-family or two-family dwelling units (duplexes).

DEVELOPMENT POTENTIAL: Should the property be rezoned to R-2 (Residential), the property could be developed for single-family residential, at a density of four (4) dwelling units per acre, which theoretically could yield seventy-one (71) single-family dwelling units. This theoretical number is likely not be achievable due to the configuration of the property, as well as topographical challenges. The differences between the existing zone (R-20), and the proposed zoning (R-2); is that duplexes are not permitted, and Hickory's density is greater.

REVIEW CRITERIA: In reviewing and making recommendations on proposed zoning map amendments, review bodies shall consider the following factors:

1. Consistency of the proposed zoning with the *Hickory Comprehensive Land Use and Transportation Plan (Hickory by Choice 2030)* and the stated Purpose and Intent of this Land Development Code;

The area under consideration is identified as Low Density Residential by the Hickory by Choice 2030 Comprehensive Plan's future land use map (**Please refer to Map 1 for detail**).

The general area is classified Low Density Residential by the Hickory By Choice 2030 Comprehensive Plan. (Note: The Hickory By Choice 2030 Comprehensive Plan's Future Land Use map does not contain parcel line data, as the general boundaries of the land use categories are not concrete.)

The Hickory by Choice 2030 Comprehensive Plan states the following about Low Density Residential areas: "this classification is intended to provide an area of transition between higher density housing and the surrounding area by offering development at two (2) to four

(4) units per acre. (HBC 2030, Pg. 3.9) *The Hickory by Choice 2030 Comprehensive Plan goes on to state; "although the gross density in these areas is proposed to be less than Medium Density Residential, conservation subdivision design principles can provide opportunities for a combination small and large lot development that helps preserve open space and protect environmentally sensitive areas" (HBC 2030, Pg. 3.9)*

The R-2 zoning district is not listed as the implementing zoning district for the Low Density Residential classification; however, the density discussed within the quoted section of the Hickory by Choice 2030 Comprehensive Plan clearly states densities up to four units per acre are appropriate for the area. The R-2 district permits density up to, but not more than, four (4) units per acre, which is compatible with the language found with the Hickory by Choice 2030 Comprehensive Plan.

Given these factors, the rezoning of the property to R-2 Residential should be considered to be consistent with the findings and recommendations of the Hickory by Choice (2030) comprehensive Plan.

Section 1.7 of the Hickory Land Development Code contains its Stated Purpose and Intent. This section contains five (5) specific items which the Land Development Code is intended to uphold. These are as follows:

- Implement the Hickory by Choice 2030 Comprehensive Plan;

The area under consideration for rezoning is indicated by the Hickory by Choice 2030 Comprehensive Plan as being a future residential area with residential densities between two (2) and four (4) units per acre.

- Preserve and protect land, air, water and environmental resources and property values;

Any and all improvements that are to take place on the property will be required to follow all applicable development regulations.

- Promote land use patterns that ensure efficiency in service provision as well as wise use of fiscal resource and governmental expenditures;

The current land use pattern of the larger area consists almost entirely of single-family dwellings. This development pattern will continue under the R-2 Residential district, as only single-family residences are permitted under this zoning classification. The future use of the properties is best suited to further the existing development pattern of the area. Public resources to provide critical public services are in place to service the area. These include public utilities and transportation infrastructure.

- Regulate the type and intensity of development; and

Any future development that takes place on the subject properties will be regulated by current and future development standards duly adopted by the City of Hickory and all other government regulatory agencies with jurisdiction to regulate property development.

- Ensure protection from fire, flood and other dangers.

Any future development occurring on the subject properties will be required to adhere to all state and local building, fire, and flood zone related development regulations. Such regulations will ensure proper protections are provided to ensure surrounding residents, employees, and properties are properly protected as prescribed by law.

2. Existing land uses within the general vicinity of the subject property (**Please refer to Maps 2 & 3 for more detail**):

- **North:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses;
- **South:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses;
- **East:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses; and
- **West:** The properties are zoned R-20 Residential by Catawba County, and are occupied by Single-family residential uses.

3. The suitability of the subject property for the uses permitted under the existing and proposed zoning classification:

The current land use pattern of the larger area mainly consists of single-family residences, and larger wooded properties, which has occurred as planned by the existing zoning district. The proposed zoning district will continue this type of development pattern, as the prescribed density and permissible land-uses are similar.

4. The extent to which zoning will detrimentally affect properties within the general vicinity of the subject property:

The subject property, and all directly abutting properties are residentially used. Rezoning the property to residential should not have detrimental impacts upon its neighboring properties.

5. The extent to which the proposed amendment (zoning map) will cause public services including roadways, storm water management, water and sewer, fire and police protection to fall below acceptable levels.

Public resources to provide critical public services are in place to service the area. These include public utilities transportation infrastructure, as well as police and fire protection.

6. The proposed amendment (zoning map) will protect the public health, safety, and general welfare.

The subject property is located within an area where the Hickory by Choice 2030 Comprehensive Plan anticipated continued residential development. The future use of the property is residential.

Any future development that occurs of the subject property as the result of the zoning map amendment, will be required to be adhere to regulations related to zoning, building and fire code, traffic, stormwater, etc.; which will work in conjunction with one another to ensure the health and safety of residents and visitors are properly protected.

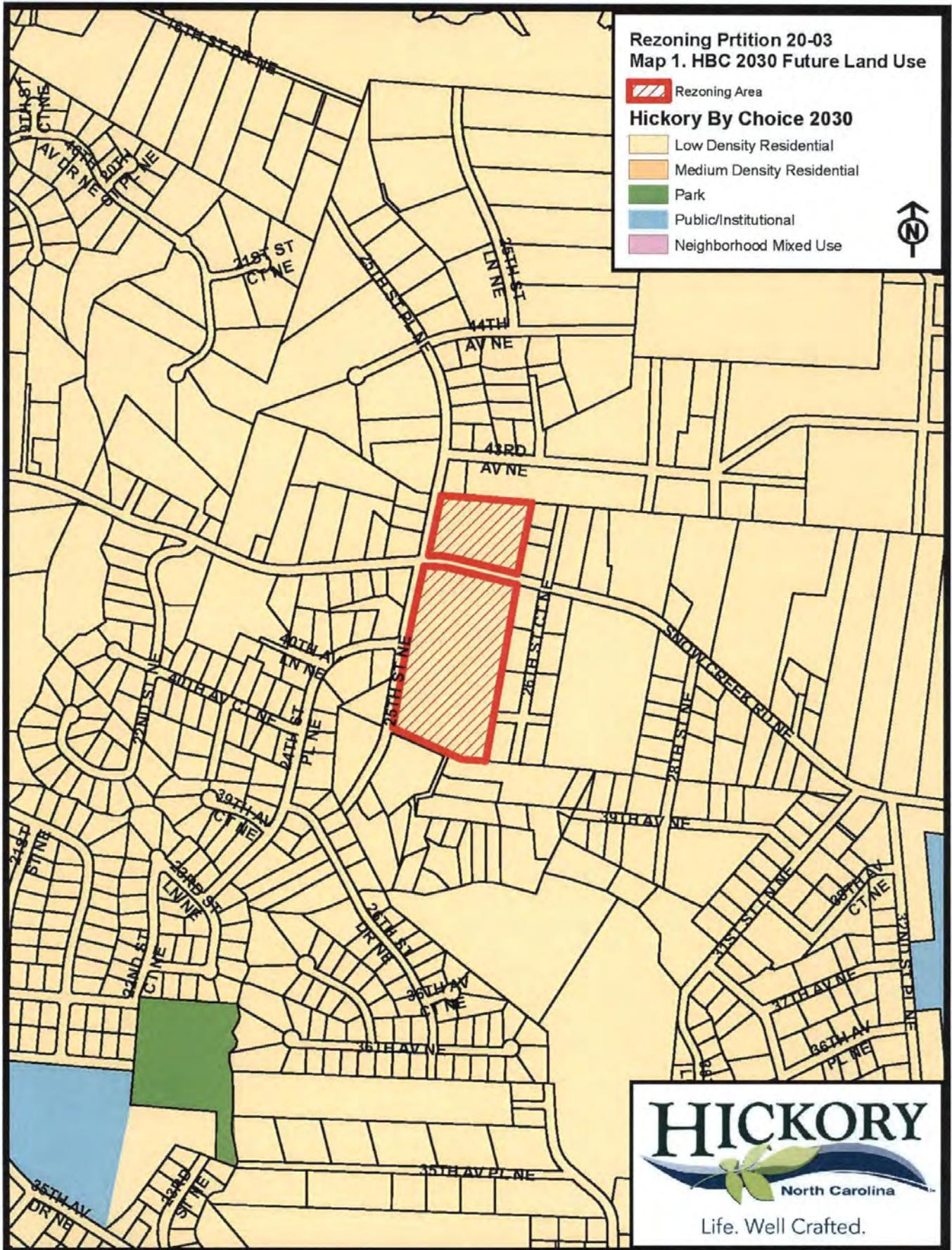
RECOMMENDED ACTION:

The Hickory Regional Planning Commission conducted a public hearing on October 28, 2020 to consider the petition. During the public hearing, the property owners spoke in favor of the petition, while thirteen (13) spoke in opposition. Those who spoke in opposition cited concerns over the residential density, traffic, driveway locations, stormwater, schools, lack of transparency, property values, privacy, and noise.

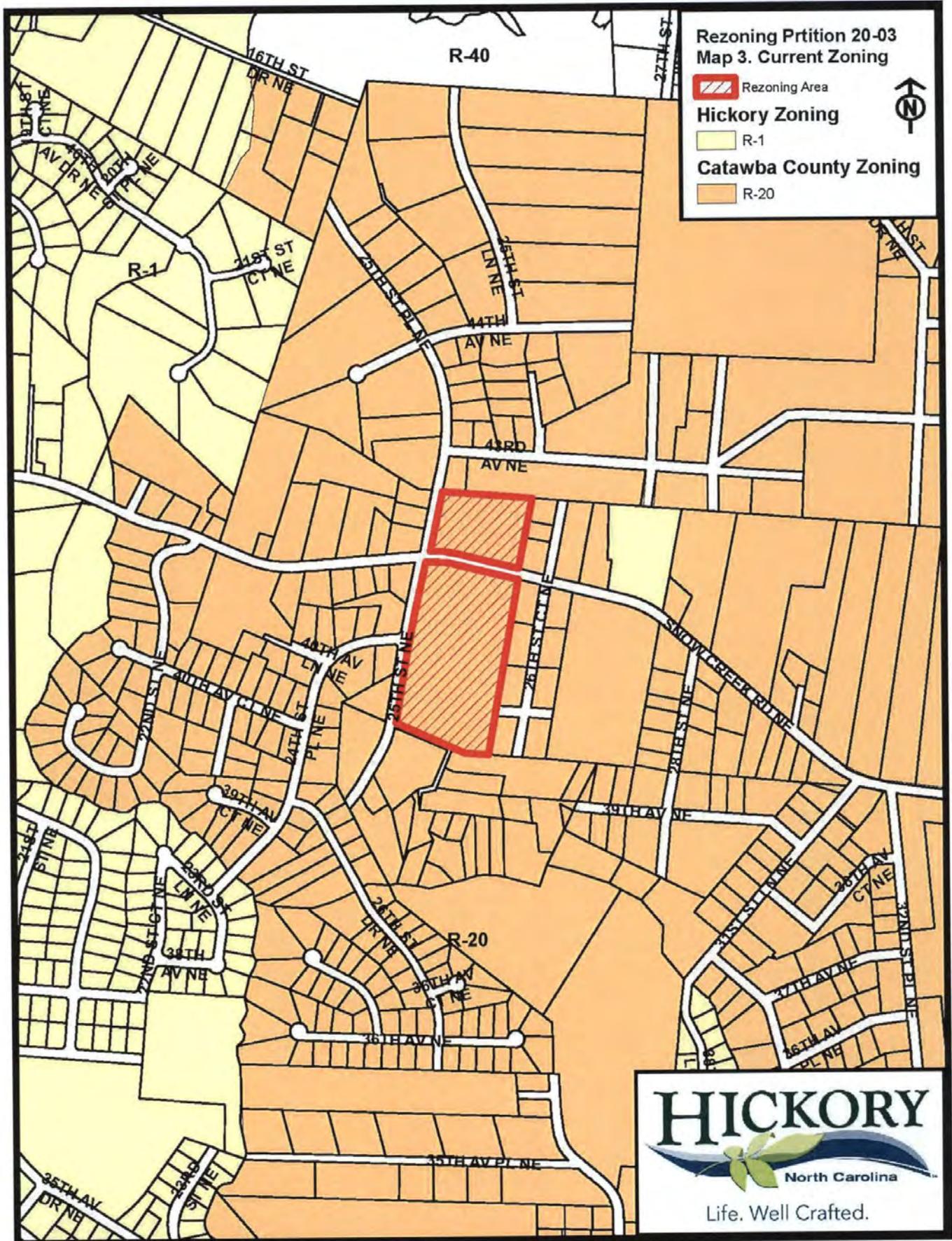
Upon closing the public hearing, the Hickory Regional Planning Commission voted unanimously (6-0) to affirm the petition's consistency with the Hickory by Choice 2030 Comprehensive Plan, and recommended City Council approval of the petition.

CITIZEN INPUT:

As of November 4, 2020, staff has received twenty-two (22) inquiries regarding this petition.







ORDINANCE NO. _____

AN ORDINANCE OF THE HICKORY CITY COUNCIL AMENDING THE OFFICIAL HICKORY ZONING ATLAS TO REZONE 18.264 ACRES OF PROPERTY LOCATED AT THE NORTHEAST AND SOUTH EAST CORNERS OF SNOW CREEK ROAD AND 25TH STREET PLACE NE AND 25TH STREET NE FROM R-20 RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL (R-2).

WHEREAS, Article 2, Section 2.2 of the Hickory Land Development Code provides for amendments to the Official Zoning Atlas; and

WHEREAS, the City has been petitioned to rezone 18.364 acres of property located at the northeast and southeast corners of Snow Creek Road and 25th Street Place NE and 25th Street NE, more particularly described on **Exhibit A** attached hereto, to allow a Medium Density Residential (R-2) district; and

WHEREAS, the Hickory Regional Planning Commission considered the proposed rezoning during a public hearing on October 28, 2020 and forwarded a recommendation of approval to the City Council; and

WHEREAS, Article 2 of the Hickory Land Development Code requires findings the proposed rezoning is in response to changing conditions and is reasonably necessary to promote the public health, safety and general welfare; and

WHEREAS, the City Council has found Petition 20-03 to be in conformance with the City's Land Development Plan and Zoning Ordinance,

NOW, THEREFORE, BE IT ORDAINED by the City Council of Hickory, North Carolina, THAT THE REZONING OF THE PROPERTY LOCATED THE NORTHEAST AND SOUTH EAST CORNERS OF SNOW CREEK ROAD AND 25TH STREET PLACE NE AND 25TH STREET NE, AND DESCRIBED IN EXHIBIT A is approved.

SECTION 1. Findings of fact.

1. The subject property is located at the northeast and southeast corners of Snow Creek Road and 25th Street Place NE and 25th Street NE, and further identified as PIN 3724-06-48-2558.
2. The rezoning request is intended to further implement the findings and recommendations of the *Hickory by Choice 2030 Comprehensive Plan*.
3. The rezoning of the property is consistent with the *Hickory by Choice 2030 Comprehensive Plan*.

SECTION 2. All ordinances or provisions of the Hickory City Code which are not in conformance with the provisions of the Amendment occurring herein are repealed as of the effective date of this Ordinance.

SECTION 3. Statement of Consistency and Reasonableness

Upon considering the matter, the Hickory City Council found:

1. The general area is classified as Low Density Residential by the Hickory By Choice 2030 Comprehensive Plan, and the rezoning of the property to Medium Density Residential (R-2) is in keeping with the plan's recommended density for area classified as Low Density Residential;
2. The Low Density Residential classification is intended to provide an area of transition between higher density housing and the surrounding area by offering development at two (2) to four (4) units per acre;
3. The R-2 zoning district's permissible density adheres to the recommendations for areas classified as Low Density Residential by the Hickory by Choice 2030 Comprehensive Plan;
4. Any and all improvements that are to take place on the property will be required to follow all applicable development regulations;
5. Public infrastructure currently in place in the area is sufficient to handle the type of development possible on the subject property;
6. Any future development that takes place on the subject property will be regulated by current and future development standards duly adopted by the City of Hickory and the State of North Carolina; and
7. Any future development occurring on the subject property will be required to adhere to all state and local building, fire, and flood zone related development regulations. Such regulations will ensure proper protections are provided to ensure surrounding residents, and property owners are properly protect as prescribed by law.

Based upon these findings, the Hickory City Council has found Rezoning Petition 20-03 to be consistent with the findings and recommendations of the Hickory by Choice 2030 Comprehensive Plan.

SECTION 4. This Ordinance shall become effective upon adoption.

ORDAINED by the City Council of Hickory, North Carolina, this, the ____ day of _____, 2020.

(SEAL)

THE CITY OF HICKORY, a
North Carolina Municipal Corporation

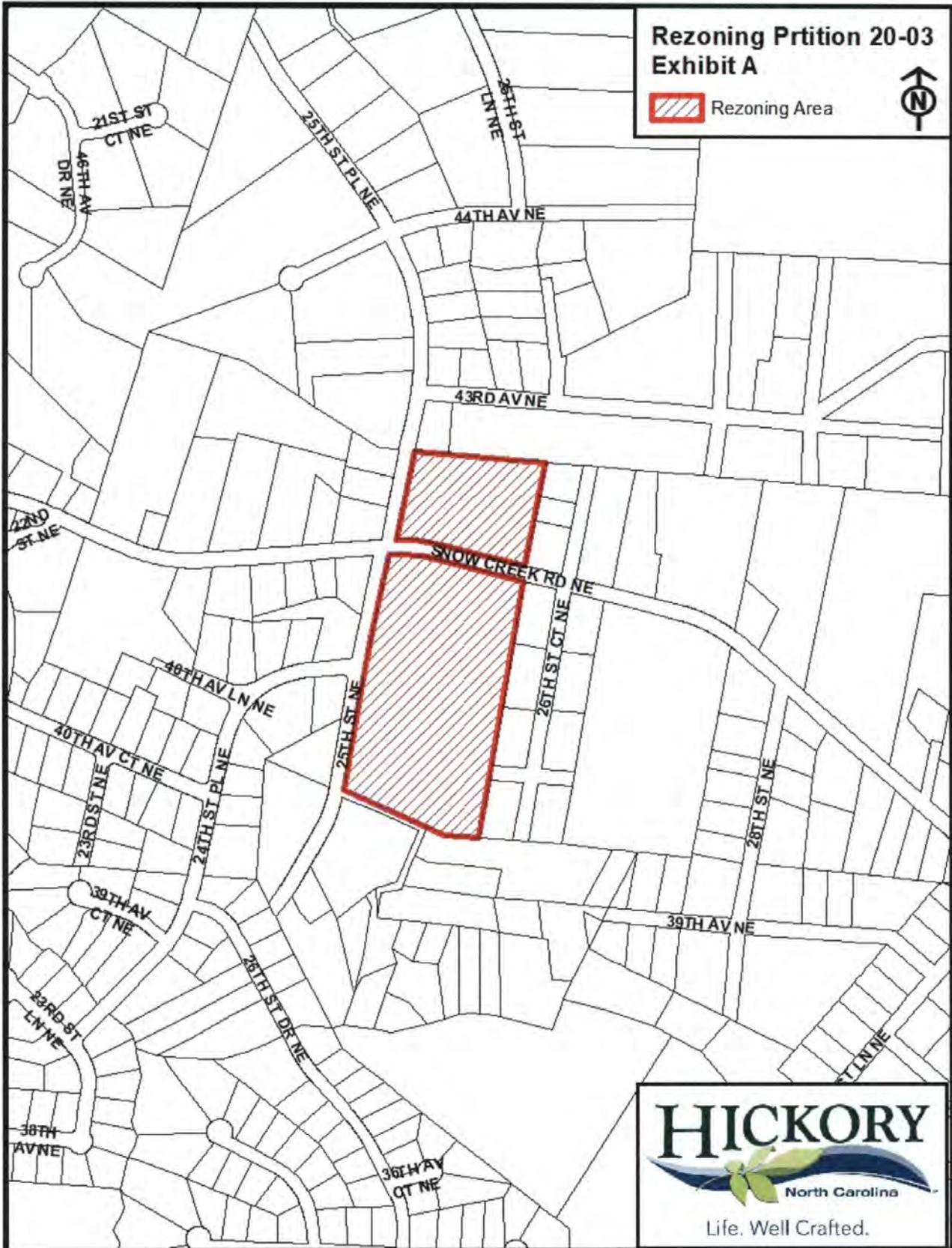
Attest:

By: _____
Hank Guess, Mayor

Debbie D. Miller, City Clerk

Approved as to form this ____ day of _____, 2020.

Attorney for the City of Hickory



5

COUNCIL AGENDA MEMOS

Exhibit XI.A.3.

To: City Manager's Office
From: Rodney Miller, Assistant City Manager/CFO
Contact Person: Melissa Miller, Finance Officer
Date: October 29, 2020
Re: Public Hearing - Multiple General Fund Projects
Approve Resolution Approving Financing Terms and
Accept bank bid from low bidder – BB&T (Truist Bank)

REQUEST

Approval of resolution approving financing terms and to accept the bank bid from BB&T (Truist Bank) for the Multiple General Fund Projects installment purchase financing.

BACKGROUND

The City of Hickory has recognized the need to finance multiple general fund projects using an installment purchase method of financing for a fifteen (15) year period. The projects include a Fire Training Facility, Ridgeview Branch Library Expansion and Upgrades, Henry Fork River Park Turf Field, Deidra Lackey Memorial Park, and Appalachian Regional Commission (ARC) Road Project-Local Match.

Projects involving financing methods of installment purchase are required to hold a public hearing for presentation of the financing concept in order to meet the public participation requirement prior to approval of debt by the Local Government Commission. This meeting is required to be a public hearing and must identify the concept that the City has chosen to use to finance the projects.

ANALYSIS

A Request for Proposal was distributed to various banks on September 30, 2020 by the Finance Department. Three bids were received by the deadline date of October 23, 2020.

- BB&T (Truist Bank) – 1.69%
- Regions Bank – 1.94%
- Peoples Bank – 2.35%

RECOMMENDATION

Staff recommends approval of resolution approving financing terms and to accept the bank bid from BB&T (Truist Bank) for the Multiple General Fund Projects installment purchase financing.

BUDGET ANALYSIS:

Budgetary Action

Is a Budget Amendment required?

Yes

No

LIST THE EXPENDITURE CODE:

Various Departmental Advertising Line Items

Reviewed by:

Initiating Department Head

Rodney Miller

Asst. City Manager Rodney Miller

Date

11/9/20

Date

Melissa Miller
Finance Officer, Melissa Miller

11/5/20

Date

A. Dula
Deputy City Attorney, A. Dula

11-6-20

Date

R. Beasley
Asst. City Manager, R. Beasley

11/9/20

Date

Deputy Finance Officer

Date

Recommended for approval and placement on November 17, 2020 Council agenda (as Consent, Public Hearing, Informational, Department Report, etc).

W. Wood
City Manager, W. Wood

11-10-20
Date

RESOLUTION NO. _____**RESOLUTION APPROVING FINANCING TERMS
FOR MULTIPLE GENERAL FUND PROJECTS**

WHEREAS, the City of Hickory, North Carolina (“Borrower”) has previously determined to finance the Borrower’s multiple general fund projects (the “Project”), and the Finance Officer has now presented a proposal for the financing of such Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory, North Carolina as follows:

1. The Borrower hereby determines to finance the Project through Truist Bank (“Lender”) in accordance with the proposal dated October 23, 2020, or as such proposal may be supplemented or amended by Lender and the Borrower verbally or in writing. The amount financed shall not exceed \$7,500,000, the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.69%, and the financing term shall not exceed fifteen (15) years from the date of closing.
2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) shall be consistent with the foregoing terms. All officers and employees of the Borrower are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and such other documents as Lender may request. Pursuant to the Financing Agreement and Deed of Trust, (a) Lender will advance moneys to the Borrower to pay the costs of the Project and the financing costs related thereto, and the Borrower will repay such advance in installments, and (b) the Borrower will grant a lien on the site of the Project, or portions thereof, together with all fixtures and improvements located thereon, to Lender as security for such advance.
3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to the Finance Officer’s satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Borrower officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer’s release of any Financing Document for delivery constituting conclusive evidence of such officer’s final approval of the Document’s final form.

4. The Borrower shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The Borrower hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).
5. The Borrower intends that the adoption of this resolution will be a declaration of the Borrower's official intent to reimburse expenditures for the Project that are to be financed from the proceeds of the Lender financing described above. The Borrower intends that funds that have been advanced, or that may be advanced, from the Borrower's general fund or any other Borrower fund related to the Project, for costs of the Project may be reimbursed from the financing proceeds.
6. All prior actions of Borrower officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict.

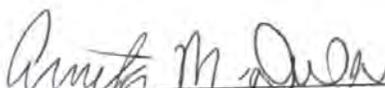
This resolution is effective upon its adoption this _____ day of _____, 20____.

THE CITY OF HICKORY,
A North Carolina Municipal Corporation

Hank Guess, Mayor

Debbie Miller, City Clerk

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



Arnita Dula, Deputy City Attorney