City of High Point

Municipal Office Building
211 S. Hamilton Street
High Point, NC 27260

Meeting Agenda

Thursday, February 2, 2023

4:00 PM

3rd Floor Conference Room

Finance Committee

Britt Moore, Chair
Committee Members:
Monica Peters, Mayor Pro Tem
Michael Holmes
Victor Jones

Jay Wagner, Mayor (Alternate)

FINANCE COMMITTEE - Britt W. Moore, Chair

CALL TO ORDER

PRESENTATION OF ITEMS

2023-049 Contract - WESCO Distribution, Inc. 200 AMP Pedestals - Electric Department - Warehouse Stock

City Council is requested to award a contract to WESCO Distribution, Inc. in the amount of $172,383 for the purchase of 200-amp Secondary Pedestals that are commonly used by the Electric Utilities Department to replenish warehouse stock.

Attachments: 1. Contract – WESCO Distribution, Inc. 200 AMP Pedestals – Electric Departme

2023-050 Contract - WESCO Distribution, Inc. 1,000 kVA Transformers - Electric Department - Warehouse Stock

City Council is requested to award a contract to WESCO Distribution, Inc. in the amount of $194,680 for the purchase of Large Commercial/Industrial Voltage (277/480V) Transformers (1,000 kVa) that are commonly used by the Electric Utilities Department to replenish warehouse stock.

Attachments: 2. Contract – WESCO Distribution, Inc. 1,000 kVA Transformers – Electric Depa

2023-051 Contract - On Call Consultants - Transportation Engineering & Planning Services

City Council is requested to award a contract to the following firms as on-call providers of transportation engineering and planning services, and to authorize the City Manager to execute a Master Agreement for an initial term of three (3) years with each.

1. Kimley-Horn and Associates, Inc.
2. Stantec Consulting Services, Inc.
3. STV Engineers, Inc.
4. Dewberry Engineers, Inc.
5. Alfred Benesch & Company

Attachments: 3. Contract – On Call Consultants – Transportation Engineering & Planning Serv

2023-052 Municipal Agreement - NCDOT for Transportation Alternatives Funds (TAP) - sidewalk construction project EB-5873 - University Parkway (SR 1278)

City Council is requested to approve a Municipal Agreement with the North Carolina Department of Transportation (NCDOT) at the City's cost which is 20% ($72,000) of the overall project cost which is for TAP funding to construct a sidewalk project along University Parkway.

Attachments: 4. Municipal Agreement with NCDOT for Transportation Alternatives Funds (TAI

2023-053 Municipal Agreement - NCDOT for Transportation Alternatives Funds (TAP) - sidewalk construction project EB-5874 - Eastchester Drive (NC

68)
City Council is requested to approve a Municipal Agreement with the North Carolina Department of Transportation (NCDOT) at the City's cost which is 20% ($126,000) of the overall project cost
which is for a sidewalk construction project EB-5874 along Eastchester Drive (NC 68).

Attachments: 5. Municipal Agreement - NCDOT for Transportation Alternatives Funds (TAP) -

2023-054 New Position Request - Planner - Planning and Development Department
The Planning and Development Department requests an entry-level Planner position within the Development Services Division due to the increase in the number of land development records in recent years, and an increase in public inquiries related to development.

Attachments: 6. New Position Request – Planner - Planning and Development Department

2023-041 Contract - Oltrin Solutions LLC - Bulk Purchase of Sodium Hydroxide - Public Services
Public Services Department is requesting approval from City Council for authorization to piggyback off the Winston-Salem / Forsyth County Utility Commission's bid
submitted by Oltrin Solutions LLC for Caustic Soda (Sodium Hydroxide) a one (1) year contract for the annual amount of $340,090...Body

Attachments: 7. Contract – Oltrin Solutions LLC – Bulk Purchase of Sodium Hydroxide – Publi
Recommendation Form - Caustic 1-24-23

2023-042 Contract - Change Order No. 2 - Baker Underground Inc. - Waterview Pump Station Forcemain Extension
City Council is requested to approve Change Order No. 2 to Baker Underground Inc. in the amount of $455,546.74, and a 70-day extension to the contract end date for the
extension of the 16-inch forcemain from Eastchester Drive to Whites Mill Road, approximately 730 linear feet.

Attachments: 8. Contract – Change Order No. 2 – Baker Underground Inc. – Waterview Pump

2023-048 Sole Source Contract - Clearwater Inc. - Eastside Wastewater Treatment Plant (WWTP) DAF #3 Recirculating Pump
City Council is requested to award a sole source contract to Clearwater Inc. in the amount of $39,900 for the purchase of a recirculating pump for Dissolved Air Flotation (DAF) thickener #3 for the Eastside Wastewater Treatment Plant (WWTP).

Attachments: 9. Sole Source Contract – Clearwater Inc. – Eastside Wastewater Treatment Pla
Sole Source Form- DAF #3

2023-045 Contract - Environmental Services - Rubicon, Route Optimization & Software Solution
City Council is requested to award a contact to Rubicon in the amount of

$90,937.50 for Environmental Services waste and recycling collection processes to provide the following: oversee collection progress for each truck, driver uploaded issues with collections,
driver uploaded photos, location collection verification, vehicle tracking/alerts for drivers, improve routing and efficiency.

Attachments: 10. Contract - Environmental Services – Rubicon, Route Optimization & Softwar

2023-047 Contract Amendment - Community Housing Solutions - 506 Rolling Green Drive - Cedrow Affordable Housing Project

City Council is requested to approve the amendment of the executed contract with Community Housing Solutions (CHS) in the amount of $246,553.56 to add the construction of an additional unit at 506 Rolling Green Drive in the Cedrow Affordable Housing Project.

Attachments: CHS Contract Amendment-506 Rolling Green

2023-046 Ordinance - American Rescue Plan Act (ARPA) Project Funding

1. Staff recommends and asks City Council to approve the community application process for American Rescue Plan Act (ARPA) funds, as outlined above.
2. Staff recommends and asks City Council to approve the grant project ordinance amendment for the use of American Rescue Plan Act (ARPA) for government services.
3. Staff recommends and asks City Council to approve the budget ordinance amendment for the homeless day shelter ($2,000,000), Foxwood Meadows alternate access project ($990,000), shared use commercial kitchen ($2,000,000), and 300 Oak Street upfits ($3,000,000).

Attachments: 12. Ordinance - American Rescue Plan Act (ARPA) Project Funding

ADJOURNMENT

CITY OF HIGH POINT
AGENDA ITEM

Title: ARPA Project Funding

From: Eric Olmedo, Assistant City Manager

Public Hearing: No

Attachments:

Meeting Date: February 6, 2023
Advertising Date:
Advertised By:

PURPOSE:
To allocate American Rescue Plan Act (ARPA) funds for city projects.

BACKGROUND:
The City of High Point was awarded $22,699,511 in American Rescue Plan Act funds. City Council allocated $5,862,085 to fund critical items on Monday, February 7, 2022, and approved using $3,000,000 of the funds to purchase the 300 Oak property on May 3, 2022. To date, $8,862,085 has been allocated and $13,837,426 remains unallocated.

Staff recommends that the City Council allocate funding for several priority projects listed below:

- Homeless Day Shelter - $2,000,000
- Foxwood Meadows alternate access - $990,000
- Shared Use Commercial Kitchen - $2,000,000
- 300 Oak Street upfits - $3,000,000

The total for these projects is $7,990,000. If allocated, the remaining available balance of these funds will be $5,847,426. As with previous ARPA allocation, to reduce the administrative burden of federal uniform guidance, ARPA funds will be allocated for government services, freeing up the funding needed for the above projects.

Staff also recommends that if a community application process to apply for ARPA funds is approved by Council, that a total dollar amount for these grants is determined and communicated to the applicants before the grant applications are released. Staff recommends a process that requires applications to be due in mid-April, a Council Committee reviews and makes funding recommendations in mid-May, and that the funding decisions are adopted with the FY 2024 Budget in June.

BUDGET IMPACT: The available ARPA available balance is $13,837,426. There is no local budget impact. These are 100% federal funds.

RECOMMENDATION / ACTION REQUESTED:

1. Staff recommends and asks City Council to approve the community application process for American Rescue Plan Act (ARPA) funds, as outlined above.

2. Staff recommends and asks City Council to approve the grant project ordinance amendment for the use of American Rescue Plan Act (ARPA) for government services.

3. Staff recommends and asks City Council to approve the budget ordinance amendment for the homeless day shelter ($2,000,000), Foxwood Meadows alternate access project ($990,000), shared use commercial kitchen ($2,000,000), and 300 Oak Street upfits ($3,000,000).

"AN ORDINANCE AMENDING THE GRANT PROJECT ORDINANCE OF THE CITY OF HIGH POINT, NORTH CAROLINA FOR THE AMERICAN RESCUE PLAN ACT OF 2021: CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS FOR GOVERNMENT SERVICES

Be it ordained by the City Council of the City of High Point, North Carolina, as follows:

Section 1. The Grant Project Ordinance of the City of High Point for the American Rescue Plan Act of 2021: Coronavirus State and Local Fiscal Recovery Funds should be amended as follows:

(A) That the following expenditures be amended as follows

Government Services	$7,990,000
Unassigned	-7,990,000

Section 2. That all ordinances, or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict

Section 3. That this ordinance shall be effective from and after its passage."

Adopted by High Point City Council, this the 6th day of February 2023

_____
Mayor, Jay W. Wagner

ATTEST

_____
Sandra Keeney,
City Clerk

"AN ORDINANCE AMENDING THE 2022-2023 BUDGET ORDINANCE
OF THE CITY OF HIGH POINT, NORTH CAROLINA
APPROPRIATING FUNDING FOR THE HOMELESS DAY SHELTER, FOXWOOD MEADOWS
ALTERNATE ACCESS, SHARED USE COMMERCIAL KITCHEN, AND 300 OAK STREET UPFITS

Be it ordained by the City Council of the City of High Point, North Carolina, as follows:

Section 1. The proposed amendment appropriates $7,990,000 for the homeless day shelter ($2,000,000), Foxwood Meadows alternate access project ($990,000), shared use commercial kitchen ($2,000,000), and upfits at 300 Oak Street ($3,000,000), utilizing budget freed up by the use of American Rescue Plan Act (ARPA) funds for government services

Section 2. The 2022-2023 Budget Ordinance of the City of High Point should be amended as follows:

(A) That the following expenditures be amended as follows:

General Capital Projects	
Homeless Day Shelter	$2,000,000
Shared Use Commercial Kitchen	2,000,000
300 Oak Street Upfits	3,000,000
	$7,000,000
Stormwater Operations	
Foxwood Meadows Alternate Access	$990,000

(B) That the following revenues be amended as follows:

General Capital Projects	
Transfer from General Fund	$7,000,000
Stormwater Operations	
Transfer from General Fund	$990,000

Section 3. That all ordinances, or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4. That this ordinance shall be effective from and after its passage."

Adopted by High Point City Council, this the 6th day of February 2023

_____
Mayor, Jay W. Wagner

ATTEST

_____
Sandra Keeney,
City Clerk

FORMAL BID RECOMMENDATION
REQUEST FOR COUNCIL APPROVAL

DEPARTMENT:

COUNCIL AGENDA DATE:

BID NO.: CONTRACT NO.: DATE OPENED:

DESCRIPTION:

PURPOSE:

COMMENTS:

RECOMMEND AWARD TO: AMOUNT:

JUSTIFICATION:

ACCOUNTING UNIT	ACCOUNT	ACTIVITY	CATEGORY	BUDGETED AMOUNT
TOTAL BUDGETED AMOUNT				

DEPARTMENT HEAD: DATE:

The Purchasing Division concurs with recommendation submitted by the and recommends award to the lowest responsible, responsive bidder in the amount of $.

PURCHASING MANAGER: DATE:

Approved for Submission to Council
FINANCIAL SERVICES DIRECTOR: DATE:

CITY MANAGER: DATE:

CITY OF HIGH POINT
AGENDA ITEM

Title: Contract Amendment - Cedrow Affordable Housing Project

From: Thanena S. Wilson, Director
Community Development & Housing

Meeting Date: February 6, 2023

Public Hearing: N/A

Advertising Date: N/A
Advertised By:

Attachments: Site Plan
House Design

PURPOSE:

The Community Development and Housing Department proposes to amend the executed contract with Community Housing Solutions (CHS) in the amount of $246,553.56 to add the construction of an additional unit at 506 Rolling Green Drive in the Cedrow Affordable Housing Project. This will bring the total number of units under the contract to seven, and the contract total to $1,733,442.12.

BACKGROUND:

There is additional grading work that will need to be completed for one of the six lots in the original contract causing a delay in the construction start. Conveyance of the six lots was approved by City Council on January 17, 2023, and the 10-day public notice was published making a substitution of lots infeasible. Therefore, adding this unit sooner than planned will allow CHS to keep construction moving according to the project timeline for completion of six units.

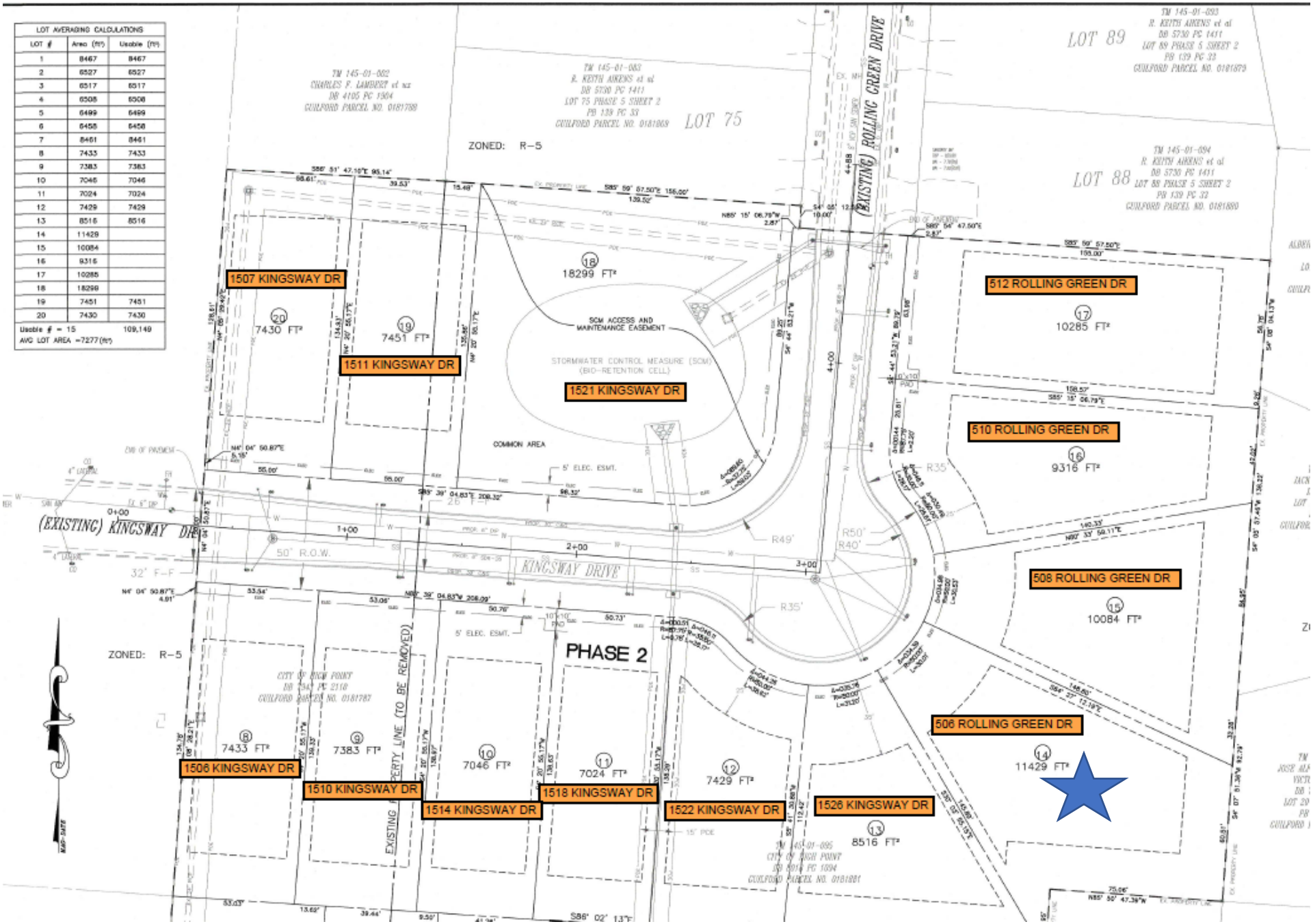
BUDGET IMPACT:

The funding source for this project will be federal HOME funds and there are sufficient funds in the FY2022-23 budget.

RECOMMENDATION / ACTION REQUESTED:

The Community Development and Housing Department recommends approval of the contract amendment and that the appropriate City official and/or employee be authorized to execute all necessary documents.

CEDROW DRIVE PROJECT



LOT AVERAGING CALCULATIONS		
LOT #	Area (ft²)	Usable (ft²)
1	8467	8467
2	6527	6527
3	6517	6517
4	6508	6508
5	6499	6499
6	6458	6458
7	8461	8461
8	7433	7433
9	7383	7383
10	7046	7046
11	7024	7024
12	7429	7429
13	8516	8516
14	11429	
15	10084	
16	9316	
17	10285	
18	18299	
19	7451	7451
20	7430	7430
Usable # = 15		109,149
AVG LOT AREA =7277(ft²)		

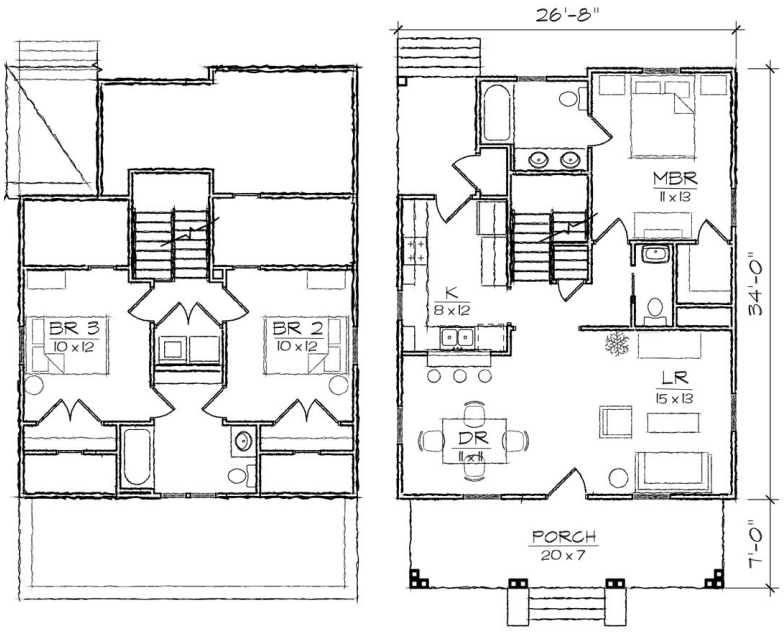
TightLines Designs
creating great places to live

Bailey II

This one and one half story bungalow style home of 1250 square feet features a large open living and dining area and a first floor master bedroom suite. The plan includes a total of three bedrooms, two and a half bathrooms, and an L-shaped galley kitchen with a breakfast bar that opens to the dining room. The second floor offers two bedrooms, a shared bathroom, the laundry area, and abundant easily accessible storage.

The Arts and Crafts inspired exterior offers a side to side gabled roof and a front gabled dormer, covered front and rear porches, and exterior storage room. At 26'-8" it is ideally suited for a narrow lot.

Also available: Bailey I, Bailey III.
Modifications available upon request.



SECOND FLOOR FIRST FLOOR

Specifications

bedrooms: **3**	square footage: **1250**	roof pitch: **9/12**
bathrooms: **2.5**	1st floor ceiling: **9'**	width: **26' 8"**
stories: **2**	2nd floor ceiling: **8'**	depth: **41'**

CITY OF HIGH POINT
AGENDA ITEM

Title: Environmental Services – Rubicon, Route Optimization & Software Solution

From: Robby Stone – Public Services Director
Melinda King – Asst. Public Services Director

Meeting Date: February 6, 2023

Public Hearing: No

Advertising Date: N/A
Advertised By: N/A

Attachments: Master Software Services Agreement

PURPOSE:
To request approval for the purchase of Rubicon software for Environmental Services waste and recycling collection processes. This software will assist to provide the following:

- Oversee collection progress for each truck (total stops, number completed, remaining stops)
- Driver uploaded issues with collections (cart not out, vehicle blocking cart, etc.)
- Driver uploaded photos of issues.
- Location collection verification
- Vehicle tracking/Alerts for drivers (back door pick up, etc.)
- Improve Routing and Efficiency

BACKGROUND:
Environmental Services performed a pilot this fall with Rubicon. It provides a visual map for the operator of their route, once a property is collected the address changes color to show it is collected. If there is an issue such as the toter(s) is not out or a car is parked in front of the toter(s) that doesn't allow for collection or they have violated an ordinance, the operator can take a photo and attach it to the address and program. Supervision can monitor the operator's location in real time, and if they receive a call or complaint the office staff can access those photos to explain the situation to the complainant.

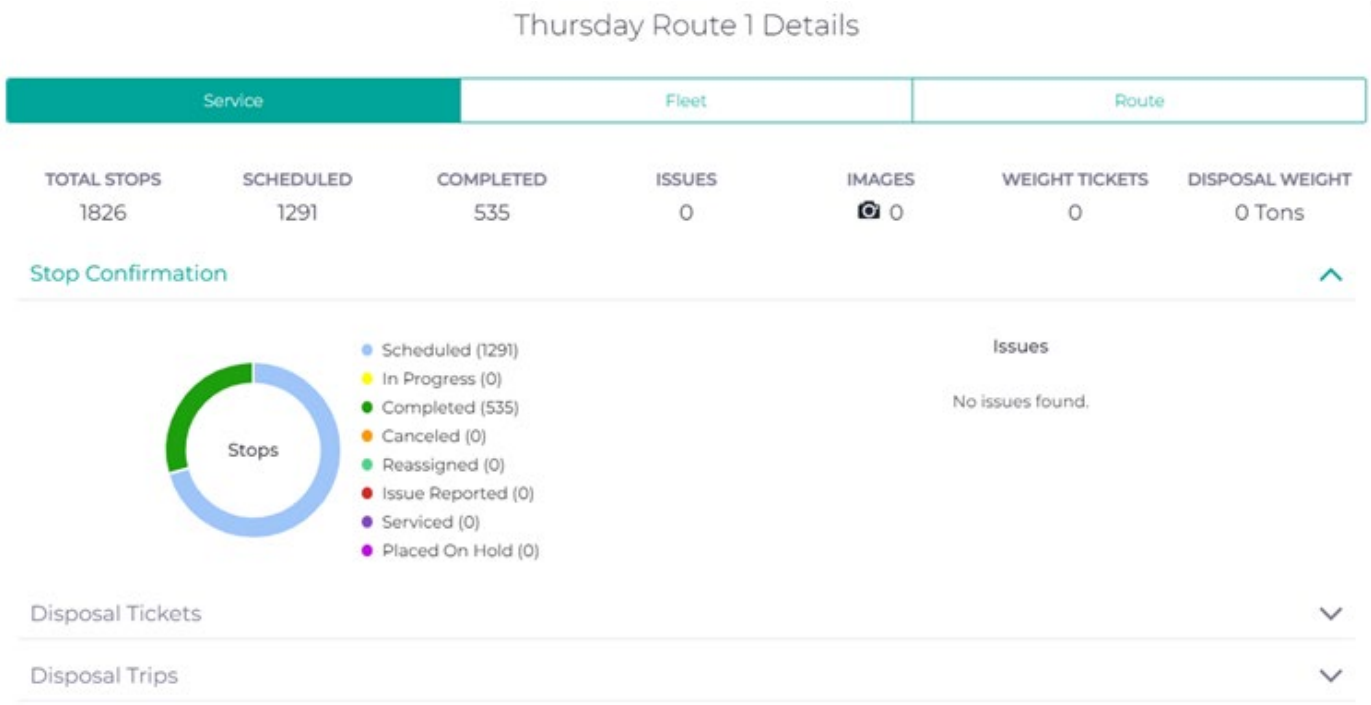
Part of the expense is for cameras to be mounted on the trucks to collect a photo at intervals so the entire route will have a visual track that can be accessed through the software. This is an automatic system that the operator doesn't have to take time to push a button, etc.

Rubicon will also be able to determine if we are using the most efficient and cost-effective routes. This is very important as we experience growth.

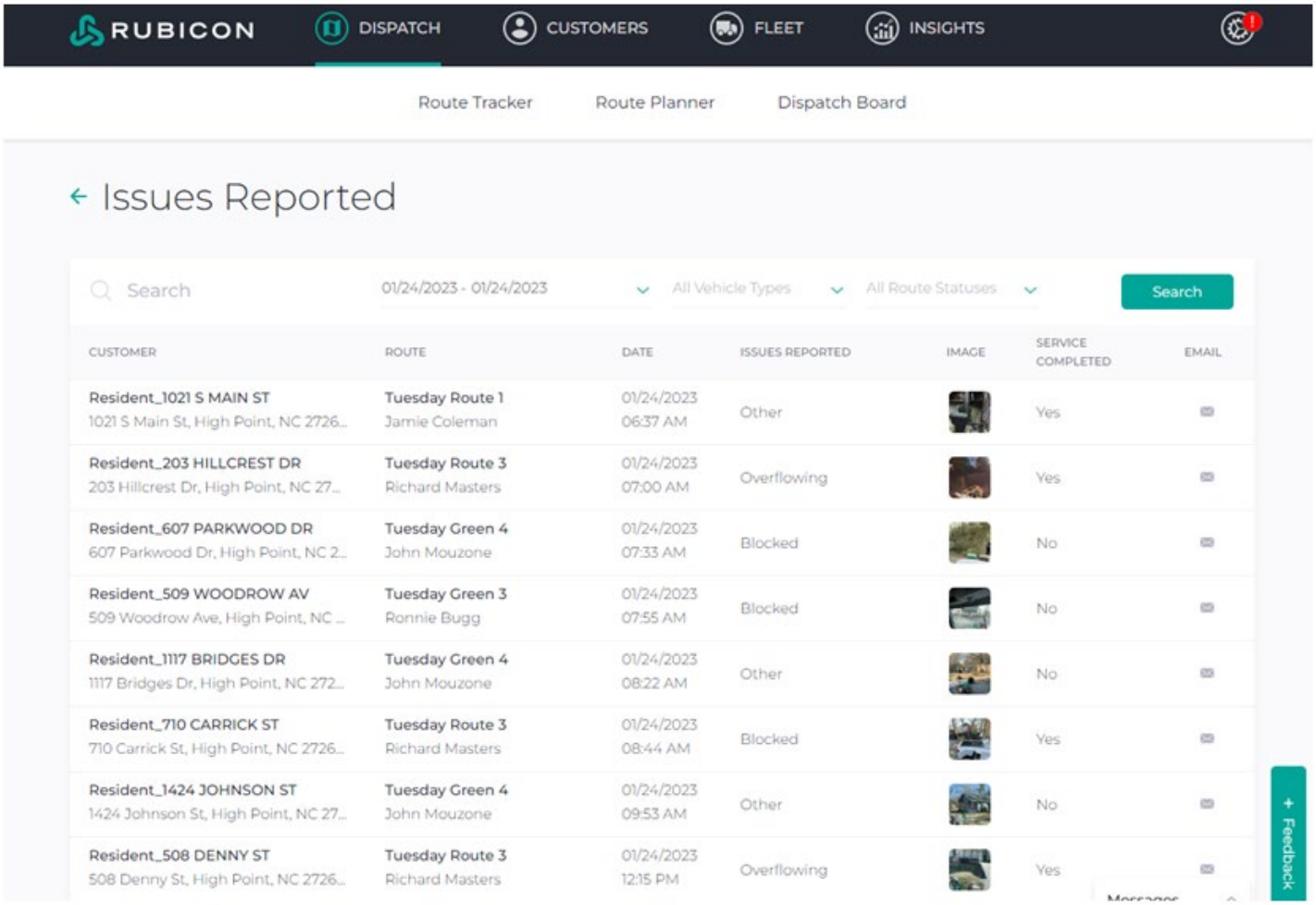
BUDGET IMPACT:
Funding for this order is currently available in the FY 2022-2023 budget.

RECOMMENDATION / ACTION REQUESTED:
The Public Services Department - Environmental Services Division is recommending that Council approve the request to purchase Rubicon software for $90,937.50. The contract cost for years two and three will be $67,500 each with a total three-year cost equaling $225,937.50.

This screen allows us to check a driver's progress throughout the day. It shows how many total stops they have on their route, how many they have completed, and how many are left to complete.



The screen below allows the driver to enter any issues they encounter at an address and take a photo of the issue.



This screen allows us to look up an address and see if a truck has been at a location yet, and what time they were there.

RUBICON DISPATCH CUSTOMERS FLEET INSIGHTS

Customers Suspended Locations

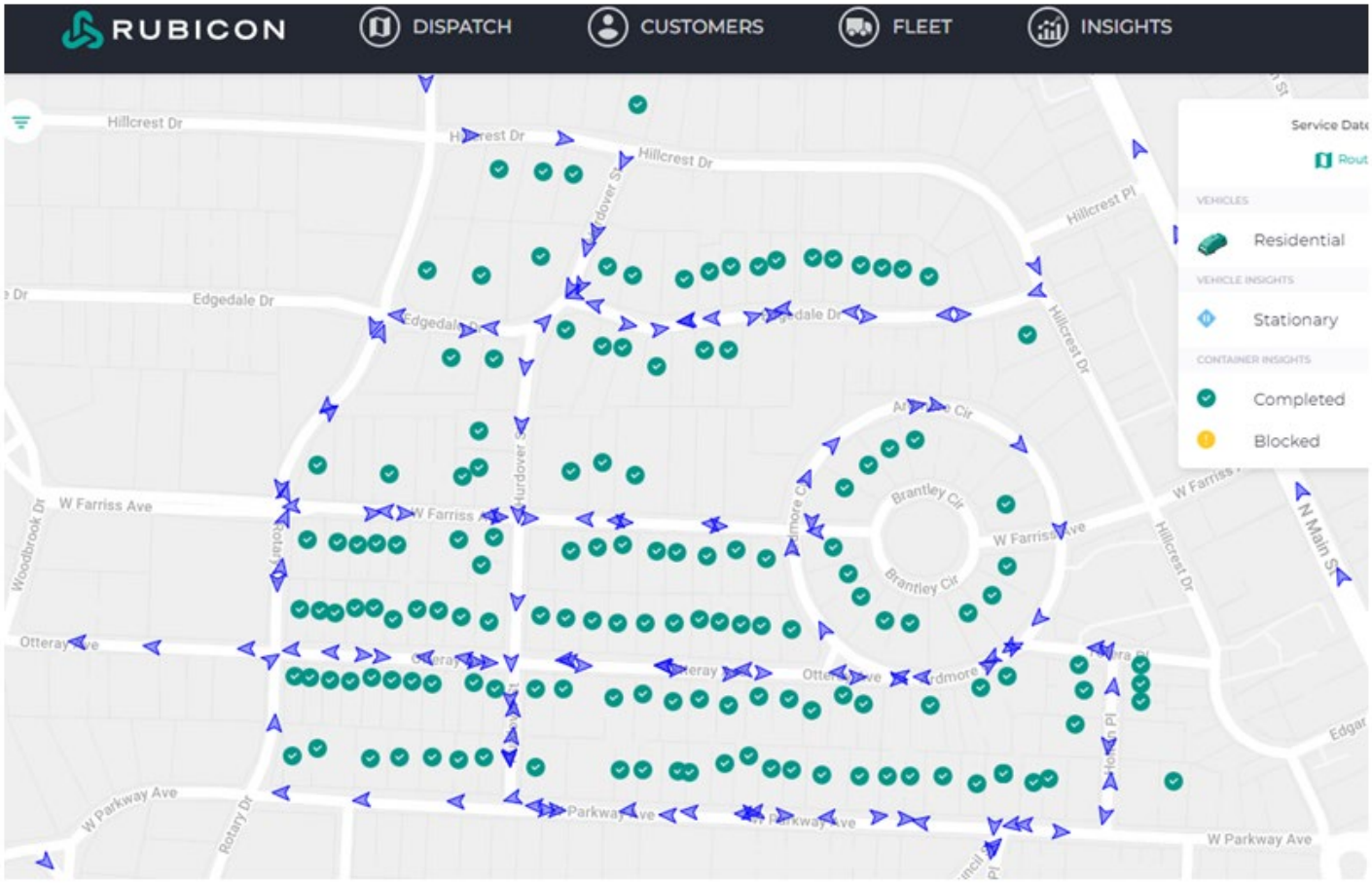
Service History

+ Add Job | Communications | Export

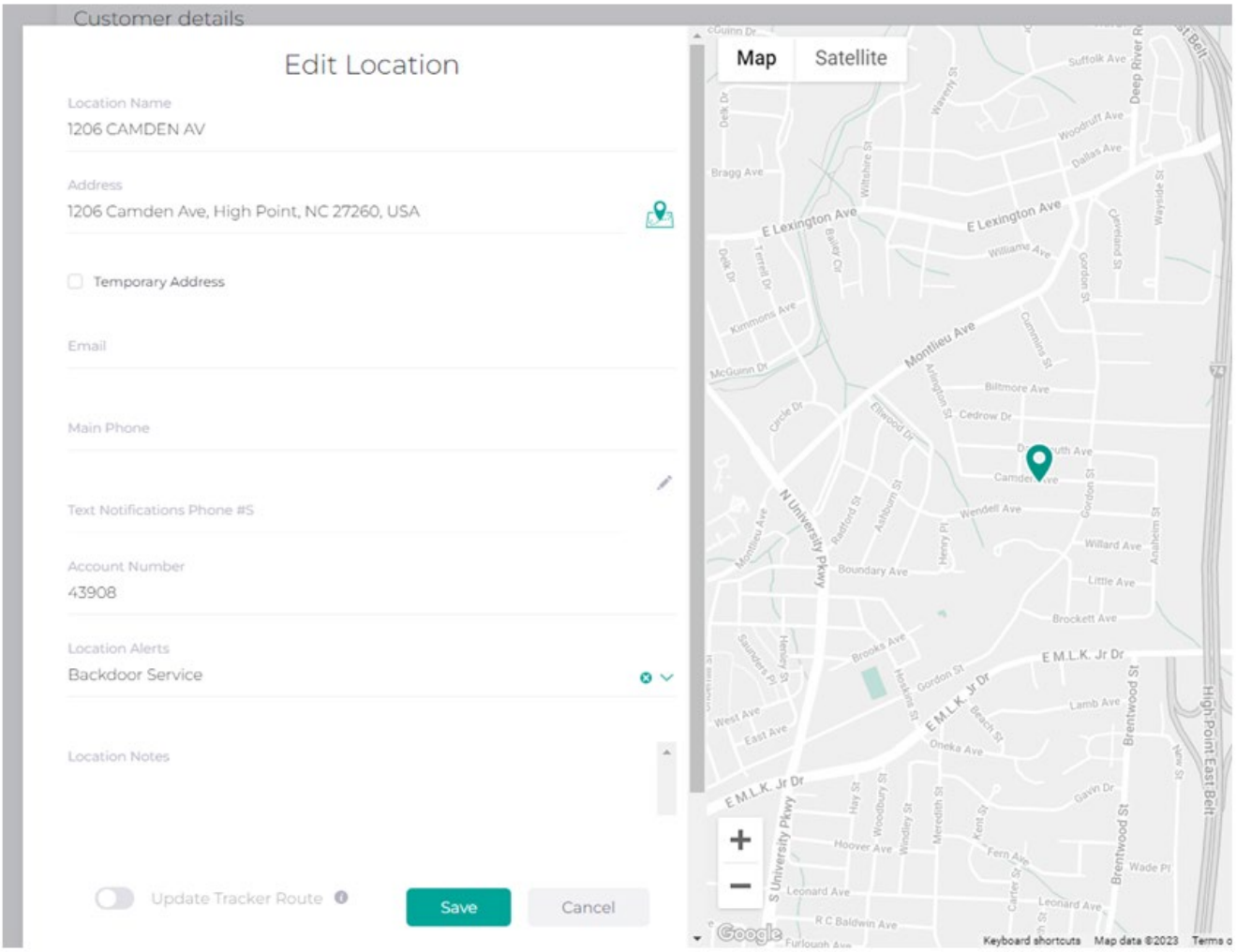
Location / Address | All Statuses | 12/26/2022 - 01/26/2023

LOCATION / ADDRESS	SERVICE	DATE	PICKUP STATUS	ROUTE	PICKUP TYPE	EVENTS
2201 WAYNICK ST 2201 Waynick St, High Point, NC 27265, USA	96GL - Cart Single Stream R...	01/26/2023 08:25 AM	Completed	Thursday Green 3 689 Jamie Coleman	Pickup	
2201 WAYNICK ST 2201 Waynick St, High Point, NC 27265, USA	96GL - Cart Trash - MSW	01/26/2023 08:17 AM	Completed	Thursday Route 1 654 Shanyce Frith	Pickup	
2201 WAYNICK ST 2201 Waynick St, High Point, NC 27265, USA	96GL - Cart Trash - MSW	01/20/2023	Scheduled	Thursday Route 1 Jamie Coleman	Pickup	
2201 WAYNICK ST 2201 Waynick St, High Point, NC 27265, USA	96GL - Cart Trash - MSW	01/19/2023	Scheduled	Thursday Route 1	Pickup	
2201 WAYNICK ST 2201 Waynick St, High Point, NC 27265, USA	96GL - Cart Trash - MSW	01/12/2023 11:13 AM	Completed	Thursday Route 1 693 Jamie Coleman	Pickup	

This screen allows us to track the truck and see where they are – and to see if both sides of the street have been serviced.



This screen allows me to put alerts on a location, such as letting the drivers know that the address they are approaching has back door collection service



DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

MASTER SOFTWARE SERVICES AGREEMENT

THIS MASTER SOFTWARE SERVICES AGREEMENT (this "Agreement") is made and entered into as of **December 20, 2022,** by and between RUBICON GLOBAL, LLC, a Delaware limited liability company ("Rubicon"), and THE CITY OF HIGH POINT with a principal place of business at 211 S Hamilton Street, High Point, NC 27260 ("Client"). This contract is made pursuant to Sourcewell Contract 020221-RUB by and between Rubicon Global, LLC and Sourcewell, which commenced March 26, 2021(the "Sourcewell Contract"). The City of High Point's Sourcewell account number is 18103.

In consideration of the mutual covenants and agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

Capitalized terms used and not otherwise defined in this Agreement shall have the following meanings:

1.1 "Affiliate" means any entity that is controlled by Client, where "control" means the ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares, or interests in an entity.

1.2 "Agreement" means this Agreement, and any Orders, exhibits, Statements of Work and amendments to the foregoing.

1.3 "Client" means the entity entering into this Agreement and any Affiliate designated in this Agreement or an Order which is authorized to receive the Subscribed Services. Client shall be fully responsible for the performance of all of its Affiliates' obligations under this Agreement.

1.4 "Client Content" means all data, imagery, information and other content (a) transmitted by or on behalf of Client through the System; (b) provided by Client or on Client's behalf for use in connection with the Subscribed Services; or (c) otherwise processed or stored by Rubicon or its contractors on Client's behalf pursuant to this Agreement.

1.5 "Documentation" means the then-current, commercially available user manuals, training materials and technical manuals relating to the Subscribed Services provided to Client by Rubicon pursuant to this Agreement.

1.6 "Effective Date" means the earlier of (a) the date this Agreement and the first Order are accepted and signed by Rubicon; or (b) the date Client begins using or receiving the Subscribed Services.

1.7 "Intellectual Property Rights" means, on a world-wide basis, any and all (a) rights associated with works of authorship, including without limitation, copyrights, copyrightable rights, moral rights and mask work rights; (b) trademark, service mark and trade name rights and any similar rights recognized under applicable law; (c) rights in confidential information and trade secret; (d) patents and patentable rights; (e) all rights with respect to inventions, discoveries, improvements, know-how, formulas, algorithms, processes, technical information and other technology; (f) all other intellectual and industrial property rights of every kind or nature, whether arising by operation of law, contract, license or otherwise; and (g) all international, national, foreign, state and local registrations, applications for registration and any renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisions, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations relating thereto; and to settle and retain all proceeds from any such actions).

1.8 "Marks" means the trademarks, service marks or trade names of Client.

1.9 "Order(s)" means the order(s), and any amendments thereto, executed by the parties and which references this Agreement. Each Order shall specify the Subscribed Services being subscribed for, the licensing parameters, the term of the Order, the applicable fees, billing period, and other charges, as well as payment terms. Each Order with the terms of this Agreement, and any exhibits and amendments to such Order, is a separate and independent contractual obligation of Rubicon from any other Order. In the event of any conflict between the terms of this Agreement and the terms of any such Order, the terms of such Order shall prevail.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

1.10 "Professional Services" means implementation, consulting and training services, including without limitation, technical services to facilitate setup and deployment of the Subscribed Services specified in a Statement of Work.

1.11 "Rubicon Software" means Rubicon's proprietary software programs used by Rubicon to provide the Subscribed Services (including, without limitation, all source code, object code, designs, copyrightable works, ideas, inventions, technology and other Intellectual Property Rights therein), as modified, enhanced or replaced by Rubicon from time to time. For the avoidance of doubt, Rubicon Software does not include Client Content.

1.12 "Statement of Work" means a document executed by both parties that describes the Professional Services to be performed by Rubicon pursuant to the Professional Services Terms (as defined in Section 2.6), including without limitation, the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference this Agreement and be sequentially numbered. Each Statement of Work with the Professional Services Terms, and any exhibits, change orders and amendments to such Statement of Work, is a separate and independent contractual obligation of Rubicon from any other Statement of Work.

1.13 "Subscribed Services" means Rubicon's proprietary, web-based services set forth in an Order which are provided to Client on a subscription basis and enable use of the Rubicon Software through the System.

1.14 "System" means the Rubicon Software and the server grade computers and related networks maintained by or on behalf of Rubicon and its third-party providers to host the Rubicon Software and provide the Subscribed Services to Client, all as hereafter modified, enhanced or replaced by Rubicon.

1.15 "Third Party Offerings" means services delivered or performed by third parties independently of Rubicon related to the Subscribed Services, or other online, web-based CRM, ERP, or other business application subscription services, and any associated offline products provided by third parties, that interoperate with the Subscribed Services.

1.16 "Work Product" means any software, data, documentation, graphics, text, code, inventions, pictures, audio, video, animations, enhancements, improvements, methods, processes, works of authorship, work-flow methods or other deliverables or any portions of the foregoing that Rubicon creates, whether alone or jointly, while performing Professional Services or any other services hereunder. Work Product excludes: (a) the Subscribed Services; (b) the System; (c) any generic routines or code that have general application to the Rubicon Software or System; and (d) all modifications, alterations, derivative works and enhancements to the foregoing, and all copies thereof.

2. Services.

2.1 Subscribed Services. Subject to the terms and conditions set forth herein, including without limitation, Client's payment of all applicable fees, Rubicon hereby agrees to provide the Subscribed Services, and in connection therewith, Rubicon hereby grants to Client during the term of the applicable Order a non-exclusive, non-transferable, non-sublicensable, limited right and license to (a) access and use of the Subscribed Services subject to the terms specified in the SOW and as specified in the applicable Order, solely for Client's internal use; (b) to transmit and receive Client Content to and from the System; and (c) use the Documentation in connection with such rights. The rights granted to Client pursuant to any Order shall terminate upon the termination or expiration of this Agreement or the applicable Order for any reason. All rights not expressly granted to Client are reserved by Rubicon and its licensors.

2.2 Limitations. Client shall not: (a) access or use any portion of the Subscribed Services or System except as expressly authorized pursuant to an Order; (b) cause or permit decompilation, reverse assembly or reverse engineering of all or any portion of the Subscribed Services or System; (c) copy any ideas, features, functions or graphics of the Subscribed Services or System or modify or make derivative works based upon the Subscribed Services or System; (d) delete, fail to reproduce or modify any patent, copyright, trademark or other proprietary rights notices which appear on or in the Subscribed Services, System or Documentation; or (e) directly or indirectly, sublicense, relicense, distribute, disclose, use, rent or lease the Subscribed Services or System, or any portion thereof, for third party use, third party training, facilities management or time-sharing, or use as an application service provider or service bureau. Without limiting the foregoing, Client may not use the Subscribed Services or System to: (i) send or store material containing viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (ii) interfere with or disrupt the integrity or performance of the Subscribed Services, System or the data contained therein; or (iii) attempt to gain unauthorized access to the Subscribed Services or System.

2.3 Support. Client will be responsible for providing first line maintenance and support to its authorized end users in connection with the Subscribed Services. Qualified employees of Client who have been trained on use of the Subscribed Services (the "Designated Employees") to contact Rubicon with technical questions or issues with respect to the

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

Subscribed Services and to report System outages or failures. Rubicon shall respond to the technical support questions from the Designated Employees and commence the process of responding to System or Subscribed Services outages or failures in accordance with Rubicon's standard procedures. The Designated Employees shall assist Rubicon in resolving issues with the Subscribed Services and System as Client resources allow. Rubicon acknowledges that limited availability of Designated Employees does not, under any circumstance, waive Rubicon's obligations described in Addendum A. Rubicon is under no obligation to provide functional updates, enhancements or upgrades to the System or Subscribed Services by any time certain.

2.4 System Availability. Rubicon will use commercially reasonable efforts to enable and maintain access to the Subscribed Services. Updates to the System will be scheduled for evenings and/or weekends to minimize disruption. Client acknowledges and agrees that certain portions of the Subscribed Services, including without limitation, data storage, hosting, and System hardware management, may be provided by third party service providers. Rubicon will provide ongoing management of the System, located at the third-party provider's location, in accordance with Rubicon's agreement with the third-party provider(s), in order to maintain the best practical availability of the Subscribed Services. Rubicon may change its third-party data hosting provider to another hosting provider, in Rubicon's sole discretion, from time to time. Additional system availabilities can be found in Addendum A.

2.5 Browsers. Client acknowledges and agrees that the Subscribed Services will only be compatible with and support use with the most recently superseded version for one year from the date of the general release of the then-current version, of the following browsers: Edge, Firefox, Safari and Google Chrome.

2.6 Professional Services. If requested and as available, Rubicon will provide Client with Professional Services pursuant to mutually agreeable Statements of Work in accordance with the Professional Services Terms attached hereto as Exhibit A ("Professional Services Terms").

2.7 Provisioning of the Subscribed Services. Rubicon may update the functionality and user interface of the Subscribed Services from time to time in its sole discretion as part of its ongoing improvement of the Subscribed Services. Client agrees that its subscription to the Subscribed Services is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Rubicon regarding future functionality or features.

3. Client Obligations.

3.1 Resources. Except as expressly set forth herein, Client and its end users shall be solely responsible for providing all resources, equipment and software at its or their respective facilities which are necessary for them to access the System and/or receive the Subscribed Services. Client and its end users must provide all equipment and licenses necessary to access and use the Internet, and pay all fees associated with such access and use. To the extent Rubicon's provision of the Subscribed Services requires data, documents, information or materials of any nature to be furnished, in whole or in part, by Client or its employees, agents, contractors, representatives or authorized users, Client will cause such employees, agents, contractors, representatives and authorized users to furnish such data, documents and information in a manner which permits Rubicon to perform the Subscribed Services as contemplated herein.

3.2 Third Party Coordination; Required Consents. To the extent the Subscribed Services require access to a third party service provider who is under contract with Client, or access or use of such provider's information or interconnection with such provider's services, facilities, technology or systems in order to receive or transmit Client Content, Client shall be responsible for obtaining any required third party licenses or consents necessary for Rubicon to access and use such information, services, facilities, technology or systems.

3.3 Third-Party Web Sites, Products and Services. The Subscribed Services may rely on or require that Client access Third Party Offerings. If Client elects to use the Subscribed Services with Third Party Offerings, Client agrees that: (a) its use of Third Party Offerings must at all times comply with the terms of service governing such offerings; and (b) Rubicon has the right to export and import Client Content to and from such Third-Party Offerings for purposes of delivering the Subscribed Services purchased by Client. Client's or its user's use of third-party websites must at all times comply with the terms of service governing such websites. Client understands and agrees that the availability of the Subscribed Services, or certain features and functions thereof, is dependent on the corresponding availability of Third-Party Offerings or specific features and functions of Third-Party Offerings. Rubicon will not be liable to Client or any third party in the event that changes in Third Party Offerings cause the unavailability of the Subscribed Services or any feature or function thereof. Rubicon may also refer Client to third party service providers that offer Third Party Offerings. Rubicon does not make any representations

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

or warranties regarding any such Third Party Offerings, whether or not such Third Party Offerings or services are designated by Rubicon as "certified," "approved," "recommended" or otherwise, or the services are provided by a third party that is a member of a Rubicon partner program. To the extent that Rubicon requires that Client grant Rubicon authorizations, passwords or other user credentials to a Third-Party Offering ("Rubicon Access Codes") to retrieve Client Content or to enable interoperability with the Subscribed Services, Client shall promptly provide such Rubicon Access Codes.

3.4 Integrated Third-Party Software. Rubicon may integrate third-party computer software into the Subscribed Services. In such an event, Rubicon will obtain, at no additional charge to Client, all rights necessary for Client to use such third-party computer software with the Subscribed Services. All free software is distributed to Client WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. A copy of the free software is included with the Subscribed Services. Rubicon disclaims on behalf of all individuals or entities that distributed such free software to Rubicon (the "Contributors") all warranties and conditions, express and implied, including warranties or conditions of title and non-infringement, and implied warranties or conditions of merchantability and fitness for a particular purpose; and Rubicon excludes on behalf of all such Contributors (i) all liability for damages, including direct, indirect, special, incidental and consequential damages, such as lost profits; and (ii) any provisions which differ from this Agreement which are offered by any particular Contributor alone and not by any other party.

3.5 Compliance with Laws. Client will comply with all applicable laws, rules and regulations relating to Client's or its authorized user's receipt or use of the Subscribed Services. Without limiting the foregoing, Client will be solely responsible for determining the extent to which the design or provision of the Subscribed Services is subject to any privacy laws or regulations ("Privacy Laws") or the oversight of any regulatory agency charged with the enforcement thereof ("Regulatory Oversight"). To the extent that the design and operation of the Subscribed Services is subject to any Privacy Laws or Regulatory Oversight, Client will specify any procedures to be taken by Rubicon during the customization and provision of the Subscribed Services to cause the Subscribed Services to be in compliance with such Privacy Laws and Regulatory Oversight. Client shall not export the Subscribed Services, System or Documentation in violation of U.S. Department of Commerce export administration regulations.

3.6 Activity. Rubicon will provide Client access to the Subscribed Services by issuance of a confidential site address and passwords to Client. Client is responsible for maintaining the confidentiality of such address and passwords and any activity that transpires through the use of such address and passwords. Client shall: (a) notify Rubicon immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (b) report to Rubicon immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of Client Content that is known or suspected by Client; and (c) not impersonate another Rubicon client or user or provide false identity information to gain access to or use of the Subscribed Services.

4. Prices; Ordering; Payment.

4.1 Invoicing and Payment. Except as otherwise specified in an Order or Statement of Work: (a) Client shall pay to Rubicon all fees, charges and expenses due and owing pursuant to an Order or Statement of Work in U.S. dollars to the address designated on the invoice within thirty (30) days following Rubicon's invoice date; and (b) all payment obligations are non-cancellable, non-refundable and non-contingent. Client may not set-off any amounts owing to Client against any payments owing to Rubicon hereunder. Payments which are not received when due shall bear interest at the lesser of the maximum amount chargeable by law or one and a half percent (1½%) per month commencing with the date payment was due. In addition, in the event Client fails to timely pay any fees or charges when due, Rubicon may, in its discretion, suspend or terminate any Subscribed Services or other services hereunder in accordance with Section 5.3. Client will continue to be charged for all Subscribed Services and other services during any period of suspension.

4.2 Taxes and Duties. Excluding taxes based on Rubicon's net income, Client is liable and responsible for paying all federal, state and local sales, foreign withholding, value added, use, property, excise, service and other taxes, and all duties and customs fees relating to Client's receipt or use of the Subscribed Services, whether or not Rubicon invoices Client for such taxes, duties or customs fees, unless Client timely provides Rubicon with a valid tax exemption or direct pay certificate showing Client is exempt from such payments. If Rubicon is required to pay any such taxes, duties or customs fees, Client shall reimburse Rubicon for such amounts in accordance with Section 4.1, and Client further agrees to indemnify, defend and hold harmless Rubicon for any such taxes, duties and customs fees and any related costs, interest and penalties paid or payable by Rubicon with respect thereto to the extent permitted by law.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

4.3 Audits. During the Term, upon thirty (30) days prior written notice to Client, Rubicon may audit Client's facilities, records and use of the Subscribed Services to determine Client's compliance with the terms and conditions of this Agreement. Such audits shall occur during regular business hours and shall be conducted in a manner designed to limit disruption to Client's business.

5. Term and Termination.

5.1 Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall continue for a period of three (3) years unless earlier terminated in accordance with the provisions hereof. The Term shall allow for additional one-year extensions upon mutual agreement of the parties hereto at additional cost, provided that there shall be no more than two (2) such extensions at one (1) year per extension.

5.2 Automatic Monthly Extension. On the last day of the Term, unless (a) an agreement for a renewal term has been executed; or (b) either party provides a written notice of non-renewal at least seven (7) days in advance of the last day of the then-current term, this Agreement will automatically extend and continue to be effective on a month-to-month basis until either (a) or (b) occurs ("Automatic Monthly Extension").

5.3 Termination. Either party may terminate this Agreement or the applicable Order or Statement of Work if the other party breaches this Agreement or such Order or Statement of Work, as applicable, and fails to correct the breach within thirty (30) days following receipt of written notice from the non-breaching party. In addition, Rubicon may terminate this Agreement immediately if Client files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or if a trustee is set up to administer a substantial portion of Client's assets or business.

5.4 Suspension of Services. In the event (a) Client fails to timely pay any fees when due; or (b) Rubicon believes, upon advice of counsel, that any element of the Subscribed Services, or Client's receipt or use thereof, violates any applicable law, rule or regulation, Rubicon may it its sole discretion suspend or terminate any Subscribed Services and other services immediately without notice.

5.5 Effect of Termination. Upon termination of this Agreement or an Order or Statement of Work for any reason, all payment obligations shall become immediately due and owing and Client shall immediately cease using the applicable Subscribed Services and return all Documentation to Rubicon. In addition, in the event this Agreement or any Order is terminated early, before completion of the applicable term, for any reason other than due to Rubicon's breach, Client shall pay to Rubicon (in addition to any other amounts due under this Agreement) as liquidated damages within thirty (30) days following any such termination, (a) any non-refundable costs incurred by Rubicon in connection with such termination including, but not limited to, hardware costs and licensing fees paid to third party licensors; Client acknowledges and agrees that (i) the payment of such fees does not constitute a penalty, but is due to the difficulty in estimating actual damages for early termination; (ii) such fees are a reasonable estimate of the amounts required to fairly compensate Rubicon in such events; and that (iii) such fees have taken into consideration Rubicon's cost savings due to the termination of this Agreement and the present value of accelerated payments. Upon termination of this Agreement, Client shall also return to Rubicon or destroy all copies of Rubicon's Trade Secrets and Confidential Information in every form. Upon request of Rubicon, Client agrees to certify in writing to Rubicon that it and each of its Affiliates have performed the foregoing obligations. Sections 1, 4, 5.4, 6.2, 6.3, and 7, 8, 10 and 11 shall survive any termination of this Agreement in accordance with their respective terms. In the event of any termination hereunder, Client shall not be entitled to any refund of any payments made by Client.

6. Representations and Warranties.

6.1 Services Warranty. Provided that Client notifies Rubicon of the non-conformance within the warranty period, and subject to the limitations set forth herein, Rubicon warrants that the Subscribed Services will be provided substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date such Subscribed Services are first provided. No specific result from the provision of Subscribed Services is assured or guaranteed. In the event of any breach of the foregoing warranty, Rubicon shall, at its option and as Client's sole and exclusive remedy, (a) re-perform the Subscribed Services which were not performed as warranted at no additional charge; or (b) in the event Rubicon is unable to re-perform such Subscribed Services after exercising commercially reasonable efforts to do so, refund the fees paid to Rubicon for the Subscribed Services which were not performed as warranted. Notwithstanding the foregoing, Rubicon shall have no obligation to provide the warranty services described in this Section 6.1 if: (i) the performance failure is at least partially attributable to Client's deviation from applicable operating instructions or failure to perform Client's obligations set forth in this Agreement; or (ii) Client or any other person or entity (other than Rubicon) has modified the Subscribed Services.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

6.2 Client Acknowledgment. Client acknowledges and agrees that it has made its own evaluation in deciding to subscribe for the Subscribed Services. The warranties provided in this Agreement extend solely to Client and to no other person or entity whatsoever. Without limiting the foregoing, Rubicon is not responsible for the results that may be obtained from use of the Subscribed Services.

6.3 DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, RUBICON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), WITH RESPECT TO THE SUBSCRIBED SERVICES, THE SYSTEM OR ANY OTHER SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PROFESSIONAL SERVICES. RUBICON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL WARRANTIES ARISING FROM CONDUCT, COURSE OF DEALING OR CUSTOM OF TRADE, AND ALL WARRANTIES OF TITLE AND NON-INFRINGEMENT. RUBICON DOES NOT WARRANT THAT THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES ARE OR WILL BE ERROR-FREE OR THAT THE USE OR OPERATION OF THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES WILL BE UNINTERRUPTED OR THAT ALL ERRORS OR ISSUES WITH THE SUBSCRIBED SERVICES, SYSTEM OR OTHER SERVICES CAN OR WILL BE CORRECTED.

7. Confidentiality.

7.1 Confidentiality. Each party (the "Receiving Party") acknowledges that it will have access to Confidential Information and Trade Secrets of the other party (the "Disclosing Party"). For purposes of this Agreement, "Trade Secrets" means information, without regard to form, which: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and "Confidential Information" means information, other than Trade Secrets, that is of value to Disclosing Party and is treated as confidential. Rubicon's Trade Secrets and Confidential Information include, without limitation, the Subscribed Services, the System, the Documentation and object and source code for the Rubicon Software. The Receiving Party agrees to use the Trade Secrets and Confidential Information of the Disclosing Party solely for purposes of performing its obligations or exercising its rights under this Agreement. The Receiving Party agrees to discuss the Trade Secrets and Confidential information of the Disclosing Party only with, and to transmit the Trade Secrets and Confidential Information only to, those officers, employees and consultants of the Receiving Party who have a need to know the Trade Secrets or Confidential Information for the purposes set forth herein and who have agreed in writing to treat such information as confidential on terms no less restrictive than as set forth in this Agreement. The parties acknowledge and agree that the terms of any previously executed confidentiality or nondisclosure agreements shall remain in effect with respect to the information exchanged thereunder.

7.2 Security Precautions. The Receiving Party shall take commercially reasonable security precautions to prevent unauthorized use and disclosure of the Trade Secrets and Confidential Information of the Disclosing Party and shall use at least the same degree of care the Receiving Party employs with respect to its own Trade Secrets and Confidential Information, but in no event less than a reasonable standard of care. The Receiving Party shall not permit unauthorized access to the Trade Secrets or Confidential Information of the Disclosing Party.

7.3 Duration and Exceptions. With regard to Confidential Information, the obligations in this Section 7 shall continue for the Term and for a period of five (5) years thereafter. With regard to Trade Secrets, the obligations in this Section 7 shall continue for so long as such information constitutes a trade secret under applicable law, but in no event less than the Term and for a period of five (5) years thereafter. The Receiving Party's obligations with respect to Trade Secrets and Confidential Information of the Disclosing Party shall not apply to the extent such Trade Secrets or Confidential Information: (a) are previously known to the Receiving Party without restriction on disclosure; (b) cease to be secret or confidential except by reason of a breach of this Agreement by the Receiving Party; (c) are independently developed by the Receiving Party without reference to the Trade Secrets or Confidential Information of the Disclosing Party; or (d) were received from a third party without obligations of confidence and without breach of this Agreement. In addition, the Receiving Party may disclose Trade Secrets and Confidential Information of the Disclosing Party to the extent such disclosure is required by applicable law including, but not limited to, the applicable Freedom of Information Act, or by any governmental authority, provided the Receiving Party notifies the Disclosing Party, if permitted by law, of the applicable legal requirements before such disclosure occurs so as to enable the Disclosing Party to obtain such protection as may be available to preserve the confidentiality of such information.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

8. Intellectual Property Rights.

8.1 Rubicon's Intellectual Property. Rubicon (or its licensors) retains title to the Subscribed Services, System, and Documentation, and all modifications, alterations, derivative works, and enhancements thereto, and all copies thereof and Intellectual Property Rights therein. Except as specified herein, Client does not acquire any rights, express or implied, in the Subscribed Services, System or Documentation, and has no right to commercialize or transfer the Subscribed Services, System or Documentation, in whole or in part. No license, right or Intellectual Property Right in any Rubicon trademark, trade name or service mark is granted pursuant to this Agreement. Subject only to the following, title to all Work Product will at all times remain the sole and exclusive property of Rubicon or its licensors; provided that Rubicon shall not obtain any ownership rights in any Client Content provided by, or on behalf of, Client. Upon request, Client agrees to execute such documents as may be reasonably requested by Rubicon to secure Rubicon's rights in and to the foregoing. Rubicon hereby grants Client during the term of the applicable Order a non-exclusive, royalty free (subject only to the fees provided for in a Statement of Work), limited right and license to copy, use, modify and sub-license all Work Product.

8.2 Client Content. Client shall own all Client Content. Client shall have sole responsibility for the accuracy, completeness, quality, integrity, legality, reliability, timeliness, appropriateness, and intellectual property ownership and right to use all Client Content, and Rubicon shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store Client Content for any reason. Rubicon does not warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Client Content, and Client shall hold Rubicon harmless from any and all third-party claims arising out of Client's use or dissemination of any such Client Content. In the event this Agreement is terminated (other than by reason of Client's breach), Rubicon will make available to Client a file of the Client Content in its possession, if any, within thirty (30) following Client's request; provided such request is made within thirty (30) days following termination of the Agreement. Rubicon reserves the right to (a) withhold, remove and/or discard Client Content in its possession, if any, in the event Client breaches this Agreement, including, without limitation, non-payment of fees and charges; and (b) purge and delete Client Content, if any, in its possession if Client fails to request such Client Data within thirty (30) days following termination of this Agreement.

8.3 License to Client Content. Client hereby grants to Rubicon the non-exclusive right and license to (a) receive, retrieve, process, use and transmit any Client Content necessary or reasonably desirable to perform the Subscribed Services or other services; (b) use, copy, manipulate and store any Client Content that will be archived, stored or otherwise transmitted in connection with the Subscribed Services or other services; and (c) to aggregate Client Content and data with content and data from other clients ("Data Aggregations") for purposes including, without limitation, product and service development and commercialization and quality improvement initiatives. Rubicon will redact Client Content in such a way as to not divulge Client's Confidential Information or Trade Secrets. All Data Aggregations will be the sole and exclusive property of Rubicon.

8.4 License to the Marks. Client hereby grants to Rubicon the worldwide, non-exclusive limited right and license during the Term to use the Marks in connection with performance of the Subscribed Services and its other obligations under this Agreement.

9. Defense and Indemnification.

9.1 Limited Covenant to Defend. Rubicon will defend any third party claim brought against Client in the United States to the extent that the claim, if true, would constitute an infringement or misappropriation by the Subscribed Services of any valid and subsisting patent or copyright (a) recognized under the laws of the United States; and (b) of which Rubicon had actual knowledge; provided, however, that: (i) Client immediately advises Rubicon of the claim upon learning of the assertion of the claim; and (ii) Rubicon is given the sole right to control the defense and/or settlement of the claim, in litigation or otherwise.

9.2 Injunctions Obtained by Third Parties. If a third-party infringement claim, of which Rubicon is notified in accordance with Section 9.1 (or of which Rubicon is otherwise aware or believe is likely) results, or in Rubicon's opinion is likely to result, in an injunction prohibiting Client from continued use of the Subscribed Services that is the subject matter of the claim, then Rubicon may, in its sole discretion and at its expense: (a) procure for Client the right to continue to use the Subscribed Services that are the subject matter of the claim; (b) replace or modify the Subscribed Services that are the subject matter of the claim to make them non-infringing, but, where reasonably possible, preserving the functionality of such Subscribed Services; or (c) if the foregoing remedies are not commercially practical, suspend or terminate access to the infringing Subscribed Services.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

9.3 Exceptions to Duties to Defend and Indemnify. Notwithstanding any other provisions hereof, Rubicon shall have no obligation to indemnify or defend Client for any third party claim pursuant to this Section 9, nor be required to pay losses, damages or expenses under this Section 9, if Client agrees to settle any such claim without the prior written consent of Rubicon, or if the claim arises out of, in whole or in part: (a) a modification of the Subscribed Services by anyone other than Rubicon; (b) use of the Subscribed Services other than in accordance with the Documentation or the terms of this Agreement; (c) use of a release of the Subscribed Services without having implemented updates, the use of which would have cured the alleged infringement; (d) any third party software or service; (e) use of the Subscribed Services in combination with Third Party Offering or any other third party hardware, software, database or materials where, absent such combination, the Subscribed Services would not be infringing; or (f) Client's negligence or willful misconduct.

9.4 Sole Obligation. This Section 9 states Rubicon's sole obligation, and Client's sole and exclusive remedy, with respect to infringement of proprietary and Intellectual Property Rights. Notwithstanding anything else in this Section 9, Rubicon's aggregate liability for indemnification pursuant to this Section 9 shall not exceed the original subscription fees paid by Client to Rubicon for the infringing Subscribed Services.

10. Limitation on Liability.

10.1 EXCLUSION OF DAMAGES. IN NO EVENT SHALL RUBICON OR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE, DELAY OR MALFUNCTION), EVEN IF RUBICON HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

10.2 LIMITATION OF LIABILITY. RUBICON TOTAL AGGREGATE LIABILITY TO CLIENT OR ANY OTHER PERSON OR ENTITY FOR ANY AND ALL CLAIMS AND DAMAGES ARISING FROM OR OUT OF THIS AGREEMENT (WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT TO RUBICON DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DAY THE ACT OR OMISSION OCCURRED THAT GAVE RISE TO CLIENT'S FIRST CLAIM.

10.3 EXCEPTIONS. THE FOREGOING LIMITATIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW.

11. Miscellaneous.

11.1 Dispute Resolution; Governing Law. The laws of the State of North Carolina shall govern this Agreement, without reference to conflicts of law rules or principles. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement. Client hereby consents and submits to the exclusive jurisdiction and venue over any action, suit or other legal proceeding that may arise out of or in connection with this Agreement, by any state or federal court located within or about Guilford County, North Carolina USA. Client shall bring any action, suit or other legal proceeding to enforce, directly or indirectly, this Agreement or any right based upon it exclusively in such courts.

11.2 Force Majeure. Neither party will be liable for any loss, damage or delay resulting from any event beyond such party's reasonable control (a "Force Majeure Event"), and delivery and performance dates will be extended to the extent of any delays resulting from any such Force Majeure Event. Each party will promptly notify the other upon becoming aware that a Force Majeure Event has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. Notwithstanding any other provision of this Section 11.2, a Force Majeure Event shall not relieve Client of its obligations to pay monies due and owing to Rubicon hereunder.

11.3 Assignment. Neither party shall assign, transfer, or otherwise delegate any of its rights, duties, or obligations under this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any attempted assignment (whether by operation of law or otherwise) shall be void; except that Rubicon may delegate any of its rights, duties, or obligations under this Agreement to one or more of its affiliates, in which case Rubicon shall make a commercially reasonable effort to provide a thirty (30) days' advance notice of such delegation. Notwithstanding the foregoing, either party may assign its rights, duties, and obligations hereunder, without approval of the other party, to a party that succeeds to all or substantially all of its assets or business (whether by sale, merger, operation of law or otherwise), so long as the assignee agrees in writing to be bound by the terms and conditions

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

of this Agreement; provided, however, that any such assignment by Client shall be subject to any fee adjustments specified in an Order, or that may be necessary because of Client's use of the subscribed Services beyond the licensing parameters specified in the applicable Order**;** and further provided that no such assignment may be to a competitor of Rubicon. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

11.4 Independent Contractors. Nothing in this Agreement shall be construed to create an agency, joint venture, partnership or other form of business association between the parties. Neither party has the right or authority to make any contract, representation or binding promise of any nature on behalf of the other party, and neither party shall hold itself out as having such right or authority.

11.5 No Waiver. The failure on the part of either party to exercise any right or remedy hereunder will not operate as further waiver of such right or remedy in the future or any other right or remedy.

11.6 Severability. In the event that any provision of this Agreement is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Agreement, and the application of such provision in any other circumstances, will not be affected thereby.

11.7 Counterparts. This Agreement may be executed in duplicate and either copy or both copies are considered originals.

11.8 Notices. All official notices (including any notices regarding breach, termination, renewal, etc.) required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified, registered mail or next day express mail or courier, postage prepaid. Any such notice shall be deemed given (a) when so delivered personally; (b) three (3) days after, when sent by certified or registered mail; or (c) the day after, when sent by next day express mail or courier, as follows: (i) if to Client, to it at: 211 S Hamilton Street, High Point, NC 27260; (ii) if to Rubicon, to it at: Rubicon Global, LLC, 100 W Main Street, Suite 610, Lexington, KY 40507. In addition, routine, non-contractual notices, consents and approvals (including support) given under this Agreement may be delivered in writing as provided above or through electronic mail or other electronic record addressed to the parties identified herein.

11.9 Marketing. Client agrees that Rubicon may reference Client's execution of this Agreement and its status as a user of the Subscribed Services in marketing materials and in sales presentations. Rubicon may use Client's Marks in connection with such usage.

11.10 Entire Agreement. This Agreement (including any Orders, Exhibits, Statements of Work and attachments, which are hereby incorporated herein by reference) constitute the final and entire agreement between the parties, and supersedes all prior written and oral agreements, understandings, or communications with respect to the subject matter of this Agreement.

11.11 Cooperative Purchasing. Rubicon and the Client agree that other government entities (including but not limited to municipalities, counties, states, public utilities, non-profit hospitals, educational institutes, special governmental agencies, and non-profit corporations) that allow cooperative purchasing may utilize the terms of this agreement to procure Rubicon's software and services.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

Exhibit A
Professional Services Terms

These Professional Services Terms are hereby annexed to and made a part of the Master Software Services Agreement (the "Agreement") between Rubicon and Client. In the event any provisions of these Professional Services Terms contradict or are inconsistent with the provisions of the Agreement, the provisions these Professional Services Terms shall prevail and govern.

1. Services. Upon request by Client, Rubicon will provide consultants to perform implementation, consulting and training services to the extent such Professional Services are identified in any mutually agreed upon Statement of Work more fully describing the project assumptions, specifications, scope, work plan, responsibilities, duration and fees for such Professional Services, which Statements of Work shall reference the Agreement and be sequentially numbered. Any modifications to a Statement of Work shall be made by written change order, in Rubicon's standard form, executed by both parties to this Agreement (a "Change Order"). Each Change Order complying with this Section shall be deemed to be an amendment to the applicable Statement of Work to which it applies and shall become a part thereof.

2. Cooperation. All Professional Services will be coordinated with the designated Client Project Coordinator, as identified in each Statement of Work. Client shall cooperate and provide information as is reasonably necessary or desirable for the timely completion of the Professional Services. Client shall at all times make available its functional and/or information technology personnel as reasonably required or desirable for Rubicon to perform the Professional Services, and Client shall timely fulfill its obligations and responsibilities set forth in each Statement of Work. To the extent required or as specified in any Statement of Work or work plan, Client shall provide Rubicon with access to its facilities, software, systems, data, information and support materials to perform the Professional Services. Client acknowledges that Rubicon's performance hereunder is contingent on Client's timely and effective performance of Client's responsibilities and Client's timely decisions and approvals. If Client fails to provide required information and/or make decisions as agreed or in a reasonably expeditious and timely manner, and such failure results in a delay in delivery of any deliverables or Work Product or to the overall project, Client agrees to extend the time frame for delivery of the deliverable or project, as applicable, on a day for day basis and compensate Rubicon for any additional work required as a result of such delay.

3. Project Control. Rubicon shall have the sole right to supervise, manage, contract, direct, procure, perform, or cause to be performed, all Professional Services performed by it pursuant to a Statement of Work. Rubicon may subcontract all or a portion of the Professional Services to a qualified third party. In recognition that Rubicon personnel may perform similar services for third parties, this Agreement shall not prevent Rubicon from providing services or developing materials that may be perceived as competitive with those developed or provided hereunder, subject to the confidentiality provisions of the Agreement.

4. Compensation. All Professional Services will be provided by Rubicon on a time, materials and expense basis at Rubicon's then current rates, unless otherwise agreed by the parties in a Statement of Work.

5. Termination. These Professional Services Terms shall be effective as of the Effective Date of the Agreement and shall remain in effect until (a) terminated by either party upon thirty (30) days prior written notice in the event no Statement of Work is outstanding; or (b) as provided in the Agreement, whichever is earlier. Client shall be liable for payment to Rubicon for all Professional Services provided or performed prior to the effective date of any such termination, including any expenses incurred pursuant to the provision of such Services.

6. Additional Services. Any services performed by Rubicon at the request of Client that are outside the scope of any Professional Services described in the applicable Statement of Work shall be governed by these terms and will be billed at Rubicon's then current rates.

7. Insurance. Rubicon shall, at all relevant times, and at its own cost and expense, maintain insurance coverage relative to the Agreement and these Professional Services Terms, in which Client is listed as an additional insured (where appropriate) and a certificate holder, with waiver of subrogation (where appropriate), and with, at the very least, the following limits and coverages: for commercial general liability, one million dollars for each occurrence and two million dollars in the general aggregate; for automobile liability, one million dollars for combined single limit; and for workers compensation and employer's liability, one million dollars for each accident, one million dollars for disease – each employee, and one million dollars for disease – policy limit.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

ORDER NUMBER _1_ TO THE
MASTER SOFTWARE SERVICES AGREEMENT

This independent Order Number 1 ("Order") to the Master Software Services Agreement is made as of December 20, 2022("Order Effective Date"), by and between Rubicon Global, LLC ("Rubicon") and THE CITY OF HIGH POINT ("Client"). This Order is part of the Master Software Services Agreement between the parties dated December 20, 2022 ("Agreement"). Capitalized terms used and not otherwise defined in this Order shall have the respective meanings set forth in the Agreement.

1. The Subscribed Services.

DESCRIPTION	COST
Year 1 Cost	$90,937.50
Year 2 Cost	$67,500.00
Year 3 Cost	$67,500.00
Total Cost (36-month contract)	$225,937.50

The complete pricing proposal has been included in this package as Addendum B.

2. Other Charges. As may be agreed to by the parties in writing from time to time.

3. Payment Terms. The parties agree that the fees for the above services shall be a total of TWO HUNDRED TWENTY-FIVE THOUSAND AND NINE HUNDRED THIRTY-SEVEN DOLLARS AND FIFTY CENTS payable as follows ("Fee"):

a. US$90,937.50 due upon execution of this Agreement.
b. US$67,500.00 due upon the first anniversary of this Agreement.
c. US$67,500.00 due upon the second anniversary of this Agreement.

4. Renewal. Unless either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the initial term, upon expiration of the initial terms of the Subscribed Services (as described in the table in Section 1 of this Order) and Client's obligations to pay the applicable fees, the parties shall meet and determine if the Agreement shall be extended by another term. If the parties shall so agree, they will negotiate in good faith terms, conditions and fees associated with any renewal term. For purposes of clarification, the liquidated damages specified in Section 5.4 of the Agreement shall apply to the initial term of the Subscribed Services, or the then-current renewal term, as the case may be.

5. Fee for the Automatic Monthly Extension Period. Fee for the Automatic Monthly Extension described in the Section 5.2 of the Agreement will be $7,500 per month, which Rubicon will invoice each month while the Automatic Monthly Extension is in effect. Client shall pay all fees, charges and expenses in accordance with the Section 4 of the Agreement.

6. Separate Agreement. Rubicon may provide Professional Services regarding the Subscribed Services provided hereunder pursuant to a Statement of Work to the Professional Services Terms executed between the parties. Client understands and agrees that such Professional Services and associated Statements of Work that may be signed are separate and independent contractual obligations from any Order or amendment thereto relating to the access and use of the Subscribed Services. Client shall not withhold payments that are due and payable pursuant to this Order or any other Order(s) or amendment(s) thereto because of the status of Professional Services performed under any Statement of Work.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Master Software Services Agreement and to bind their respective party hereto.

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Order and to bind their respective party hereto.

ACCEPTED BY:

RUBICON GLOBAL, LLC

DocuSigned by:

E237204F5315451...

Authorized Signature

Conor Riffle, SVP RUBICONSmartCity

Printed Name and Title

Date: 1/4/2023 | 10:29 AM EST

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

Signature Page

CITY OF HIGH POINT, NORTH CAROLINA
The City

DocuSigned by:

P O Box 230, High Point, NC 27261
Address

DocuSigned by:
Sandra Keeney
5BCEB919F16D419...
Sandra R. Keeney, City Clerk
1/11/2023 | 07:56:14 EST

By: DocuSigned by:
Tasha Logan Ford
F699C7423A3645A...
Tasha Logan-Ford, City Manager
1/11/2023 | 07:14:08 EST

APPROVAL BY CITY ATTORNEY

Approved as to form:

DocuSigned by:
Meghan Maguire
10B1F6F225AB4EA...
Meghan Maguire, Interim City Attorney

Date: 1/10/2023 | 22:37:54 EST

APPROVAL BY FINANCE OFFICER

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

DocuSigned by:
Bobby Fitzjohn
385F1C88F40E4DB...
Bobby D. Fitzjohn, Director of Financial Services

Date: 1/4/2023 | 15:46:17 EST

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

ADDENDUM A

SERVICE AVAILABILITY

RUBICONSmartCity software is hosted externally using Amazon Web Services (AWS).

Below please find our standard Service Level Availability Policy (SLA):

Rubicon's Service Availability commitment for a given calendar month is **99.5%.** Service Availability is calculated per month as follows: (Total time - Unplanned Outage - Planned Maintenance) / (Total – Planned Maintenance) X 100

- Definitions:
  - *Total time* is the total minutes in the month
  - *Unplanned Outage* is total minutes unavailable due to an unplanned outage in the month
  - *Planned Maintenance* is total minutes of planned maintenance in the month. Currently, Planned Maintenance is four (4) hours for weekly maintenance, four (4) hours for monthly maintenance, four (4) hours for quarterly maintenance. Rubicon's current weekly maintenance begins at 10 pm (Eastern) on Fridays; monthly maintenance begins at 2:00 am (Eastern) on Saturday; and quarterly maintenance begins at 6:00am (Eastern) on Saturday. All times are subject to change upon reasonable notice. If actual maintenance exceeds the time allotted for Planned Maintenance, it is considered an Unplanned Outage. If actual maintenance is less than time allotted for Planned Maintenance, that time is not applied as a credit to offset any Unplanned Outage time for the month. The measurement point for Service Availability is the availability of the Rubicon Service. Customer may request an availability report once per month.
- Service Response
  - Rubicon Production Support and Service Level Availability Policy (SLA)
  - Rubicon's Service Response commitment is: (1) not less than 50% of (online) transactions in two (2) seconds or less and not more than 10% in five (5) seconds or more.
  - Service Response is the processing time of the Rubicon Production Service in the Amazon Web Service data center to complete transactions submitted from a web browser.
  - The time required to complete the request will be measured from the point in time when the request has been fully received by the encryption endpoint in the Amazon Web Service data center, until such time as the response begins to be returned for transmission to Customer. Customer may request a response time report not more than once per month via email.
- Disaster Recovery
  - Rubicon commits to a recovery time objective of twelve (12) hours - measured from the time that the Rubicon Service becomes unavailable until it is available again. Rubicon commits to a recovery point objective of one (1) hour - measured from the time that the first transaction is lost until the Rubicon Service became unavailable.
  - Rubicon will test the disaster recovery plan once every six months and will make available a written summary of the results of the most recent test available to Customer upon its request made via the Customer Center.
- Severity Level Determination Submittal
  - Customer shall reasonably self-diagnose each support issue and recommend to Rubicon an appropriate Severity Level designation. Rubicon shall validate Customer's Severity Level designation or notify Customer of a proposed change in the Severity Level designation to a higher or lower level with justification for the proposal. In the event of a conflict regarding the appropriate Severity Level designation, each party shall promptly escalate such conflict to its management team for resolution through consultation between the parties' management, during which time the parties shall continue to handle the support issue in accordance with the Rubicon Severity Level designation. In the rare case a conflict requires a management discussion, both parties shall be available within one hour of the escalation.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

- Support Issue Production Levels - Response and Escalation
    - Response Time is the period from the time the Production case was logged in the Customer Center until Rubicon responds to Customer and/or escalation within Rubicon, as appropriate. Because of the widely varying nature of issues, it is not possible to provide specific resolution commitments.
        - SEVERITY LEVEL 1
            - Definition: The Rubicon Service is unavailable for all users
            - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
            - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
            - Escalation: If the problem has not been resolved within one (1) hour, Rubicon will escalate the problem within the appropriate Rubicon organization. The escalated problem will have higher priority than ongoing support, development or operations initiatives.
            - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 1 issue is logged until such time as it is resolved.
        - SEVERITY LEVEL 2
            - Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more critical business processes with a significant impact and no workaround exists.
            - Rubicon Response Commitment: Rubicon will respond within one (1) hour of receipt of case.
            - Resolution: Rubicon will work to resolve the problem until the Service is returned to normal operation. Customer will be notified of status changes.
            - Escalation: If the problem has not been resolved within four {4) hours.; Customer may request that Rubicon escalate the problem within the appropriate Rubicon organization where the escalated problem will have higher priority than ongoing development or operations initiatives.
            - Customer Response Commitment: Customer shall remain accessible by phone for troubleshooting from the time a Severity 2 issue is logged until such time as it is resolved.
        - SEVERITY LEVEL 3
            - Definition: The Rubicon Service contains a bug that prevents Customer from executing one or more important business processes. A workaround exists but is not optimal.
            - Rubicon Response Commitment: Rubicon will respond within four (4) hours of receipt of case.
            - Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
            - Escalation: If the problem has not been resolved within one (1) week, Customer may request that Rubicon escalate the problem to the appropriate Rubicon organization .
            - Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

- SEVERITY LEVEL 4:
  - Definition: The Rubicon Service contains an issue that may disrupt important business processes where a workaround is available or functionality is not imperative to Customer's business operations.
  - Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hour of receipt of case.
  - Resolution: If resolution requires a Rubicon bug fix, Rubicon will add the bug fix to its development queue for a future Update and suggest potential workaround until the problem is resolved in a future Update. Customer will be notified of status changes.
  - Escalation: None.
  - Customer Response Commitment: Customer will respond to Rubicon requests for additional information and implement recommended solutions in a timely manner.
- CUSTOMER CARE or OPERATIONS REQUEST (Severity Level 5):
  - Definition: Non-system issues such as Named Support Contact change, requests for SLA reports or business documents, etc. If necessary to open a Support case requesting assistance, Severity *5* should be used.
  - Rubicon Response Commitment: Rubicon will respond within twenty-four (24) hours of receipt of case.
  - Resolution Commitment: Rubicon will respond to request. Customer will be notified of status changes.
  - Escalation: None.
  - Customer Commitment: Customer will respond to Rubicon requests for additional information in a timely manner.

- Rubicon Support Scope
  - Rubicon will support functionality that is developed by Rubicon and under its direct control. For any other functionality, and/or issues or errors in the Rubicon Service caused by issues, errors and/or changes in Customer's information systems and/or third party products or services, Rubicon may assist Customer and its third party providers in diagnosing and resolving issues or errors but Customer acknowledges that these matters are outside of Rubicon's support obligations. Service Level failures attributable to (i) Customers acts or omissions; and (ii) force majeure events shall be excused.
- Rubicon Service Credit
  - In the event of a failure by Rubicon to meet the Service Availability and Service Response minimums as set forth in the SLA, as Customer's sole and exclusive remedy, at Customer's request, Rubicon shall provide service credits in accordance with the following:
  - First month in any rolling six (6) month period: 10% of the Subscription Fee paid for the applicable month for the affected Service
  - Second month in any rolling six (6) month period: 20% of the Subscription Fee paid for the applicable month for the affected Service
  - Third month in any rolling six (6) month period: 30% of the Subscription Fee paid for the applicable month for the affected Service
  - Fourth month in any rolling six (6) month period: 40% of the Subscription Fee paid for the applicable month for the affected Service
  - Fifth month in any rolling six (6) month period: 50% of the Subscription Fee paid for the applicable month for the affected Service or within thirty (30) days of such failure Customer shall have the option to terminate the entire Agreement and upon such termination Customer shall

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

receive a refund of all prepaid subscription fees that are unearned as of the date such termination is effective.

- If more than one of the above (a through e) is triggered, Customer will be eligible for the greater amount for the applicable month only. Credits shall be deducted from subsequent invoices for subscription fees or other fees or, upon expiration or termination of the Agreement, paid to Customer directly.

DocuSign Envelope ID: 181085CC-937A-4442-A67F-949FD0C0CE0A

ADDENDUM B

RUBICONSmartCity Three-Year Sourcewell Contract Proposal
City of High Point, NC

November 28, 2022

In order to help the City of High Point get a sense of RUBICONSmartCity costs, we have provided initial pricing information below. Please also keep in mind that this is a general estimate based on the information provided.

Rubicon uses a Software-as-a-Service (SaaS) model for pricing. SaaS service models provide several advantages for the customer:

- Solution upgrades become available for customers automatically. Costs and effort associated with upgrades and new releases are lower than the traditional model that usually forces the user to buy an upgrade package and install it or pay for specialized services to get the environment upgraded.
- Reduce the costs for hardware and software licenses compared with the traditional model because service usually resides in shared or multi-user environments.
- Reduce the time spent on installation and configuration reducing issues that complicate software deployment.
- No hidden costs for additional services or features.

Rubicon's standard per vehicle pricing is outlined below. The per vehicle cost outlined includes two components: a one-time implementation cost and a recurring yearly cost for each hardware and software component. Implementation costs include installation and any additional training and implementation services provided by the Customer Success Team. Recurring costs are hardware and software dependent. The recurring price includes all hardware, software, associated data for RUBICONVision Cameras, external hosting, maintenance, warranty and ongoing customer and technology support costs.

Implementation Costs
One Time

Description	Cost
Implementation Support	$250 / per hour

Recurring Software & Hardware Costs
Per Vehicle Per Month

Description	Cost
Rubicon Platform – Portal & Driver App	$190.00
Rubicon Vision – Strobe Feature	$200.00

Based on the information provided to date, Rubicon proposes the below scenario for the City of High Point. The scenario below includes the City providing their own Apple or Android devices to utilize Rubicon's in-cab technology. If the City chooses to utilize Rubicon's devices there will be an additional charge.

Three-Year Cost Scenario for the City of High Point

Rubicon will provide 9 RUBICONVision Cameras running the Strobe feature and 30 RUBICONSmartCity software licenses for the City's Public Services Department. Cost Scenario initial pricing includes:

- Unlimited Access to Rubicon Portal
- 30 RUBICONSmartCity Software Licenses*
- 9 RUBICONVision Cameras running the Strobe feature
- Ongoing software subscription for all devices
- External hosting in a secure cloud environment
- Training, support, and account management services
- Installation and implementation of RUBICONVision Cameras

Rubicon's Portal + 30 RUBICONSmartCity Software Licenses + 9 RUBICONVision Cameras running the Strobe feature + Implementation Support (125 hours)

Three-Year Contract

Description	List Price	Discount (25%)	Price for High Point, NC
Year 1	$121,250.00	($30,312.50)	$90,937.50
Year 2	$90,000.00	($22,500.00)	$67,500.00
Year 3	$90,000.00	($22,500.00)	$67,500.00
TOTAL	***$301,250.00***	***($75,312.50)***	***$225,937.50***

The cost of the contract is higher in the first year of deployment due to one-time charges that do not recur. After the first year, the annual costs of the contract drop.

The fees for any extensions or renewals beyond Year 3 will be agreed upon by Client and Rubicon prior to each such extension or renewal term.

**NOTE – The Driver application is supported on Apple and Android phones and tablets. For minimum hardware requirements please contact your Rubicon representative to confirm your devices are supported.*
***NOTE - The City will be responsible for data charges associated with City procured Apple or Android devices.*

CITY OF HIGH POINT
AGENDA ITEM

Title: Chemical Contract – Caustic Soda (Sodium Hydroxide) Oltrin Solutions LLC

From: Robby Stone – Public Services Director
Derrick Boone, Asst. Public Services Director

Meeting Date: February 6, 2023

Public Hearing: N/A

Bid Number:
Advertising Date:

Attachments:
Invitation for Bid
Bid Tabulation Sheet
Agenda for Winston-Salem / Forsyth County Utility Commission

Advertised By:

PURPOSE:
For the bulk purchase of Caustic Soda (Sodium Hydroxide - 50%).

BACKGROUND:
Caustic Soda (Sodium Hydroxide) is used at the City's water and wastewater treatment plants for pH adjustment and alkalinity addition. The Public Services is requesting approval to piggyback on the bids for Caustic Soda (Sodium Hydroxide) that were received by the Winston-Salem / Forsyth County Utility Commission on November 17, 2022. The Winston-Salem / Forsyth County Utility Commission received three bids and Oltrin Solutions LLC was the lowest bidder at $958.00/dry ton.

BUDGET IMPACT:
Funding is available in the FY 2022-2023 Budget.

RECOMMENDATION / ACTION REQUESTED:
The Public Services Department is requesting approval from Council for authorization to piggyback off the Winston-Salem / Forsyth County Utility Commission's bid submitted by Oltrin Solutions LLC for Caustic Soda (Sodium Hydroxide) opened on November 17, 2022 and awarded December 12, 2022. It would be a one (1) year contract to Oltrin Solutions LLC, for the annual amount of $340,090.

FORMAL BID RECOMMENDATION
REQUEST FOR COUNCIL APPROVAL

DEPARTMENT:

COUNCIL AGENDA DATE:

BID NO.: CONTRACT NO.: DATE OPENED:

DESCRIPTION:

PURPOSE:

COMMENTS:

RECOMMEND AWARD TO: AMOUNT:

JUSTIFICATION:

ACCOUNTING UNIT	ACCOUNT	ACTIVITY	CATEGORY	BUDGETED AMOUNT
TOTAL BUDGETED AMOUNT				

DEPARTMENT HEAD: DATE:

The Purchasing Division concurs with recommendation submitted by the and recommends award to the lowest responsible, responsive bidder in the amount of $.

PURCHASING MANAGER: DATE:

Approved for Submission to Council
FINANCIAL SERVICES DIRECTOR: DATE:

CITY MANAGER: DATE:

ADVERTISEMENT FOR BIDS

Pursuant to NCGS 143-129, sealed proposals endorsed "**CAUSTIC SODA, FB23145**" will be received by the City/County Purchasing until **3:00 PM, November 17, 2022** in Room 324 City Hall, 101 N. Main Street, Winston-Salem NC 27101. The Utility Commission reserves the right to reject any and all proposals, and to waive any informalities in the bidding procedures.

This bid is for procurement of the following water and wastewater treatment chemicals: Caustic Soda 25% and Caustic Soda 50%, otherwise known as Liquid Sodium Hydroxide, in the estimated six-month quantities of 45 dry tons and 450 dry tons, respectively.

BIDDERS MAY SUBMIT ELECTRONICALLY (preferred) OR BY HARDCOPY - see Proposal Form for instructions. It is the bidder's responsibility to confirm receipt of their bid proposal.

For a complete bidding package and/or instructions on submitting bids, contact Darren Redfield at darrenmr@cityofws.org or 336-747-6936 during regular office hours. End of question period is 12:00 PM EST, November 14, 2022.

City of Winston-Salem

State of North Carolina
Interactive Purchasing System

Bid Details

Return

Bid No: 281-FB23145
Department: NON STATE - City of Winston-Salem
Purchaser: Darren Redfield
Type of Bid: Open Market Solicitations
Description of Requirements: 6-month supply of caustic soda (sodium hydroxide) in full tanker shipments as needed by five plant facilities.
Category: Chemicals including Bio Chemicals & Gas Matls
Commodity Number: 1216 - Additives

Date Issued: 11/4/2022
Open Date: 11/17/2022
Date Awarded:
Date Award Posted:
Cancel Date:

No Bid Items Found

ADDENDUM #1

CAUSTIC SODA – FB23145

BIDS WILL BE RECEIVED UNTIL

3:00 PM, November 17, 2022

DELIVERED TO bids@cityofws.org OR MAIL TO:
CITY OF WINSTON-SALEM
PURCHASING
101 NORTH MAIN STREET
CITY HALL, ROOM 324
WINSTON-SALEM, NC 27101

November 9, 2022

Please include this page with your bid.

Darren Redfield, Buyer

_____
Company

_____
Authorized Signature

_____
Date

BID CLARIFICATIONS

The following responses are hereby given to bidder questions:

1. *Question:* It seems the contract dates should be 2023 on page 8. RESPONSE: Correct. All changes are highlighted in gray on attached revised Proposal form page 8.
2. *Question:* Is the price evaluation at each three month mark valid for the initial six month contract period, or only on the renewals? RESPONSE: this has been removed from the bid.
3. *Question:* Is membrane grade required for 25% caustic soda? RESPONSE: Diaphragm grade is acceptable. Membrane grade is only required for 50% caustic soda.

PROPOSAL FORM *(Rev. Add #1)*

CAUSTIC SODA 25% and 50%

BIDDERS:
The Utility Commission wishes to enter into annual contracts for its water and wastewater chemicals. The Commission reserves the right to cancel or not extend the contract at any time and/or at renewal junctures, whether due to discontinuing use of the chemical, budget constraints, or without cause.

NOTE: **All quantities shown are estimated.** The Utility Commission reserves the right to purchase more or less than these amounts at the firm contract cost during each contract term. All purchases made under the contract in subsequent fiscal years are subject to appropriations by the City Council of the City of Winston-Salem to cover such purchases.

The Initial Contract Period is **January 1, 2023 through June 30, 2023.** All unit prices shall be firm for this initial contract period.

Renewable term contract. The Utility Commission reserves the right to extend this contract for up to two (2) additional 6-month periods* (ending June 30, 2024). Any contract extension is subject to the continuation of usage and availability of funds. A properly executed purchase order shall be evidence of an extension agreed to by the parties and that said purchase order shall become a self-executing amendment to the contract.

Price adjustments. The vendor may request a price increase at the beginning of each renewal term by an amount not-to-exceed the latest Producer Price Index (PPI) as noted below - the difference from the most recently available month to the previous six-month period* - as reported on the U.S. Department of Labor Bureau of Labor Statistics website https://www.bls.gov/ppi/detailed-report/home.htm#2021 at the time the extension is pursued (approximately 60 days ahead of renewal date). The Commission expects its vendors to give it the benefit of any a price reduction, which will likewise be based on the same PPI calculation and agreed to by both parties. The Purchasing Department will verify price adjustment requests using PPI Table 9, commodity code 325180-4 "sodium hydroxide".

The calculation formula is the simple percentage method: (PPI Value at Renewal divided by PPI Value of 6 months prior) multiplied by Original Unit Price = New Adjusted 6-mo. Price. Example:
(PPI-Nov 2021 / PPI -Nov 2020) X Orig. Unit Price =…(277.948 / 260.229) X $500 = $534.05, a 6.81% increase. The PPI index calculation will be based on 3 decimal places, but the price will be rounded up or down to 2 decimal places, unless the unit price is under $1.00 where it will be rounded to 3 decimal places.

*Deleted

DETAILED SPECIFICATIONS

CAUSTIC SODA 25%

PURPOSE:

1. The City of Winston-Salem/Forsyth Utility Commission desires to enter into a contract for the supply of **25% Sodium Hydroxide (caustic soda)** solution for use at the Commission's two wastewater treatment plants. The City reserves the right to extend this contract.
2. Award: The Commission intends to award the contract to the responsible bidder submitting the lowest contract price; however, it reserves the right to consider any bid or contract exceptions, as well as past performance, in making a final award decision.

CERTIFICATIONS REQUIRED:

1. The material furnished under this contract shall conform to the latest revision of the American Water Works Association Standard for Caustic Soda, 8501 and must be certified as meeting ANSI/NSF Standard 60. **The product must be produced domestically in the USA. ~~Membrane~~ Diaphragm grade is acceptable.**
2. Each bid shall show the unit price per dry ton of caustic soda provided (as a 25% solution) and the total contract price. The contract price will be equal to the unit price per ton multiplied by the estimated dry tons to be purchased during the contract period.
3. The unit price by the supplier shall include all delivery and shipping charges.
4. Any exception(s) to any of the specifications detailed herein must be fully explained in a letter accompanying the bid, and is subject to acceptance by the Commission.

PHYSICAL AND CHEMICAL CHARACTERISTICS:

1. The material provided under this contract shall contain 25% sodium hydroxide (NaOH) by weight and shall have a specific gravity of 1.278 at 60°F.
2. The material provided under this contract shall contain no compound or contaminant that will inhibit or interfere with the wastewater treatment process or that will pass through the treatment plant in such a form so as to harm the receiving stream.
3. A statement of the equivalent dry weight of sodium hydroxide of each shipment shall be submitted, from which the cost of the shipment will be calculated. Dry tons of sodium hydroxide shall be calculated using the following formula:

$$\text{Caustic Soda, dry tons} = \frac{\text{Total weight of material delivered, lbs X \% Caustic Soda}}{200{,}000}$$

4. The Commission reserves the right to award the contract on the basis of price and/or suitability of the material based on the analysis of the material.

PACKAGING AND DELIVERY:

1. The material shall be delivered to the Archie Elledge and the Muddy Creek Wastewater Treatment Plants in ~4,000 gallon tanker loads. The address for each of the facilities are as follows:

INVITATION FOR BID

CAUSTIC SODA (25% and 50%)

CITY/COUNTY UTILITY COMMISSION

Bids Will Be Opened At
3:00 pm, November 17, 2022

In CITY HALL ROOM 324
BY CITY/COUNTY PURCHASING

For electronic bid delivery, scan all required bid forms as a single PDF with subject line "**Bid for Caustic**" and email to: bids@cityofws.org
OR
For FedEx / hand-delivery, place bid inside a sealed envelope labelled "**BID for CAUSTIC**" to:
City of Winston-Salem Purchasing Dept.
101 N. Main Street
City Hall Room 324
Winston-Salem, North Carolina 27101

Pursuant to NCGS 143-129, sealed proposals endorsed "**CAUSTIC SODA, FB22287**" will be opened by City/County Purchasing at the place and time noted above. The Utility Commission reserves the right to reject any and all proposals, and to waive any informalities in the bidding procedures. Bids will be opened publicly.

BIDDERS MAY SUBMIT ELECTRONICALLY OR BY HARDCOPY. It is the bidder's responsibility to confirm receipt of their bid proposal.

For additional instructions on submitting bids, contact Darren Redfield at darrenmr@cityofws.org or 336-747-6936 during regular office hours. End of question period is 12:00 PM, November 14, 2022.

Bidding Agent:
Darren Redfield
Buyer - Purchasing
darrenmr@cityofws.org

SPECIFICATIONS PREPARED BY:
Utilities staff

INSTRUCTIONS TO BIDDERS

READ, REVIEW AND COMPLY: This entire set of documents constitutes the IFB. It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein. This IFB sets forth the minimum requirements that all submissions shall meet. Failure to submit proposals in accordance with this request may render the proposal unacceptable. Costs incurred by any Bidder in the preparation of his/her response to the IFB are the responsibility of the Bidder and will not be reimbursed by the City of Winston-Salem. Bidders shall not include any such expenses as part of their proposals.

INSPECTION OF SITES:
Each bidder should visit the site of the proposed work and fully acquaint himself with the existing conditions relating to the service. Each bidder should fully inform himself as to the facilities involved and any difficulties and restrictions involved in performance of the Contract. The Contractor by the execution of the Contract shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal instrument or to visit the site and acquaint himself with the existing conditions. The City of Winston Salem will be justified in rejecting any claim based on facts that the bidder should have been aware of as a result of his site inspection.

PREPARATION AND SUBMISSION OF BID:
Please read all instructions carefully before preparing and submitting your bid.

All bids shall be prepared and submitted in accordance with the following requirements. Failure to comply with any requirement shall cause the bid to be considered irregular and shall be grounds for rejection of the bid.

- **The Proposal forms furnished herein must be used and shall not be altered in any manner.**
- All entries on the itemized proposal form shall be written in ink or typed.
- The total amount bid shall be written in the proper place on the itemized proposal form.
- Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Bidder shall initial the change in ink. Do not use "White Out" or similar product to make corrections.
- The bid shall be properly executed. All bids shall show the following information:
  - Name of individual, firm, corporation, partnership, or joint venture submitting bid.
  - Name of individual or representative submitting the bid, position or title.
  - Signature of person authorized to submit a bid of behalf of the company.
- Bids submitted by corporations shall bear the seal of the corporation.
- The bid shall not contain any unauthorized additions, deletions, or conditional bids.
- The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- Required forms: price page, Signature Page, Non-Collusion Affidavit. Any Addenda issued which affects the quantity or price must be acknowledge.

Bids may be submitted electronically or by hardcopy. See Proposal Form for instructions.

TIME FOR OPENING BIDS:
Bidders or their authorized agents are invited to be present at the public bid opening. Bids received prior to the advertised hour of opening will be securely kept sealed. The agent whose duty it is to open them will decide when the specified time has arrived, and no Bid received thereafter will be considered. Mailed Bids will be treated in every respect as though filed in person and will be subject to the same requirements.

It is the Bidders responsibility to assure that the bid is received by the required deadline. If mail or delivery by other means is delayed beyond the date and hour set for the receipt of the bid, the proposals that are late will not be considered, except by fault of the City it does not reach the bidding agent.

PROPOSER QUESTIONS AND INQUIRIES:

Questions relative to this IFB must be submitted in writing only to Darren Redfield, e-mail darrenmr@cityofws.org (email is preferred), by fax: (336) 748-3057 or by letter to the address shown on Proposal Form. **All inquiries must be made by the End of Question Period.** The City will provide written responses to all inquiries received by this date, and responses will be made available to all recipients of this IFB. Any oral responses made by any representative of the City may not be relied upon. Any supplements or amendments to this IFB will be in writing and furnished to potential bidders.

BID AWARD:

Pursuant to N.C.G.S. 143-129, the award will be made to the lowest responsive, responsible Bidder taking into consideration quality, performance, and time specified in the proposal for completion of work. The Owner reserves the right to hold bids for a period of sixty (60) days.

EQUIPMENT AND TOOLS:

The contractor shall use no equipment or tools that are owned by the City of Winston-Salem unless so noted in the Specifications. Neither shall the contractor utilize any employees of the City of Winston-Salem in performing the contract, except for opening locked gates, doors, etc., and giving directions.

MATERIALS:

No materials shall be stored on site and the City of Winston-Salem is not responsible for any materials, equipment or tools lost or stolen from the site. Any materials needed to complete the job shall be included in the bid.

CLEAN-UP:

The area of work shall be cleaned so that the City of Winston-Salem shall not incur any additional costs to make the area suitable for the educational process. Also, the Contractor shall utilize no trash receptacles or dumpsters owned by the City of Winston-Salem. All trash and debris shall be properly disposed of off the property. This will be monitored by the City of Winston-Salem.

PERFORMANCE OF WORK:

All work shall be performed at the highest level of quality. The City shall be responsible for determining the quality of work, and may notify vendor of the same. The City reserves the right to inspect the service of the vendor, to request log sheets and information related to vendor visits to City facilities. If the City determines that corrective action is needed, the City will inform the vendor of such action. Failure to take corrective action as directed shall be grounds for termination of the contract.

TERMINATION OF CONTRACT:

If the vendor fails to perform as outlined herein, the City may terminate the contract by 10-day written notice at its discretion and be liable only for that portion of product delivered.

NOTICE TO PROPOSERS

City Rights and Options
The City, at its sole discretion, reserves the following rights:

- To supplement, amend, substitute or otherwise modify this IFB at any time
- To cancel this IFB with or without the substitution of another IFB
- To take any action affecting this IFB, this IFB process, or the Services subject to this IFB that would be in the best interests of the City
- To issue addendums and/or additional requests for information
- To require one or more service providers to supplement, clarify, or provide additional information in order for the City to evaluate the responses submitted
- To negotiate a contract with one or more service providers based on the information provided in response to this IFB.

Public Records
Any material submitted in response to this IFB will become a "public record" once the bidder's document(s) is opened and the bidder is determined to be a participant in the solicitation process and shall be subject to public disclosure consistent with Chapter 132, North Carolina Statutes. Bidders must claim any applicable exemptions to disclosure provided by law in their response to this IFB. Bidders must identify materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary and legal. The City reserves the right to make all final determination(s) of the applicability of North Carolina General Statutes § 132-1.2, Confidential Information.

Familiarity with Laws and Ordinances
The submission of a proposal on the services requested herein shall be considered as a representation that the proposer is familiar with all federal, state, and local laws, ordinances, rules, and regulations which affect those engaged or employed in the provision of such services, or equipment used in the provision of such services, or which in any way affects the conduct of the provision of such services; and no plea of misunderstanding will be considered on account of ignorance thereof. If the proposer discovers any provisions in the IFB documents that are contrary to or inconsistent with any law, ordinance, or regulation, it shall be reported to the City in writing without delay.

The successful bidder must comply with all provisions of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder. By submitting a proposal, the successful bidder agrees to indemnify the City from and against all claims, suits, damages, costs, losses, and expenses in any manner arising out of, or connected with, the failure of the Company, its subcontractors, agents, successors, assigns, officers, or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

The successful bidder agrees that in carrying out this contract, compliance will be maintained with all applicable federal, state, and local laws, specifically including, without limitations, the Occupational Safety and Health Act of 1970 and Section 1324A, the Immigration Reform and Control Act.

E-Verify Compliance:
Per N.C.G.S. 143-133.3, Contractor compliance with federal E-Verify Law is required and will be so stated in the contract agreement. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a subcontractor, the Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

Iran Divestment Act. Contractor hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepared pursuant to NCGS §143C-6A-4, nor will Contractor utilize on this Agreement any subcontractor on such list.

Divestment from Companies that Boycott Israel. Contractor hereby certifies that it is not on the North Carolina State Treasurer's list of companies engaged in a boycott of Israel in violation of NCGS 147-86.80 et. seq. and that it will not utilize on this agreement any subcontractor on said list."

Ethics Policy / Code of Conduct

The City of Winston-Salem has establish guidelines for ethical standards of conduct for City representatives and to provide guidance in determining what conduct is appropriate in particular cases. In establishing an ethics policy, the City of Winston-Salem desires to protect the public against decisions that are affected by undue influence, conflicts of interest, or any other violation of these policies as well as promote and strengthen the confidence of the public in their governing body. To review the City Policy, refer to this link: http://www.cityofws.org/Home/Departments/Purchasing/Articles/Bids

It is the policy of the City of Winston-Salem that an employee, officer, or agent of the City may not participate in any manner in the bidding, awarding, or administering of contracts in which they, or a member of their immediate family, their business partner, or any organization in which they serve as an officer, director, trustee, or employee, have a financial interest.

IMPORTANT: Winston-Salem City Code *(Chapter 2, Article 1, Sec. 2-3)* provides that the City may disqualify contractors from bidding on contracts of the City if a contractor fails to perform satisfactorily on past or current contracts. Failure to complete work within contract time limits and/or meeting required quality levels are factors that could make a contractor ineligible to bid on future City projects. Satisfactory performance on a job includes: performing work to City standards (including all safety and labor laws), working cooperatively with our inspector and citizens, and completing the project in the time period provided for in the contract.

Contract

The Vendor must wait for the Purchase Order to be issued prior to doing business with or for the City, contingency upon the vendor meeting the City of Winston-Salem's insurance provisions.

The vendor shall be responsible for any damages caused by his personnel or equipment to property of the Owner. He shall make good in an approved manner at his own expense any such loss, damage, or injury without cost to the owner. The vendor shall also assume all responsibility to maintain all existing protection, provide, and maintain all such additional protection as required by the governing laws, regulations, ordinances, and safety of personnel and visitors.

GENERAL INSURANCE REQUIREMENTS
for City of Winston-Salem contracts

A. The Contractor shall, during the continuance of all work under the Contract, provide the following:

1. Workers' Compensation Insurance as required by the North Carolina General Statutes.

2. Commercial General Liability to protect the Contractor against any and all injuries to third parties, including personal injury and property, and special and consequential damages, resulting from any negligent action, omission or operation by the Contractor or in connection with the services described herein. The insurance shall also include, coverage for explosion, collapse, and underground hazards, where required. This insurance shall provide bodily injury and property damage limits of not less than $1,000,000 for each occurrence, respectively, and shall provide at least $5,000 in Medical Expenses (Med Pay) coverage.

3. Maintain Owned, non-owned, and hired Automobile Liability insurance, including property damage insurance, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor in furtherance of these services. In addition, all mobile equipment used by the Contractor in connection with the contract work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. This insurance shall provide bodily injury and property damages limits of not less than $1,000,000 combined single limit/each accident.

B. If this Agreement is for a design, engineering or consulting Service, maintain Professional Liability insurance of at least $1,000,000.00 per incident.

C. The Contractor will provide an original, signed Certificate of Insurance, evidencing such insurance and such endorsements as prescribed herein, and shall submit the certificate with its executed contract. **The City of Winston-Salem shall be named as an additional insured** in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate with the provision that this coverage is primary to all other coverage the City of Winston-Salem may possess.

D. The Contractor will secure and maintain all insurance policies of its subcontractors which shall be made available to the City of Winston-Salem on demand. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities and obligations under this heading or under any other section or provisions of the Contract.

E. The Contractor will provide on demand certificate copies of all insurance coverage on behalf of the Contract within ten days of demand by the City of Winston-Salem. These certified copies shall be sent to the City of Winston-Salem from the Contractor's insurance agent or representative.

F. The Contractor shall furnish the City of Winston-Salem thirty days written notice of any changes or cancellation of the policy. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished to the Risk Manager, City of Winston-Salem.

GENERAL INSURANCE REQUIREMENTS - Page 2

G. Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Contractor fail to provide acceptable evidence of current insurance within seven days of written notice at any time during the Contract Term, the City of Winston-Salem shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to the City of Winston-Salem for the entire additional cost of procuring the uncompleted portion of the contract at time of termination.

H. Contractual and other Liability insurance provided under this Contract shall not contain a supervision inspection or engineering services exclusion that would preclude the City of Winston-Salem from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.

I. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City of Winston-Salem. The Contractor shall be as fully responsible to the City of Winston-Salem for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

J. Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its operation on the property.

K. The Contractor and all subcontractors and sub-subcontractors agree to comply with the State of North Carolina Occupational/Safety and Health Act and the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

Address for Certificate of Insurance:
City of Winston-Salem
Purchasing
P.O. Box 2511
Winston-Salem, NC 27102

PROPOSAL FORM

CAUSTIC SODA 25% and 50%

BIDDERS:
The Utility Commission wishes to enter into annual contracts for its water and wastewater chemicals. The Commission reserves the right to cancel or not extend the contract at any time and/or at renewal junctures, whether due to discontinuing use of the chemical, budget constraints, or without cause.

NOTE: **All quantities shown are estimated.** The Utility Commission reserves the right to purchase more or less than these amounts at the firm contract cost during each contract term. All purchases made under the contract in subsequent fiscal years are subject to appropriations by the City Council of the City of Winston-Salem to cover such purchases.

The Initial Contract Period is **January 1, 2022 through June 30, 2022.** All unit prices shall be firm for this initial contract period.

Renewable term contract. The Utility Commission reserves the right to extend this contract for up to two (3) additional 6-month periods* (ending June 30, 2023). Any contract extension is subject to the continuation of usage and availability of funds. A properly executed purchase order shall be evidence of an extension agreed to by the parties and that said purchase order shall become a self-executing amendment to the contract.

Price adjustments. The vendor may request a price increase at the beginning of each renewal term by an amount not-to-exceed the latest Producer Price Index (PPI) as noted below - the difference from the most recently available month to the previous six-month period* - as reported on the U.S. Department of Labor Bureau of Labor Statistics website https://www.bls.gov/ppi/detailed-report/home.htm#2021 at the time the extension is pursued (approximately 60 days ahead of renewal date). The Commission expects its vendors to give it the benefit of any a price reduction, which will likewise be based on the same PPI calculation and agreed to by both parties. The Purchasing Department will verify price adjustment requests using PPI Table 9, commodity code 325180-4 "sodium hydroxide".

The calculation formula is the simple percentage method: (PPI Value at Renewal divided by PPI Value of 6 months prior) multiplied by Original Unit Price = New Adjusted 6-mo. Price. Example:
(PPI-Nov 2021 / PPI -Nov 2020) X Orig. Unit Price =…(277.948 / 260.229) X $500 = $534.05, a 6.81% increase. The PPI index calculation will be based on 3 decimal places, but the price will be rounded up or down to 2 decimal places, unless the unit price is under $1.00 where it will be rounded to 3 decimal places.

*The Commission reserves the right to evaluate pricing at each 3-month mark and to request a price decrease from vendor - and vendor may request a price increase for approval by the utility – according to the PPI index where more than a 3% differential has occurred during the applicable 3-month period.

PROPOSAL – PAGE 2

CAUSTIC SODA 25%

per Specifications, pages 16-17

Bidder acknowledgment: The undersigned bidder hereby declares that they have carefully examined the specifications contained herein and will provide all labor, materials, equipment, supervision, and insurance applicable to perform the services herein in accordance with the specifications and the requirements under them for the following sum to wit:

Supply semi-annually an estimated **45 Dry Tons** of Liquid Caustic Soda 25% per the Specifications and deliver to the two wastewater treatment plants on an as-needed basis. The City will order full 4,000 gallon loads unless unexpected circumstances were to develop.

ITEM 1:
TOTAL for estimated **45 dry tons** semi-annually:

Unit Cost $ _____ /DT, so the Total Annual Purchase is $ _____(Unit Cost x **45**)

Product must be Delivered FOB to the facility.

Manufactured by: _____

Shipping Point: _____

BIDDER NAME: _____

ALL BIDS MUST BE F.O.B. DELIVERED TO PLANT LOCATIONS - NO ADDITIONAL PAYMENTS WILL BE MADE FOR FUEL SURCHARGES, SHIPPING CHARGES, PALLETS, DRUMS, ETC.

The apparent low bidder shall provide a certified analysis within 48 hours, if requested by plant staff, for review prior to award by the Utility Commission.

PROPOSAL – PAGE 3

CAUSTIC SODA 50%

per Specifications, pages 19-20

Bidder acknowledgment: The undersigned bidder hereby declares that they have carefully examined the specifications contained herein and will provide all labor, materials, equipment, supervision, and insurance applicable to perform the services herein in accordance with the specifications and the requirements under them for the following sum to wit:

Supply semi-annually an estimated **450 Dry Tons** of 50% Liquid Sodium Hydroxide per the Specifications and deliver to the two wastewater treatment plants on an as-needed basis. The City will order full 4,000 gallon loads unless unexpected circumstances were to develop.

ITEM 1:
TOTAL for estimated **450 dry tons** semi-annually:

Unit Cost $ _____ /DT, so the Total Annual Purchase is $ _____(Unit Cost x **450**)

Product must be Delivered FOB to the facility.

Manufactured by: _____

Shipping Point: _____

BIDDER NAME: _____

ALL BIDS MUST BE F.O.B. DELIVERED TO PLANT LOCATIONS - NO ADDITIONAL PAYMENTS WILL BE MADE FOR FUEL SURCHARGES, SHIPPING CHARGES, PALLETS, DRUMS, ETC.

The apparent low bidder shall provide a certified analysis within 48 hours, if requested by plant staff, for review prior to award by the Utility Commission.

PROPOSAL – PAGE 4

For the purpose of issuing Purchase Orders and paying invoices, please indicate the following for prompt P.O. and payment distribution:

COMPANY	CONTACT PERSON
MAILING ADDRESS (or PO BOX)	TELEPHONE
CITY, STATE, ZIP	EMAIL ADDRESS

ALL BIDS MUST BE F.O.B. DELIVERED TO PLANT LOCATIONS - NO ADDITIONAL PAYMENTS WILL BE MADE FOR FUEL SURCHARGES, SHIPPING CHARGES, PALLETS, DRUMS, ETC.

PROPOSAL SIGNATURE PAGE

Submission of a bid proposal shall indicate that the proposer has made themselves fully aware of the requirements for providing the service requested by the City of Winston-Salem. It is certified that this proposal is made in good faith and without collusion with any other person bidding on this contract or with any officer or employee of the City of Winston-Salem. **The Bidder must sign and include the Non-Collusion Affidavit Form with its proposal for the bid to be considered.**

The undersigned certifies that they have read and understood all the provided bidding documents, the project specifications, and agree to the terms and conditions stated herein. **This bid must be signed by a responsible official of the bidding organization.**

Date	Company (SEAL)
Authorized Signature (*required*)	Street Address or P.O. Box
Printed or Typed Name and Title	City, State, Zip
E-Mail Address	Telephone Number

The following information is requested for statistical purposes only. The provision or omission of this information will neither affect nor influence the award of these contracts. Bidder further certifies that:

We ( ) are a minority-owned business enterprise. If yes, please identify in the appropriate box below:

( ) Black
( ) Hispanic
( ) Asian American including Indian Subcontinent and Pacific Islands
( ) Native American Indian including Eskimos and Aleuts
( ) socially and economically disadvantaged
( ) disabled

We ( ) are a woman-owned business enterprise.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

required – attach to bid

State of _____)

County of _____)

Project/Service/Product: **CAUSTIC SODA, FB23145**

_____, being first duly sworn, deposes and says that:
(Printed Name)

1. He/she is (circle: owner, partner, officer, representative or agent) of _____ _____, the Bidder that has submitted the attached Bid;

2. He/she is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bids of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Winston-Salem, Forsyth County, or any person interested in the proposed Contract; and

5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this Affiant.

_____ _____
Signature Title

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public: _____ (SEAL)

My Commission Expires:_____

GENERAL CONDITIONS and INSTRUCTIONS
CITY OF WINSTON-SALEM, NC

1. The specified item(s) shall be delivered F.O.B. to Winston-Salem, North Carolina, according to the address stated on the Purchase Order unless stated otherwise in the Detailed Specifications.

2. The Purchase Order Number, Item Number, and Inquiry Number shall be affixed to the outside of each packing crate or carton and items not in packing material.

3. The City reserves the right to reject any and all shipments if the supplier fails to meet all terms and conditions of the contract award.

4. Suppliers of equipment requiring service connections must visit the field site to check buildings, measurements, and conditions (ex. deliveries must be from rear of tanker). Vendor must have own air supply and hoses for offloading product.

5. The supplier is responsible for all errors, omissions, and deviations from the contract requirements in shop drawings when such drawings are submitted by the supplier and approved by the City.

6. The successful bidder must prepare two (2) printed sets of operating instructions, recommended maintenance schedules, parts lists, and descriptive literature for the City, if applicable.

7. After an installation is completed, the supplier shall instruct the designated City personnel in the proper use of the equipment.

8. On notification by the customer, the supplier must remove all equipment and reconstruct or refurnish any defects or work rejected by the City. The expense of removing, reconstruction, replacing, or refurnishing unfit, unsound, or damaged work or material shall be the responsibility of the supplier.

9. Payment will be made within thirty (30) days after acceptance by the City. If partial payments are provided for, final payment will be made after acceptance by the City.

10. In the case of installed equipment, twenty-five percent (25%) of the total contract award shall be withheld until the equipment and installation is accepted by the City. Withholding twenty-five percent (25%) of the contract award shall not affect the discount terms of the contract.

11. All equipment will be guaranteed against defects in materials and workmanship for a period of not less than one year from the date the equipment is put into service, and accepted by the City. Copies of all guarantees and warranties are to be attached to the bids.

12. The City reserves the right to reject any or all bids, and to waive informalities.

13. In accordance with State Law (G.S. 143-129), the award will be made to the lowest responsible bidder taking into consideration quality, performance and time specified in the proposal for the performance of the contract.

14. Taxes:
    A. Federal: The City is exempt from Federal Excise Taxes. The City will issue Federal Excise Exemption Certificates or Internal Revenue Tax Exemption Number only upon request of the contractor. Issuance of the certificate does not mean that the contract is entitled to a tax refund. All requests for refunds are to be handled by the contractor. The City, will not guarantee any Federal Tax refunds to the contractor.
    B. State: Applicable North Carolina Sales and Use Taxes are NOT to be shown on bids, but are to be added to invoices as a separate item.

15. All supplies, materials, and equipment must be new and in first class condition. Bids offered on inferior or "second-line" equipment will not be accepted.

16. Not used.

17. If a bidder cannot meet the minimum requirements of the detailed specifications, he must outline and itemize each instance by a letter of transmittal and detail the item he offers.

18. **All bids must be firm and not subject to increase during any contract period. Only at renewal may price be increased.**

19. The supplier shall give the City the benefit of any industry-wide price reduction during the contract period.

20. **The unit price as well as total price for each item must be listed for purposes of individual evaluation.** Unit price(s) will prevail in the event of a math error calculating total price, where the line item total price and the grand total price shall then be adjusted accordingly.

21. The City reserves the right to hold bids open for a period of sixty (60) days after bid opening before making awards.

22. No special inducements will be considered that are not a part of the original bidding document.

23. ~~BID DEPOSIT REQUIREMENTS~~

24. ~~PERFORMANCE BOND REQUIREMENTS~~

25. The award of this contract constitutes a preliminary determination as to the qualification of the bidder. The City is not legally bound to perform the contract until the contract is duly executed by the City. The bid deposit shall be retained if the bidder fails to execute the contract or give satisfactory surety as required by N.C.G.S. 143-129.

26. The City in each case refers to the City of Winston-Salem and/or the City/County Utility Commission, an Agency of the City of Winston-Salem.

27. It is the policy of the city of Winston-Salem that a City employee, officer or agent of the City may not participate in personal services or construction in which contract or the subcontractor, or any member of his immediate family, business partner or any organization in which they serve as an officer, director, trustee or employee, has a financial interest.

28. The successful bidder must comply with the provision of the Americans with Disabilities Act (ADA) and all rules and regulations promulgated thereunder. By submitting a proposal, the successful bidder agrees to indemnify the City from and against all claims, suits, damages, costs, loses, and expenses in any manner arising out of or connected with the failure of the Company, its subcontractors, agents, successors, assigns, officers, or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.

29. Not used.

30. **Bid proposals must be on the forms provided in this document.**

31. The Owner reserves the right to increase or decrease the quantity of product to be delivered under this contract, as described in the Proposal, without thereby altering or invalidating any terms of the Contract or Proposal or the prices therein named. Such Owner alterations shall not constitute a claim for damage nor for loss of anticipated profits. If such alterations increase the quantity of product to be delivered, payment of said additional amount shall be based on Unit Prices submitted below under the Item Section of the Proposal.

DETAILED SPECIFICATIONS

CAUSTIC SODA 25%

PURPOSE:

1. The City of Winston-Salem/Forsyth Utility Commission desires to enter into a contract for the supply of **25% Sodium Hydroxide (caustic soda)** solution for use at the Commission's two wastewater treatment plants. The City reserves the right to extend this contract.
2. Award: The Commission intends to award the contract to the responsible bidder submitting the lowest contract price; however, it reserves the right to consider any bid or contract exceptions, as well as past performance, in making a final award decision.

CERTIFICATIONS REQUIRED:

1. The material furnished under this contract shall conform to the latest revision of the American Water Works Association Standard for Caustic Soda, 8501 and must be certified as meeting ANSI/NSF Standard 60. **The product must be produced domestically in the USA. Membrane grade is acceptable.**
2. Each bid shall show the unit price per dry ton of caustic soda provided (as a 25% solution) and the total contract price. The contract price will be equal to the unit price per ton multiplied by the estimated dry tons to be purchased during the contract period.
3. The unit price by the supplier shall include all delivery and shipping charges.
4. Any exception(s) to any of the specifications detailed herein must be fully explained in a letter accompanying the bid, and is subject to acceptance by the Commission.

PHYSICAL AND CHEMICAL CHARACTERISTICS:

1. The material provided under this contract shall contain 25% sodium hydroxide (NaOH) by weight and shall have a specific gravity of 1.278 at 60°F.
2. The material provided under this contract shall contain no compound or contaminant that will inhibit or interfere with the wastewater treatment process or that will pass through the treatment plant in such a form so as to harm the receiving stream.
3. A statement of the equivalent dry weight of sodium hydroxide of each shipment shall be submitted, from which the cost of the shipment will be calculated. Dry tons of sodium hydroxide shall be calculated using the following formula:

$$\text{Caustic Soda, dry tons} = \frac{\text{Total weight of material delivered, lbs X \% Caustic Soda}}{200{,}000}$$

4. The Commission reserves the right to award the contract on the basis of price and/or suitability of the material based on the analysis of the material.

PACKAGING AND DELIVERY:

1. The material shall be delivered to the Archie Elledge and the Muddy Creek Wastewater Treatment Plants in ~4,000 gallon tanker loads. The address for each of the facilities are as follows:

Archie Elledge WWTP
2801 Griffith Road
Winston-Salem, North Carolina 27103
Contact: Matt Lavigne, 336-765-0165

Muddy Creek WWTP
4561 Cooper Road
Winston-Salem, North Carolina 27127
Contact: Keith Jones, 336-784-4700

2. The material shall be delivered on an "as needed" basis and deliveries shall be made within 3 work days of the supplier receiving a request for delivery. Delivery of this material must be made on weekdays, excluding holidays, after 7:00 AM and in sufficient time to have unloading operations completed before 3:30 PM, unless special arrangements have been made ahead of time with the plant supervisor.

3. Tanker truck drivers shall be equipped with the appropriate PPE for their use during off-loading operations. Tanker drivers shall verify with plant personnel that the connections between the tanker and the storage tank are secure, that wheel chocks are in place on the tanker and that the correct material is present in the tanker before off-loading operations begin. The delivery truck shall be capable of discharging the entire contents of the tanker against an elevation head of 20 feet. The delivery hose shall be compatible with the two-inch OPW male fitting on the tank fill lines.

4. The amount of caustic soda specified to be purchased in this contract is an estimate based on current expectations. The Commission reserves the right to purchase more chemical or less chemical than specified based on the plant's actual needs.

5. The Commission reserves the right to analyze the material upon delivery and reject same for failure to meet these specifications. Material meeting AWWA B-51 specifications, but delivered in a 50% solution will also be rejected as failing to meet these specifications. All freight charges on rejected material shall be paid by the supplier.

6. If requested by the plant supervisor, the supplier's truck driver shall collect a representative sample of the load prior to unloading. Sampling shall be done with the aid of plant personnel and the Commission will supply routine sampling apparatus, bottles and tags.

7. The supplier shall provide on-site technical service during the term of the contract if requested to do so by the Commission.

8. **The supplier shall provide a Material Safety Data Sheet (MSDS) as part of their bid package** and any updates to the MSDS shall be provided to the Commission by the vendor with 14 days of their release.

DETAILED SPECIFICATIONS

50% CAUSTIC SODA

PURPOSE:

1. The City of Winston-Salem/Forsyth County Utilities Commission desires to enter into a contract for its supply of 50% sodium hydroxide (caustic soda) solution to be used for water purification.
2. Award: the contract will be awarded to the lowest responsible bidder based on the unit price given.

CERTIFICATIONS REQUIRED:

1. The material furnished under this contract shall conform to the latest revision of the American Water Works Association Standard for Caustic Soda, 8501-03 and must be certified as meeting ANSI/NSF Standard 60. The product MUST be produced domestically within the USA.
2. Vendors shall bid a unit price per dry ton of sodium hydroxide provided in the form of a 50% solution. The unit price shall include freight and delivery charges. The contract will be awarded to the responsible bidder submitting the lowest contract price. The contract price will be equal to the unit price per ton multiplied by the estimated annual quantity.
3. Any exception(s) to any of the specifications detailed herein must be fully explained in a letter accompanying the bid, and may not be accepted by the Commission.
4. A certified truck weight (gross, tare and net) shall accompany each load for purposes of determining the tons of product delivered. Each certified weight ticket shall be from a facility that holds a current North Carolina Public Weigh master license and shall be certified as such. It is acceptable to submit a pre- and post-delivery weight ticket for payment.
5. A certificate of analysis shall accompany each load of caustic soda delivered and shall have a minimum of the following information:
    - Name of the manufacturer and method by which the material was produced, whether by Mercury Cell process or other means.
    - Specific Gravity at 60°F.
    - Total Alkalinity as Na_2O, WT%
    - Hydroxide Alkalinity as NaOH, WT%
    - Sodium Carbonate as Na_2CO_3, WT%
    - Sodium Chloride as NaCI, WT%
    - Sodium Chlorate as $NaCLO_3$, WT%
    - Iron as Fe, mg/L
    - Copper as Cu, mg/L
    - Nickel as Ni, mg/L
    - The total measured weight (in grams) of 100 mL delivered solution.

PHYSICAL AND CHEMICAL CHARACTERISTICS:

1. The material provided under this contract shall contain 50% sodium hydroxide (NaOH) by weight and shall have a specific gravity of **1.530 at 60°F**. The product shall be **membrane** grade.
2. A statement of the equivalent dry weight of sodium hydroxide of each shipment shall be submitted, from which the cost of the shipment will be calculated. Dry tons of sodium hydroxide shall be calculated using the following formula:

$$\text{Caustic Soda, dry tons} = \frac{\text{Total weight of material delivered, lbs X \% Sodium Hydroxide}}{200{,}000}$$

3. The Commission reserves the right to award the contract on the basis of price and/or suitability of the material based on the analysis of the material.
4. The material shall contain no compound capable of producing a deleterious or injurious effect upon the health of those consuming water that has been properly treated with the 50% caustic soda.

PACKAGING AND DELIVERY:

1. Suppliers shall bid a unit price per ton to supply the sodium hydroxide solution. The contract will be awarded to the responsible bidder offering the lowest contract price.
2. The price bid by the supplier shall include all delivery and shipping charges to the plant sites. The Commission will not pay any special fuel surcharges or handling charges.
3. The amount of sodium hydroxide the Commission plans to purchase annually under this contract is an estimate based on current conditions. The Commission reserves the right to purchase more material or less material under this contract based on our actual need.
4. Delivery instructions will be given to the supplier when a request for an order is placed. Questions concerning delivery should be directed to the following personnel:
   - **Neilson Water Treatment Plant:** Gabriel Sparks, (336) 766-9885
   - **Swann Water Treatment Plant:** Chris Triplett, (336) 945-1179
   - **Thomas Water Treatment Plant:** Donna Lankford, (336) 788-0152
5. The material shall be delivered on an "as-needed" basis in – 4,000 gallon tanker loads. Deliveries shall be made within three workdays of the supplier receiving a request for delivery. Delivery of this material must be made on weekdays, excluding holidays, after 7:00 AM and in sufficient time to have unloading operations completed before 3:30 PM unless special arrangements have been made ahead of time with the plant supervisor.
6. Tanker truck drivers shall be equipped with the appropriate PPE for their use during off-loading operations. Tanker drivers shall verify with plant personnel that the connections between the tanker and the storage tank are secure; that wheel chocks are in place on the tanker and that the correct material is present in the tanker before off-loading operations begin. The delivery truck shall be capable of discharging the entire contents of the tanker against an elevation head of 20 feet. The delivery hose shall be compatible with the two-inch OPW male fitting on the tank fill lines.
7. The Commission reserves the right to analyze the material upon delivery and reject it for failure to meet these specifications. The supplier shall pay all freight charges on rejected material.
8. If requested by the plant supervisor, the supplier's truck driver shall collect a representative sample of the load prior to unloading. Sampling shall be done with the aid of plant personnel and the Commission will supply routine sampling apparatus, bottles and tags.
9. The supplier shall provide on-site technical service during the term of the contract if requested to do so by the Commission. Submit a Material Safety Data Sheet with bid.

INVITATION FOR BID

CAUSTIC SODA (25% and 50%)

CITY/COUNTY UTILITY COMMISSION

Bids Will Be Opened At
3:00 pm, November 17, 2022

In CITY HALL ROOM 324
BY CITY/COUNTY PURCHASING

For electronic bid delivery, scan all required bid forms as a single PDF with subject line "**Bid for Caustic**" and email to: bids@cityofws.org
OR
For FedEx / hand-delivery, place bid inside a sealed envelope labelled "**BID for CAUSTIC**" to:
City of Winston-Salem Purchasing Dept.
101 N. Main Street
City Hall Room 324
Winston-Salem, North Carolina 27101

Pursuant to NCGS 143-129, sealed proposals endorsed "**CAUSTIC SODA, FB22287**" will be opened by City/County Purchasing at the place and time noted above. The Utility Commission reserves the right to reject any and all proposals, and to waive any informalities in the bidding procedures. Bids will be opened publicly.

BIDDERS MAY SUBMIT ELECTRONICALLY OR BY HARDCOPY. It is the bidder's responsibility to confirm receipt of their bid proposal.

For additional instructions on submitting bids, contact Darren Redfield at darrenmr@cityofws.org or 336-747-6936 during regular office hours. End of question period is 12:00 PM, November 14, 2022.

Bidding Agent:
Darren Redfield
Buyer - Purchasing
darrenmr@cityofws.org

SPECIFICATIONS PREPARED BY:
Utilities staff

PROPOSAL – PAGE 3

CAUSTIC SODA 50%

per Specifications, pages XXXX

Bidder acknowledgment: The undersigned bidder hereby declares that they have carefully examined the specifications contained herein and will provide all labor, materials, equipment, supervision, and insurance applicable to perform the services herein in accordance with the specifications and the requirements under them for the following sum to wit:

Supply semi-annually an estimated **450** Dry Tons of 50% Liquid Sodium Hydroxide per the Specifications and deliver to the two wastewater treatment plants on an as-needed basis. The City will order full 4,000 gallon loads unless unexpected circumstances were to develop.

ITEM 1:
TOTAL for estimated **450 dry tons** semi-annually:

Unit Cost $ 958 **/DT**, so the Total Annual Purchase is $ 431,100 (Unit Cost x **450**)

Product must be Delivered FOB to the facility.

Manufactured by: Trinity Mfg. Inc.

Shipping Point: Hamlet, NC

BIDDER NAME: Oltrin Solutions, llc

ALL BIDS MUST BE F.O.B. DELIVERED TO PLANT LOCATIONS - NO ADDITIONAL PAYMENTS WILL BE MADE FOR FUEL SURCHARGES, SHIPPING CHARGES, PALLETS, DRUMS, ETC.

The apparent low bidder shall provide a certified analysis within 48 hours, if requested by plant staff, for review prior to award by the Utility Commission.

PROPOSAL – PAGE 4

For the purpose of issuing Purchase Orders and paying invoices, please indicate the following for prompt P.O. and payment distribution:

OltrinSolutions llc
COMPANY

11E Y Hogan Dr (PO Box 1195)
MAILING ADDRESS (or PO BOX)

Hamlet, NC 28345
CITY, STATE, ZIP

Bonnie Lowry
CONTACT PERSON

910-419-6551
TELEPHONE

oltrinco@trinitymfg.com
EMAIL ADDRESS

ALL BIDS MUST BE F.O.B. DELIVERED TO PLANT LOCATIONS - NO ADDITIONAL PAYMENTS WILL BE MADE FOR FUEL SURCHARGES, SHIPPING CHARGES, PALLETS, DRUMS, ETC.

PROPOSAL SIGNATURE PAGE

Submission of a bid proposal shall indicate that the proposer has made themselves fully aware of the requirements for providing the service requested by the City of Winston-Salem. It is certified that this proposal is made in good faith and without collusion with any other person bidding on this contract or with any officer or employee of the City of Winston-Salem. **The Bidder must sign and include the Non-Collusion Affidavit Form with its proposal for the bid to be considered.**

The undersigned certifies that they have read and understood all the provided bidding documents, the project specifications, and agree to the terms and conditions stated herein. **This bid must be signed by a responsible official of the bidding organization.**

11/9/2022
Date

Oltrin Solutions LLC (Trinity Manufacturing, Inc.)
Company (SEAL)

Larry Oxford
Authorized Signature (Required*)

P.O. Box 1519
Street Address or P.O. Box

Larry Oxford / V.P. Sales & Operations Planning
Printed or Typed Name and Title

Hamlet, NC 28345
City, State, Zip

loxford@trinitymfg.com
E-Mail Address

910-995-0465
Telephone Number

The following information is requested for statistical purposes only. The provision or omission of this information will neither affect nor influence the award of these contracts. Bidder further certifies that:

We ( ) are a minority-owned business enterprise. If yes, please identify in the appropriate box below:

( ) Black
( ) Hispanic
( ) Asian American including Indian Subcontinent and Pacific Islands
( ) Native American Indian including Eskimos and Aleuts
( ) socially and economically disadvantaged
( ) disabled

We ( ) are a woman-owned business enterprise.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

required – attach to bid

State of North Carolina)

County of Richmond)

Project/Service/Product: **CAUSTIC SODA, FB23145**

Larry Oxford, being first duly sworn, deposes and says that:
(Printed Name)

1. He/she is (circle: owner, partner, officer, representative or agent) of Trinity Manufacturing, Inc., the Bidder that has submitted the attached Bid;

2. He/she is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such Bid;

3. Such Bid is genuine and is not a collusive or sham Bid;

4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this Affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bids of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Winston-Salem, Forsyth County, or any person interested in the proposed Contract; and

5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this Affiant.

Larry Oxford
Signature

V.P. Sales & Operations Planning
Title

Subscribed and sworn to before me this 9th day of November, 2022.

Notary Public: Maria V. Messer (SEAL)

My Commission Expires: 11-14-2025

MARIA V MESSER
NOTARY
PUBLIC
RICHMOND COUNTY, NC

ADDENDUM #1

CAUSTIC SODA – FB23145

BIDS WILL BE RECEIVED UNTIL
3:00 PM, November 17, 2022

DELIVERED TO bids@cityofws.org OR MAIL TO:
CITY OF WINSTON-SALEM
PURCHASING
101 NORTH MAIN STREET
CITY HALL, ROOM 324
WINSTON-SALEM, NC 27101

November 9, 2022

Please include this page with your bid.

Darren Redfield, Buyer

Oltrin Solutions LLC (Trinity Mfg., Inc.)
Company

Larry Oxford
Authorized Signature

11/9/2022
Date

BID CLARIFICATIONS

The following responses are hereby given to bidder questions:

1. *Question:* It seems the contract dates should be 2023 on page 8. RESPONSE: Correct. All changes are highlighted in gray on attached revised Proposal form page 8.
2. *Question:* Is the price evaluation at each three month mark valid for the initial six month contract period, or only on the renewals? RESPONSE: this has been removed from the bid.
3. *Question:* Is membrane grade required for 25% caustic soda? RESPONSE: Diaphragm grade is acceptable. Membrane grade is only required for 50% caustic soda.

PROPOSAL FORM (Rev. Add #1)

CAUSTIC SODA 25% and 50%

BIDDERS:
The Utility Commission wishes to enter into annual contracts for its water and wastewater chemicals. The Commission reserves the right to cancel or not extend the contract at any time and/or at renewal junctures, whether due to discontinuing use of the chemical, budget constraints, or without cause.

NOTE: **All quantities shown are estimated.** The Utility Commission reserves the right to purchase more or less than these amounts at the firm contract cost during each contract term. All purchases made under the contract in subsequent fiscal years are subject to appropriations by the City Council of the City of Winston-Salem to cover such purchases.

The Initial Contract Period is January 1, 2023 through June 30, 2023. All unit prices shall be firm for this initial contract period.

Renewable term contract. The Utility Commission reserves the right to extend this contract for up to two (2) additional 6-month periods* (ending June 30, 2024). Any contract extension is subject to the continuation of usage and availability of funds. A properly executed purchase order shall be evidence of an extension agreed to by the parties and that said purchase order shall become a self-executing amendment to the contract.

Price adjustments. The vendor may request a price increase at the beginning of each renewal term by an amount not-to-exceed the latest Producer Price Index (PPI) as noted below - the difference from the most recently available month to the previous six-month period - as reported on the U.S. Department of Labor Bureau of Labor Statistics website https://www.bls.gov/ppi/detailed-report/home.htm#2021 at the time the extension is pursued (approximately 60 days ahead of renewal date). The Commission expects its vendors to give it the benefit of any a price reduction, which will likewise be based on the same PPI calculation and agreed to by both parties. The Purchasing Department will verify price adjustment requests using PPI Table 9, commodity code 325180-4 "sodium hydroxide".

The calculation formula is the simple percentage method: (PPI Value at Renewal divided by PPI Value of 6 months prior) multiplied by Original Unit Price = New Adjusted 6-mo. Price. Example:
(PPI-Nov 2021 / PPI -Nov 2020) X Orig. Unit Price =...(277.948 / 260.229) X $500 = $534.05, a 6.81% increase. The PPI index calculation will be based on 3 decimal places, but the price will be rounded up or down to 2 decimal places, unless the unit price is under $1.00 where it will be rounded to 3 decimal places.

Deleted

LED

DETAILED SPECIFICATIONS

CAUSTIC SODA 25%

PURPOSE:

1. The City of Winston-Salem/Forsyth Utility Commission desires to enter into a contract for the supply of **25% Sodium Hydroxide (caustic soda)** solution for use at the Commission's two wastewater treatment plants. The City reserves the right to extend this contract.
2. Award: The Commission intends to award the contract to the responsible bidder submitting the lowest contract price; however, it reserves the right to consider any bid or contract exceptions, as well as past performance, in making a final award decision.

CERTIFICATIONS REQUIRED:

1. The material furnished under this contract shall conform to the latest revision of the American Water Works Association Standard for Caustic Soda, 8501 and must be certified as meeting ANSI/NSF Standard 60. **The product must be produced domestically in the USA. Membrane Diaphragm grade is acceptable.**
2. Each bid shall show the unit price per dry ton of caustic soda provided (as a 25% solution) and the total contract price. The contract price will be equal to the unit price per ton multiplied by the estimated dry tons to be purchased during the contract period.
3. The unit price by the supplier shall include all delivery and shipping charges.
4. Any exception(s) to any of the specifications detailed herein must be fully explained in a letter accompanying the bid, and is subject to acceptance by the Commission.

PHYSICAL AND CHEMICAL CHARACTERISTICS:

1. The material provided under this contract shall contain 25% sodium hydroxide (NaOH) by weight and shall have a specific gravity of 1.278 at 60°F.
2. The material provided under this contract shall contain no compound or contaminant that will inhibit or interfere with the wastewater treatment process or that will pass through the treatment plant in such a form so as to harm the receiving stream.
3. A statement of the equivalent dry weight of sodium hydroxide of each shipment shall be submitted, from which the cost of the shipment will be calculated. Dry tons of sodium hydroxide shall be calculated using the following formula:

$$\text{Caustic Soda, dry tons} = \frac{\text{Total weight of material delivered, lbs X \% Caustic Soda}}{200{,}000}$$

4. The Commission reserves the right to award the contract on the basis of price and/or suitability of the material based on the analysis of the material.

PACKAGING AND DELIVERY:

1. The material shall be delivered to the Archie Elledge and the Muddy Creek Wastewater Treatment Plants in ~4,000 gallon tanker loads. The address for each of the facilities are as follows:

LEO

TRICINC-02

NCASKEY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/1/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Alliant Insurance Services, Inc.
9 E River Park Place East Ste 310
Fresno, CA 93720

CONTACT NAME: Nicole Caskey
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS: Nicole.Caskey@alliant.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Ascot Specialty Insurance Company	45055
INSURER B : Nationwide Agribusiness Insurance Company	28223
INSURER C : Texas Insurance Company	16543
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Trinity Manufacturing Inc.
P O Box 1519
Hamlet, NC 28345

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE / X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / X PRO-JECT / LOC OTHER:	X	X	ENPL1910000001-04	8/1/2022	8/1/2023	EACH OCCURRENCE	$ 3,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 500,000
							MED EXP (Any one person)	$ 25,000
							PERSONAL & ADV INJURY	$ 3,000,000
							GENERAL AGGREGATE	$ 3,000,000
							PRODUCTS - COMP/OP AGG	$ 3,000,000
							POLLUTION	$ 3,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY	X	X	CPP118578A	8/1/2022	8/1/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
C	UMBRELLA LIAB / X OCCUR X EXCESS LIAB / CLAIMS-MADE DED / RETENTION $			BUQSTRTCA013200_050037_01	8/1/2022	8/1/2023	EACH OCCURRENCE	$ 5,000,000
							AGGREGATE	$ 5,000,000
								$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	WCC145762A	8/1/2022	8/1/2023	X PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Winston Salem is included as additional insured when required by written contract per policy forms attached. Waiver of Subrogation attached. Excess Policy follows form.
Endorsement(s) Attached:
General Liability Additional Insured
General Liability Waiver of Subrogation
Auto Additional Insured
Auto Waiver of Subrogation
Workers' Comp Waiver of Subrogation

CERTIFICATE HOLDER

City of Winston Salem
Purchasing
PO Box 2511
Winston-Salem, NC 27102

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Nicole Caskey

© 1988-2015 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

USMCA – United States-Mexico-Canada Agreement

CERTIFICATE OF ORIGIN

19 CFR 182

1. Blanket Period (up to one year)		2. Single Shipment ☐ Yes ☒ No
From *(mm/dd/yyyy)*	To (mm/dd/yyyy)	
01/01/2023	12/31/2023	Invoice No. of Single Shipment, if known:

3. Certifier's Name and Address (include country):		4. Producer's Name and Address (include country):	
Taylor Fahmy 11 EV Hogan Drive PO Box 1519 Hamlet, NC 28345 USA ☐ Exporter ☐ Importer ☒ Producer		Oltrin Solutions, LLC 11 EV Hogan Drive PO Box 1195 Hamlet, NC 28345 Tax ID: 94-3092516	
Telephone Number:	910-410-2740	Telephone Number:	910-410-1180
E-mail Address:	tfahmy@trinitymfg.com	E-mail Address:	oltrincs@trinitymfg.com
Job Title:	EHS Technician	Note: Address of producer shall be the place of production of the good.	

5. Exporter's Name and Address (include country):		6. Importer's Name and Address:	
Unknown Note: Not required if Producer doesn't know identity of exporter		Unknown	
Telephone Number:		Telephone Number:	
E-mail Address:		E-mail Address:	

7. Description of the Good(s)	8. HS Tariff Classification Number	9. Origin Criterion [see Instructions]	10. Method of Qualification	11. Country of Origin
Sodium Hydroxide (30-52% by weight) ECCN: NLR - No License Required EAR99 US HTS - 2815.12.0000 Canada HTS - 2815.12.0000 Mexico HTS - 2815.12.01	2815.12	B	TS	US

I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.

12a. Authorized Signature of Certifier:	12b. Date:	11-04-2022

Oltrin Solutions

50% Liquid Caustic Soda - Sales Specification

Commercial Grade

3/4/2015

ITEMS	SPECIFICATION
Sodium Hydroxide (NaOH)	49.00 – 51.00 wt %
Sodium Carbonate (Na2CO3)	0.20 wt % max
Sodium Oxide (Na2O)	38.0 – 39.6 wt %
Sodium Chloride (NaCl)	1.10 wt % max (11000 ppm max)
Sodium Chlorate (NaClO3)	0.30 wt % max (3000 ppm max)
Sodium Sulfate (Na2SO4)	0.02 wt % max (200 ppm max
Iron (Fe)	8.0 ppm max

Certified by the National Sanitation Foundation (NSF) for the NSF/ANSI-60 Standard at a maximum use level in drinking water of 100 mg/L.

This material meets the monograph test requirements of the Food Chemicals Codex most current edition. Use of caustic in a food or food related application must be carefully evaluated against appropriate regulations by the user. It cannot be assumed that products meeting the test requirements of FCC are suitable for all uses without such an evaluation.

P.O. Box 1195 Hamlet, NC 28345 PH. 910-582-5650 www.trinitymfg.com

Oltrin Solutions

Sodium Hydroxide 50% - Sales Specification

Membrane Water Treatment Grade

8-1-2017

ITEMS	SPECIFICATION
Sodium Hydroxide (NaOH)	49.50 – 51.00 wt%
Sodium Carbonate (Na2CO3)	0.10 wt% max
Sodium Oxide (Na2O)	38.36 – 39.57 wt%
Sodium Chloride (NaCl)	200 ppm max
Sodium Chlorate (NaClO3)	85 ppm max
Sodium Sulfate (Na2SO4)	25 ppm max
Iron (Fe)	3.0 ppm max
Copper (Cu)	0.30 ppm max
Nickel (Ni)	1.0 ppm max
Lead (Pb)	1.0 ppm max
Mercury (Hg)	0.05 ppm max

Certified by the National Sanitation Foundation (NSF) for the NSF/ANSI-60 Standard at a maximum use level in drinking water of 100 mg/L.

This material meets the monograph test requirements of the Food Chemicals Codex most current edition. Use of caustic in a food or food related application must be carefully evaluated against appropriate regulations by the user. It cannot be assumed that products meeting the test requirements of FCC are suitable for all uses without such an evaluation.

P.O. Box 1195 Hamlet, NC 28345 PH. 910-582-5650 www.trinitymfg.com

Certificate of Registration

This certifies that the Quality Management System of

Trinity Manufacturing, Inc including Oltrin

11 EV Hogan Dr
Hamlet, North Carolina, 28345, United States

has been assessed by NSF-ISR and found to be in conformance to the following standard(s):

ISO 9001:2015

Scope of Registration:

The development, sales, production, inspection, and shipping of Trinity's chemicals produced and shipped worldwide, in compliance with regulatory requirements. There are no exclusions from the ISO 9001:2015 requirements. The quality management system also applies to the Oltrin company, wholly operated by Trinity.

Certificate Number:	C0389680-IS2
Certificate Issue Date:	21-OCT-2021
Registration Date:	17-DEC-2021
Expiration Date *:	16-DEC-2024

Jennifer Morecraft,
Senior Managing Director

NSF International Strategic Registrations

789 North Dixboro Road, Ann Arbor, Michigan 48105 | (888) NSF-9000 | www.nsf-isr.org

Authorized Registration and /or Accreditation Marks. This certificate is property of NSF-ISR and must be returned upon request.
*Company is audited for conformance at regular intervals. To verify registrations call (888) NSF-9000 or visit our web site at www.nsf-isr.org

BID TABULATION

SODIUM HYDROXIDE (CAUSTIC SODA 25%), FB23145

BIDS OPENED: 3:00 PM, NOV. 17, 2022

CHEMICAL	VENDOR	EST. QTY (6 Mos)	UOM	UNIT COST	ESTIMATED TOTAL COST	Time/Date stamp
Caustic Soda 25% - (Elledge, Muddy Creek)		45	DT			
	Univar Solutions USA, Inc.			$1,327.00	$59,715.00	11/16/2022 17:21
	Brenntag Mid-South			$1,350.00	$60,750.00	11/15/2022 13:14
incumbent	JCI Jones			$1,374.00	$61,830.00	11/14/2022 10:45
	Oltrin Solutions/Trinity			no bid		11/17/2022 7:11
	Pencco			no bid		11/10/2022 10:15

SODIUM HYDROXIDE (CAUSTIC SODA 50%), FB23145

BIDS OPENED: 3:00 PM, NOV. 17, 2022

CHEMICAL	VENDOR	EST. QTY (6 Mos)	UOM	UNIT COST	ESTIMATED TOTAL COST	Time/Date stamp
Caustic Soda 50% - (Neilson, Swann, Thomas)		450	DT			
incumbent	Oltrin Solutions/Trinity			$958.00	$431,100.00	11/17/2022 7:11
	Brenntag Mid-South			$1,133.00	$509,850.00	11/14/2022 10:45
	Univar Solutions USA, Inc.			$1,136.00	$511,200.00	11/16/2022 17:21
	JCI Jones			no bid		11/10/2022 10:15
	Pencco			no bid		11/10/2022 10:15

ADOPTED December 12, 2022, by the
WINSTON-SALEM/FORSYTH COUNTY
UTILITY COMMISSION

Item 9

Winston-Salem/Forsyth County Utility Commission
Action Request Form

Date: December 12, 2022

To: Chair and Members of the Utility Commission

From: Courtney Driver, Utilities Director

Commission Action Requested:

Consideration of a Resolution Awarding a Term Contract for 50% Caustic Soda at the Water Treatment Plants.

Strategic Plan Goal Area: Product Quality
Strategy: Focus on Quality Assurance
Key Work Item: No

Summary of Information:

Due to continued volatility in chemical market conditions, price escalations in raw materials used to produce bulk chemicals and increasing transportation costs, the current supplier of 50% caustic soda used at Winston-Salem/Forsyth County Utilities water treatment plants requested a price increase above what is allowed under our current contract. Therefore, City/County Purchasing requested bids for 50% caustic soda. As with all chemicals re-bid, six-month renewable terms were specified.

Bids were received November 17, 2022, for 50% caustic soda to be delivered as needed for water treatment. Below is a summary of the responsive bids received:

Company	City/State	Total Bid	Change
Oltrin Solutions, Inc.	Hamlet, NC	$431,100	+28.1%
Brenntag Mid-South, Inc.	Greensboro, NC	509,850	
Univar Solutions USA, Inc.	Morrisville, PA	511,200	
JCI Jones Chemicals, Inc.	Charlotte, NC	no bid	
Pencco, Inc.	San Felipe, TX	no bid	

Staff recommends awarding a term contract to Oltrin Solutions, Inc. for an estimated 450 dry tons of 50% caustic soda semi-annually, renewable with allowable increases/decreases not to exceed the Producer Price Index, as published on the U.S. Bureau of Labor Statistics website at the time extensions are pursued, in the estimated amount of $431,100. If the term contract is extended, the estimated expenditure over one-and-a-half years would be approximately $1,293,300.

Submitted By: Shantell McClam (Name) — Purchasing (Department/Division)

ADOPTED December 12, 2022, by the
WINSTON-SALEM/FORSYTH COUNTY
UTILITY COMMISSION

RESOLUTION AWARDING A TERM CONTRACT FOR 50% CAUSTIC SODA AT THE WATER TREATMENT PLANTS

WHEREAS, due to continued volatility in market conditions for bulk chemicals, the current supplier for 50% caustic soda requested a price increase not supported under the Winston-Salem/Forsyth County Utility Commission's current contract, thus requiring staff to rebid this contract; and

WHEREAS, after due advertisement, bids were received and opened by City/County Purchasing at 3:00 p.m. on Thursday, November 17, 2022, for 50% caustic soda to be delivered as needed at the water treatment plants; and

WHEREAS, staff recommends award of a term contract to the lowest responsive bidder, Oltrin Solutions, Inc., renewable semi-annually, with allowable increases/decreases not to exceed the Producer Price Index, as published on the U.S. Bureau of Labor Statistics website at the time extensions are pursued, providing both parties agree.

NOW, THEREFORE, BE IT RESOLVED by the Winston-Salem/Forsyth County Utility Commission (Commission), an agency of the City of Winston-Salem, that a term contract for delivery of 50% caustic soda be executed with Oltrin Solutions, Inc. in the estimated semi-annual amount of $431,100, with the option to extend for up to two additional semi-annual terms, making the potential value of the award approximately $1,293,300.

BE IT FURTHER RESOLVED that the award of this contract constitutes a preliminary determination as to the bidder's qualifications. The Commission is not legally bound to perform the contract until the purchase order is duly executed by the appropriate City staff.

BE IT FURTHER RESOLVED that funds have been appropriated in FY 2022-23 to cover the cost of these purchases through June 30, 2023, with purchases thereafter subject to future budget appropriations.

Financial Services

Purchasing Division

Requisition #

CITY OF HIGH POINT
SOLE SOURCE JUSTIFICATION
FORM (For Items Costing $500.00 or More)
Statutory Reference N.C.G.S. 143-129(e)6

Vendor:

Item(s):

Justification:

Estimated expenditure for the above item(s):

CHECK ALL ENTRIES BELOW THAT APPLY TO THE PROPOSED PURCHASE.
ATTACH A MEMO CONTAINING JUSTIFICATION AND SUPPORT DOCUMENTATION.

1. Performance or price competition for a product are not available.

2. A needed product is available from only one source of supply.

3. Standardization or compatibility is the overriding consideration.

4. The parts/equipment are required from this source to permit standardization.

5. None of the above applies. A detailed explanation and justification for this sole source request is contained in attached memo and support documentation.

The undersigned requests that competitive procurement be waived and that the vendor identified as the supplier of the material or service described in this sole source justification be authorized as a sole source for the material or service.

Department Head/Authorized Personnel Department/Division

Date

Approval Process

Under $5,000	(Purchasing Manager)
$5,000-$30,000	(Financial Services Director)
$30,000 – Up	(City Council)

"AN ORDINANCE AMENDING THE GRANT PROJECT ORDINANCE OF THE CITY OF HIGH POINT, NORTH CAROLINA FOR THE AMERICAN RESCUE PLAN ACT OF 2021: CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS FOR GOVERNMENT SERVICES

Be it ordained by the City Council of the City of High Point, North Carolina, as follows:

Section 1. The Grant Project Ordinance of the City of High Point for the American Rescue Plan Act of 2021: Coronavirus State and Local Fiscal Recovery Funds should be amended as follows:

(A) That the following expenditures be amended as follows

Government Services	$7,990,000
Unassigned	-7,990,000

Section 2. That all ordinances, or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict

Section 3. That this ordinance shall be effective from and after its passage."

Adopted by High Point City Council, this the 6th day of February 2023

Mayor, Jay W. Wagner

ATTEST

Sandra Keeney,
City Clerk

CITY OF HIGH POINT
AGENDA ITEM

Title: Purchase of Warehouse Stock – 200-amp Pedestals
Bid # 30-011023

From: Tyler Berrier, Electric Utilities Director

Meeting Date: February 6th, 2023

Public Hearing: N/A

Date Opened: N/A

Advertised By: N/A

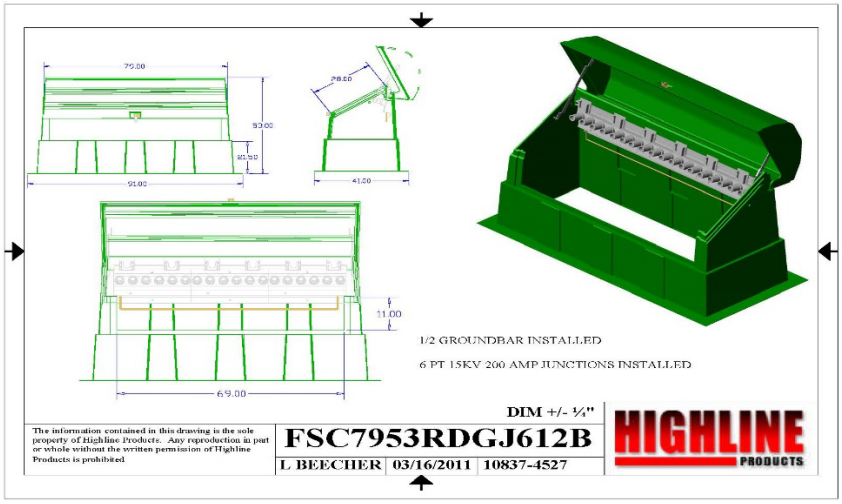
Attachments: Attachment A: Formal Bid Recommendation
Attachment B: Bid Tabulation

PURPOSE:
To purchase 200-amp Secondary Pedestals that are commonly used by the Electric Utilities Department. Replenish warehouse stock.

BACKGROUND:
The City normally stocks these items in inventory.

BUDGET IMPACT:
Funds are included in the current operating budget to cover this material purchase.

RECOMMENDATION / ACTION REQUESTED:
City Staff has reviewed the bid submittal and evaluated the information provided. Staff is recommending that the bid for this item be awarded to WESCO Distribution, Inc. for **$172,383.** WESCO Distribution was the lowest qualified bidder of the bids received by the Purchasing division.



BIDDERS LIST & TABULATION

01/10/2023 2:00 PM

FORMAL BID #30-011023 200 AMP SWITCHING PEDESTALS WHS# 2938					
VENDOR NAME & ADDRESS	**LINE ITEM #**	**QTY.**	**UNIT PRICE (UOM=EA)**	**TOTAL PRICE**	**DELIVERY A.R.O.**
BORDER STATES P.O. BOX 8597 COLUMBIA, SC 29202	**2938**	**12**	**$14,725.00**	**$176,700.00**	**12-14 WEEKS**
IRBY P.O. BOX 7457 ROCKY MOUNT, NC 27804	**2938**	**12**	**N/Q**	**N/Q**	**N/A**
NATIONAL TRANSFORMER 2613 DISCOVERY DR RALEIGH, NC 27616	**2938**	**12**	**N/Q**	**N/Q**	**N/A**
WESCO 3025 STONYBROOK DR RALEIGH, NC 27604	**2938**	**12**	**$14,365.25**	**$172,383.00**	**12-14 WEEKS**

*Bids advertised 12/22/22

FORMAL BID RECOMMENDATION
REQUEST FOR COUNCIL APPROVAL

DEPARTMENT:

COUNCIL AGENDA DATE:

BID NO.: CONTRACT NO.: DATE OPENED:

DESCRIPTION:

PURPOSE:

COMMENTS:

RECOMMEND AWARD TO: AMOUNT:

JUSTIFICATION:

ACCOUNTING UNIT	ACCOUNT	ACTIVITY	CATEGORY	BUDGETED AMOUNT
TOTAL BUDGETED AMOUNT				

DEPARTMENT HEAD: DATE:

The Purchasing Division concurs with recommendation submitted by the and recommends award to the lowest responsible, responsive bidder in the amount of $.

PURCHASING MANAGER: DATE:

Approved for Submission to Council
FINANCIAL SERVICES DIRECTOR: DATE:

CITY MANAGER: DATE:

CITY OF HIGH POINT
AGENDA ITEM

Title: Municipal Agreement with NCDOT for Transportation Alternatives Funds (TAP) for a sidewalk construction project EB-5874 along Eastchester Drive (NC 68)

From: Greg Venable, Transportation Director

Meeting Date: Monday February 6, 2023

Public Hearing: No

Advertising Date: NA
Advertised By: NA

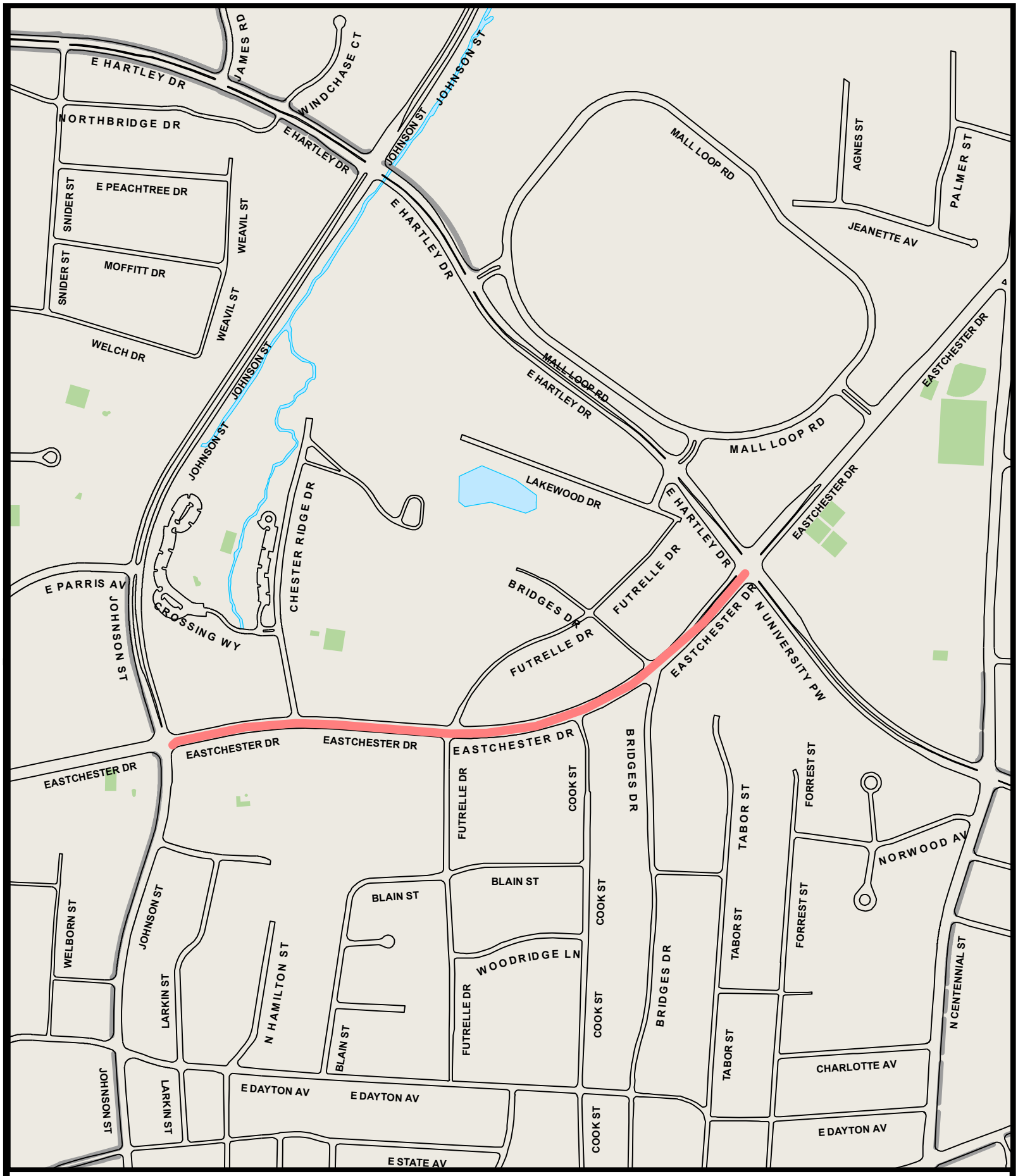
Attachments: Municipal Agreement

PURPOSE:
Consideration of a Municipal Agreement with the North Carolina Department of Transportation (NCDOT) for TAP funding to construct a sidewalk project along Eastchester Drive from Johnson Street to University Parkway.

BACKGROUND:
The High Point MPO submitted this project on behalf of the City of High Point to NCDOT during the project submittal process. The project was funded by NCDOT and included in the Transportation Improvement Program. This project is currently scheduled for construction in 2023.

BUDGET IMPACT:
The cost of this project to NCDOT is $504,000, which is 80% of the total project cost. This City is responsible for the remaining 20% of the project cost which is $126,000. The City's portion of the project will come from General Capital Project funds.

RECOMMENDATION / ACTION REQUESTED:
The Department of Transportation recommends approval of this Agreement.



Eastchester Dr - Johnson St to University Pw

Map prepared by
City of High Point Transportation Department
211 S. Hamilton Street
High Point, North Carolina 27260
August 2018

HIGH POINT
North Carolina's International City

This map is provided as a public information resource and every reasonable effort has been made to assure the quality of the map. This data information and related graphics are not legal documents and are not intended to be used as such. The City of High Point makes no warranty, express or implied, as to the accuracy, reliability, utility or completeness of this information. The City of High Point assumes no liability either for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein.

N W E S

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: City of High Point **County:** Guilford

TIP: EB-5874

Project: NC 68 (Eastchester Drive) Sidewalk

Scope: constructing sidewalk on NC 68 (Eastchester Drive) from Johnson Street to SR 1278 (N University Parkway) in High Point.

Eligible Activities:

CON	47330.3.1	Construction
OTHER		
FEDERAL-AID	0068016	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
Transportation Alternatives Program	$504,000	80%	$126,000	20%
Total Estimated Cost			**$630,000**	

Responsibility: The City of High Point shall be responsible for all aspects of the project.

NORTH CAROLINA

GUILFORD COUNTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

CITY OF HIGH POINT

LOCALLY ADMINISTERED PROJECT - FEDERAL

DATE: 12/09/2022

TIP #: EB-5874

WBS Elements: PE

ROW

CON 47330.3.1

OTHER FUNDING:

FEDERAL-AID NUMBER: 0068016

CFDA #: 20.205

Total Funds [NCDOT Participation] $504,000

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

W I T N E S S E T H:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for NC 68 (Eastchester Drive) Sidewalk, hereinafter referred to as the Project, in Guilford County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of $504,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of constructing sidewalk on NC 68 (Eastchester Drive) from Johnson Street to SR 1278 (N University Parkway) in High Point.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Transportation Alternatives Program. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Five Hundred Four Thousand Dollars ($504,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
Transportation Alternatives Program	$504,000	80%	$126,000	20%
Total Available Funding			**$630,000**	

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total available funding, or $63,000 to use towards the costs related to review

and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has three (3) years to complete all work outlined in the Agreement from the date of authorization of Federal Construction funds. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.

- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.

- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain

or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the NC 68 (Eastchester Drive) Sidewalk, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in

Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

  Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

  At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

  The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

  All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of $504,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

  Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project.

These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

  Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

  Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

  Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

  The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

  Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

  The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

  All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated

to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

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

L.S. ATTEST:

BY: _____

TITLE: _____

CITY OF HIGH POINT

BY: _____

TITLE: _____

DATE: _____

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

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

(SEAL)

_____
(FINANCE OFFICER)

Federal Tax Identification Number

_____

City of High Point

Remittance Address:

_____

_____

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 1/19/2023 (Date)

CITY OF HIGH POINT
AGENDA ITEM

Title: Selection of On-Call Consultants for Transportation Engineering and Planning Services

From: Greg Venable, Transportation Director

Meeting Date: Monday February 6, 2023

Public Hearing: No

Advertising Date: N/A
Advertised By: N/A

Attachments: None

PURPOSE:
Consideration of recommendations for the selection of qualified firms to serve as consultants for transportation engineering and planning services.

BACKGROUND:
In December 2022, the City issued a Request for Qualifications (RFQ) for on-call transportation engineering and planning services. This RFQ generated a high level of interest and proposals were received from 19 consulting firms. A selection committee, comprised of staff from the Transportation Department reviewed the proposals and identified five (5) firms demonstrating the best fit for the City's anticipated transportation engineering and planning needs. Based on their cumulative review of the proposals, the Selection Committee chose the following firms:

Kimley-Horn and Associates, Inc.
Stantec Consulting Services, Inc.
STV Engineers, Inc.
Dewberry Engineers, Inc.
Alfred Benesch & Company

These firms will be offered a Master Agreement for Professional Services in the following areas: 1) traffic engineering; 2) transportation and environmental planning; and 3) roadway, structural, and other general civil and transportation engineering. Department personnel will have the opportunity to select from the master list the consultant best qualified to perform individual projects. Each assigned project will be defined by a Task Order incorporating a Scope of Services and negotiated fee.

BUDGET IMPACT:
There is no immediate budget impact with this recommendation. On-call firms will be assigned work as projects develop and only when funding is available for their services.

RECOMMENDATION / ACTION REQUESTED:
The Transportation Department recommends approval of the selection of the firms listed above as providers of transportation engineering and planning services, and to authorize the City Manager to execute a Master Agreement for Professional Service for an initial term of five (5) years with each firm.

CITY OF HIGH POINT
AGENDA ITEM

Title: Eastside WWTP- DAF #3- Recirculating Pump Clearwater Inc.

From: Robby Stone – Public Services Director
Derrick Boone – Asst. Director Public Services

Meeting Date: February 6, 2023

Public Hearing: No

Advertising Date: N/A
Advertised By: N/A

Attachments: Attachment A- Quote
Attachment B- Sole Source Letter

PURPOSE:
For the sole source purchase of a recirculating pump for Dissolved Air Flotation (DAF) thickener #3 for the Eastside Wastewater Treatment Plant (WWTP).

BACKGROUND:
There are 3 DAF thickeners at the Eastside WWTP. The DAF thickeners receive pumped waste activated sludge and scum from the final clarifiers, thickens the sludge, and then the sludge is pumped to the sludge blending tanks. The recirculating pump for DAF #3 is 20-years old and has failed. It is more costly to rebuild the pump than to purchase a new pump. Clearwater, Inc. is the exclusive distributor for Fairbanks Morse Municipal Pump products including pumps, parts, and repair services for the area of North and South Carolina.

BUDGET IMPACT:
Funds for this project are available in the FY 2022-2023 budget.

RECOMMENDATION / ACTION REQUESTED:
Public Services is recommending that Clearwater Inc. be approved as a sole source vendor for the purchase of a replacement recirculating pump for $39,900.

ClearWater, Inc.
clearwaterinc.net
PO Box 1469 Hickory, NC 28603
Phone: (828) 855-3182 Fax: (828) 855-3183
www.clearwaterinc.net

Quote

Date	Estimate #
1/27/2023	20230393

Name / Address	Ship To
City of High Point Attn: Accounts Payable PO Box 230 High Point, NC 27261	City of High Point Eastside WWTP 5898 Riverdale Road Jamestown, NC 2728

Requestor	Phone	Email	Prepared By	Terms	Lead Time
Peter LaVigne	(336)882-4741	peter.lavigne@highpointnc.gov	Gwyn Wilson	Net 30	10 to 12 weeks

Item	Description	Qty	Price Each	Total
20224106-A	FM 4" Model C5425 Horizontal Dry-Pit Solids Handling Pump with 60HP 3/60/460VAC 1800RPM motor, SS Wear Rings, Chesterton 442 Mechanical seals, standard paint, belzona coating on wetted surfaces.	1	39,900.00	39,900.00T
	High Point Eastside WWTP TRP Pump #1 with SN 218322-2			
	NC 7% Sales Tax		7.00%	2,793.00

The above quoted prices do not include freight.

Total $42,693.00

REMIT TO:	Hickory Office:	Richmond Office:	Chesapeake Office:	
	PO Box 1469 **Hickory, NC 28603** **(828) 855-3182**	502 Research Road N. Chesterfield, VA 23236 (804) 378-3550	1224 Executive Blvd Suite 108 Chesapeake, VA23320 (757)512-6428	Quote Valid for 30 days. A 3% fee will be added for credit card fees. Freight is prepaid and added unless quoted.

Financial Services

Purchasing Division

Requisition #

CITY OF HIGH POINT
SOLE SOURCE JUSTIFICATION
FORM (For Items Costing $500.00 or More)
Statutory Reference N.C.G.S. 143-129(e)6

Vendor:

Item(s):

Justification:

Estimated expenditure for the above item(s):

CHECK ALL ENTRIES BELOW THAT APPLY TO THE PROPOSED PURCHASE.
ATTACH A MEMO CONTAINING JUSTIFICATION AND SUPPORT DOCUMENTATION.

1. Performance or price competition for a product are not available.

2. A needed product is available from only one source of supply.

3. Standardization or compatibility is the overriding consideration.

4. The parts/equipment are required from this source to permit standardization.

5. None of the above applies. A detailed explanation and justification for this sole source request is contained in attached memo and support documentation.

The undersigned requests that competitive procurement be waived and that the vendor identified as the supplier of the material or service described in this sole source justification be authorized as a sole source for the material or service.

Department Head/Authorized Personnel Department/Division

Date

Approval Process

Under $5,000	(Purchasing Manager)
$5,000-$30,000	(Financial Services Director)
$30,000 – Up	(City Council)

CITY OF HIGH POINT
AGENDA ITEM

Title: Waterview Pump Station Forcemain Extension, Change Order No. 2

From: Robby Stone – Public Services Director
Derrick Boone – Public Services Asst. Director
Allan Hicks – Projects Engineer

Meeting Date: February 6, 2023

Public Hearing: N/A

Advertising Date:
Advertised By:

Attachments: Attachment A – Change Order No. 2
Attachment B – Original and Extended Project Limits

PURPOSE:
To approve Change Order No. 2 to Baker Underground Inc for extension of the 16-inch forcemain from Eastchester Drive to Whites Mill Road, approximately 730 linear feet. This change order includes related labor, materials, time extension, equipment, and overhead outside of the scope of the original contract for the Waterview Pump Station Forcemain Extension Project which is currently under construction.

BACKGROUND:
City Council approved the contract for the Waterview Pump Station Forcemain Extension Project on May 2, 2022 to Baker Underground Inc for the amount of $ 2,767,305. During construction, the contractor discovered severely deteriorating ductile iron pipe at the intersection of Eastchester Drive. City staff have investigated the ductile iron pipe and assessed the corrosion limits. This change order will extend the 16-inch PVC pipe from Eastchester Drive to Whites Mill Road by horizontal drilling. The 16-inch PVC pipe will replace the deteriorated 16-inch ductile iron pipe and will connect to the new 16-inch ductile iron pipe that was recently installed when the NCDOT Skeet Club Road improvement project was constructed.

City staff processed change order #1 in the amount of $26,601.68 in December 2022 for additional work required for Duke Power conflicts and additional materials needed for restrained joints within encasements.

BUDGET IMPACT:
Funds for this project are available in the FY 2022-2023 budget

RECOMMENDATION / ACTION REQUESTED:
Public Services is recommending that Council approve Change Order No. 2 to Baker Underground Inc. in the amount of $455,546.74, and a 70-day extension to the contract end date. Upon approval of Change Order No. 2, the new total contract amount will be increased to $3,249,453.42 and the adjusted contract completion date will be June 6, 2023.

CHANGE ORDER NO.: 2

Owner:	**City of High Point**	Owner's Project No.:	---
Engineer:	**Davis-Martin-Powell**	Engineer's Project No.:	**200077**
Contractor:	**Baker Underground, Inc.**	Contractor's Project No.:	---
Project:	**Waterview PS Forcemain Extension**		
Contract Name:			
Date Issued:	**January 17, 2023**	Effective Date of Change Order:	**Date signed by Owner**

The Contract is modified as follows upon execution of this Change Order:

Description: **Additional costs associated with: 1) Replacing a section of existing ductile iron sewer force main, which is in poor condition, under Eastchester Drive and along Skeet Club Road to just west of Whites Mill Road with a new PVC sewer force main to be installed by Horizontal Directional Drill (HDD) method; 2) Abandonment of the existing ductile iron force main by pumping out the sewage from the pipe, plugging the ends of the pipe, and filling the pipe with grout/flowable fill. See revised DMP Plan Sheets 2, 2A, 2B, and 2C for details associated with these changes.**

Attachments: **1) Cost breakdown from Contractor**

Change in Contract Price	**Change in Contract Times**
Original Contract Price: $ 2,767,305.00	Original Contract Times: Substantial Completion: Ready for final payment: 210 Calendar Days
[Increase] ~~**[Decrease]**~~ from previously approved Change Orders No. 1 to No. 2: $ 26,601.68	~~**[Increase]**~~ ~~**[Decrease]**~~ from previously approved Change Orders No. 1 to No. 2: Substantial Completion: Ready for final payment: - 0 -
Contract Price prior to this Change Order: $ 2,793,906.68	Contract Times prior to this Change Order: Substantial Completion: Ready for final payment: 210 Calendar Days
[Increase] ~~**[Decrease]**~~ this Change Order: $ 455,546.74	**[Increase]** ~~**[Decrease]**~~ this Change Order: Substantial Completion: Ready for final payment: 70 Calendar Days
Contract Price incorporating this Change Order: $ 3,249,453.42	Contract Times with all approved Change Orders: Substantial Completion: Ready for final payment: 280 Calendar Days

	Recommended: **Davis-Martin-Powell**	Accepted: **Baker Underground, Inc.**
By:	Andrew P. Larrick	David R. Baker
Title:	Andrew P. Larrick, PE – Project Manager	David R. Baker - President
Date:	1/23/2023	1/23/23
	Authorized: **City of High Point**	Approved by Funding Agency (if applicable)
By:		
Title:	Robby D. Stone – Public Services Director	
Date:		

Copyright© 2018 National Society of Professional Engineers, American Council of Engineering Companies and American Society of Civil Engineers. All rights reserved.

Baker Underground

PCO 1B

422 West Mountain Street Suite A
Kernersville, NC 27284
336-515-4017

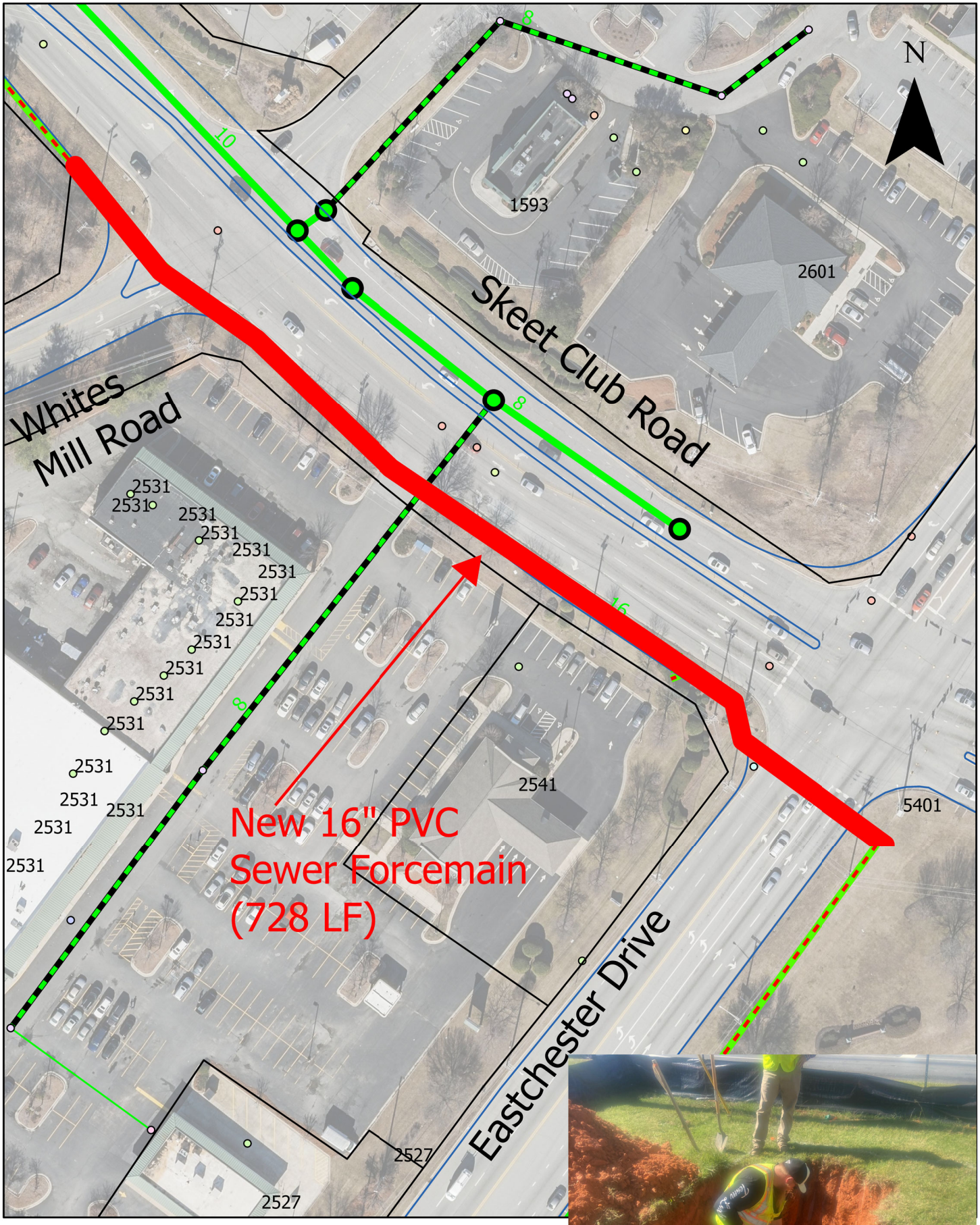
11/3/2022
rev. 12/22/2022
rev. 1/9/2023

To:	Project:
	City of High Point
Davis Martin Powell	Waterview Forcemain Extension
Att: Ben Palmer	
6415 Old Plank Road	Office 336.886.4821x284
High Point, NC 27265	Mobile 336.247.1203

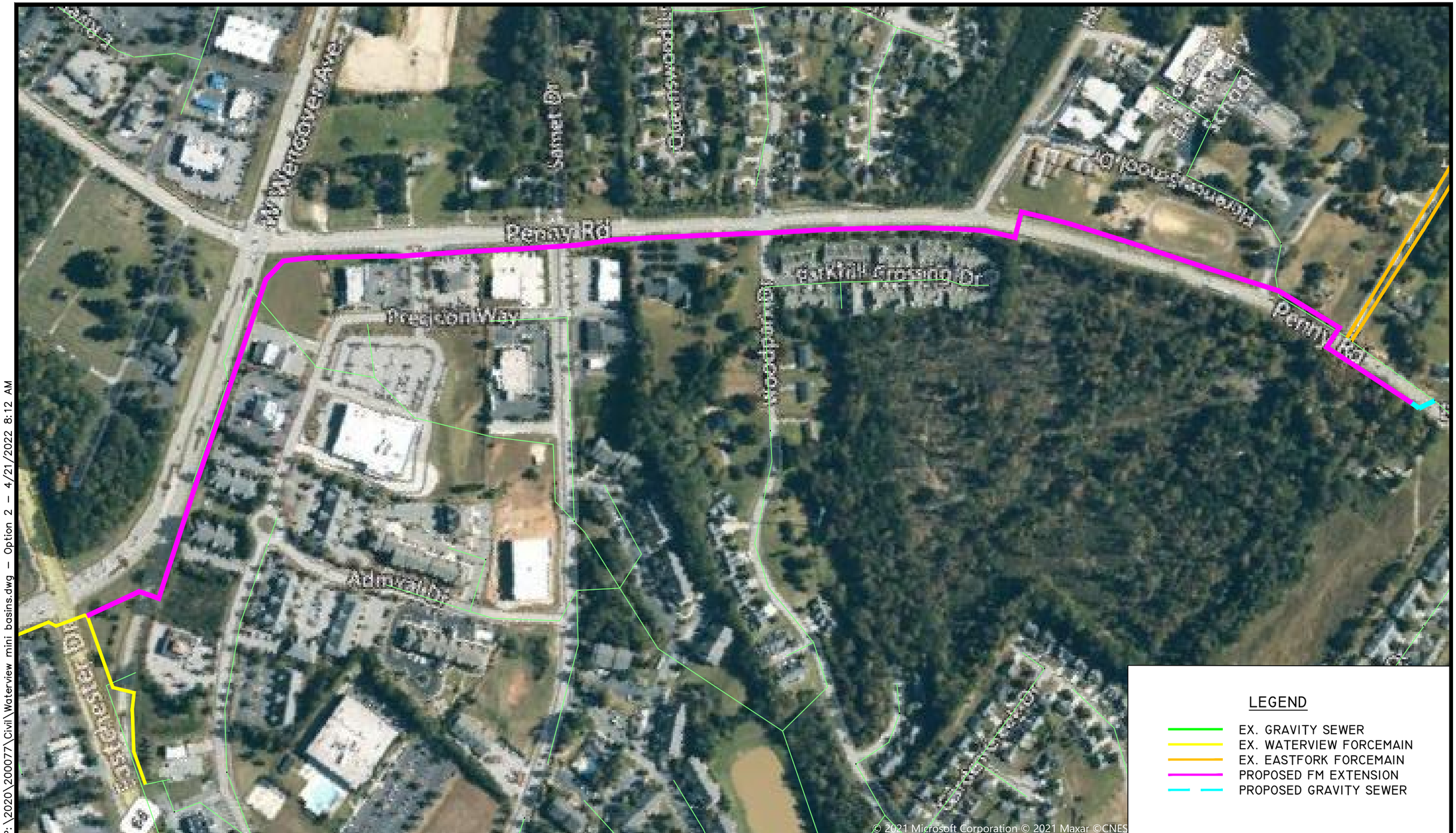
Description		Qty	U/M	Unit Price	Total
Directional Bore Under Eastchester with Stubout for Bypass Station					
Mobilization		1	LS	$ 11,500.00	$ 11,500.00
16 FPVC , installed by HDD **in Soil**		730	LF	$ 465.00	$ 339,450.00
16 FPVC , installed by HDD **in Rock*** **		730	LF	$ 975.00	
Traffic Control/ Road Plates (2 months plus maintenance, cold patch)		1	LS	$ 45,000.00	$ 45,000.00
Tracer wire		1460	LF	$ 3.00	$ 4,380.00
Tracer wire access box		1	EA	$ 1,000.00	$ 1,000.00
Cut and connect to existing pipe		1	LS	$ 2,400.00	$ 2,400.00
16" Sleeves	3	705	LBS	$ 15.00	$ 10,575.00
Pipe abandonment (plug line, pump sewage out, fill with flowable fill)		1	LS	$ 22,665.00	$ 22,665.00
Pre/Post Photography		1	LS	$ 2,400.00	$ 2,400.00
16"x16" Tapping sleeve & valve		-1	EA	$ 36,000.00	$ (36,000.00)
16x16" MJ Tee	1	650	LBS	$ 15.00	$ 9,750.00
16" 45 MJ Bend	2	340	LBS	$ 15.00	$ 5,100.00
16" MJ Plug	1	145	LBS	$ 15.00	$ 2,175.00
16" Plug Valve & Cl Box		1	EA	$ 20,000.00	$ 20,000.00
16" x 16" Tee		650	LBS	$ 15.00	$ 9,750.00
P & P Bond		1.20%	%		$ 5,401.74
Taxes are included in this proposal					
TOTAL Proposal					**$ 455,546.74**

Revision of this PCO is based on Final Drawings Released for Construcion from DMP, December 2022
Installation of this additional work will require an additional 70 calendar days to complete the contracted project.

Questions about this proposal should be directed to:
David Baker, 336-399-4086, davidb@bakerug.com



Waterview Pump Station Forcemain Extension, Change Order 2



DRAWING NAME: P:\2020\200077\Civil\Waterview mini basins.dwg – Option 2 – 4/21/2022 8:12 AM

DAVIS • MARTIN • POWELL
ENGINEERS & SURVEYORS
6415 OLD PLANK RD, HIGH POINT, NC 27265
(336) 886-4821 | WWW.DMP-INC.COM | LICENSE: F-0245

GRAPHIC SCALE
300 150 0 300 600
1" = 300 FEET

RELOCATE DISCHARGE TO PENNY ROAD

CITY OF HIGH POINT
WATERVIEW PUMP STATION
FORCEMAIN EXTENSION

Planning and Development Department

Consideration to approve an entry-level "Planner" position

Finance Committee
February 2, 2023

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Planning and Development Department

Planning and Development Director

Planning Services Division

Planning Administrator

Senior Planners (2)

GIS Analysts (2)

Development Services Division

Development Administrator

Senior Planners (3)

Planner

**Administrative Services Division

Administrative Coordinator

Administrative Specialist I & Administrative Specialist II

Current budgeted staff: 13 FTE

**Some functions shared with Inspections Dept. & Community Development (Local Code Enforcement)

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Background

- Increased land development reviews over the last few years
- Increased public interest and inquiries
- Level of Service Impacts – Longer Plan Reviews
- Previous Planner position shared with Inspection Services (restructured in 2021), supported:
  - Sign permit review
  - Residential Construction permit review
  - Zoning phone call and drop-in inquiries

****Additional Staff Needed to maintain Level of Services and Customer Satisfaction****

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Land Development Records

	Jul-Dec 2020	Jan-Jun 2021	Jul-Dec 2021	Jan-Jun 2022	Jul-Dec 2022
Number of land development records managed for **6-month period** *(easement reconveyance, group development, preliminary subdivision, ROW encroachment, site plan, street & utility plan, address assignment, design review, exclusion map, final subdivision plat, minor works certificate)*	88	150	169	134	161
*****2 FTE case managers (Planning Staff)***					

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Land Development Records:
Reviewed by the TRC (Several City Departments)

	Jul-Dec 2020	Jan-Jun 2021	Jul-Dec 2021	Jan-Jun 2022	Jul-Dec 2022
Total TRC Reviews for 6-month period *(easement reconveyance, group development, preliminary subdivision, ROW encroachment, site plan, street & utility plan)*	44	55	56	64	93
Number of TRC land development records **completing initial review within 10 business days** for 6-month period	31	27	21	34	29
Percent of TRC land development records completing **initial review within 10 business days** for 6-month period	72%	49%	37%	53%	31%

← Goal: 90 Percent

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Land Development Records: Reviewed by Planning Dept.

	Jul-Dec 2020	Jan-Jun 2021	Jul-Dec 2021	Jan-Jun 2022	Jul-Dec 2022
Number of P&D Department land development records for 6-month period *(address assignment, design review, exclusion map, final subdivision plat, minor works certificate)*	44	95	113	70	68
Number of P&D Department land development records **completing initial review within 5 business days** for 6-month period	41	91	101	54	42
Percent of P&D Department land development records completing **initial review within 5 business days** for 6-month period	93%	96%	89%	77%	62%

← Goal: 90 Percent

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Sign Permits and Code Confirmation Records: Reviewed by Planning

- Senior Staff is currently reviewing sign permits and writing code confirmation request reports.
- These are duties that a Planner would be well-equipped to fulfill after training within the department and free up senior staff time for plan reviews

	Jul-Dec 2020	Jan-Jun 2021	Jul-Dec 2021	Jan-Jun 2022	Jul-Dec 2022
Sign Permits Reviewed	93	90	78	92	78
Code Confirmation Requests	75	75	135	94	106

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

Budget Impacts

- This position will be funded by vacancy savings in FY23.
- The full cost of the position will be included in the FY24 budget recommendation.

The Planning and Development Department requests approval of the new Planner position and associated funding.

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY™

CITY OF HIGH POINT
AGENDA ITEM

Title: Municipal Agreement with NCDOT for Transportation Alternatives Funds (TAP) for a sidewalk construction project EB-5873 along University Parkway (SR 1278)

From: Greg Venable, Transportation Director

Meeting Date: Monday February 6, 2023

Public Hearing: No

Advertising Date: NA
Advertised By: NA

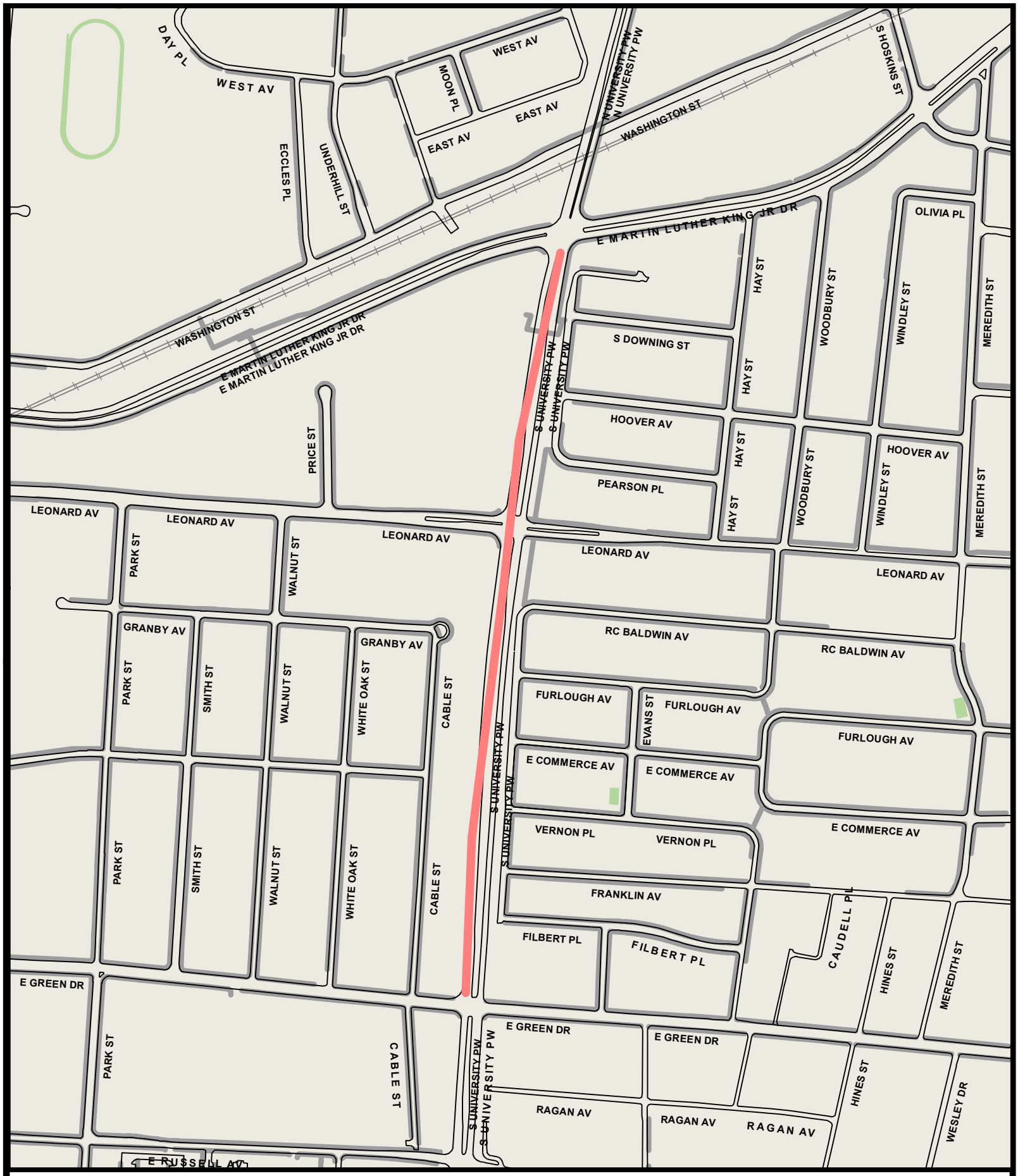
Attachments: Municipal Agreement

PURPOSE:
Consideration of a Municipal Agreement with the North Carolina Department of Transportation (NCDOT) for TAP funding to construct a sidewalk project along University Parkway from E. Green Drive to E. Martin Luther King Jr. Drive.

BACKGROUND:
The High Point MPO submitted this project on behalf of the City of High Point to NCDOT during the project submittal process. The project was funded by NCDOT and included in the Transportation Improvement Program. This project is currently scheduled for construction in 2023.

BUDGET IMPACT:
The cost of this project to NCDOT is $288,000, which is 80% of the total project cost. This City is responsible for the remaining 20% of the project cost which is $72,000. The City's portion of the project will come from General Capital Project funds.

RECOMMENDATION / ACTION REQUESTED:
The Department of Transportation recommends approval of this Agreement.



University Pw - MLK Jr Dr to Green Dr

Map prepared by
City of High Point Transportation Department
211 S. Hamilton Street
High Point, North Carolina 27260
August 2018

This map is provided as a public information resource and every reasonable effort has been made to assure the quality of the map. This data information and related graphics are not legal documents and are not intended to be used as such. The City of High Point makes no warranty, express or implied, as to the accuracy, reliability, utility or completeness of this information. The City of High Point assumes no liability either for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein.

HIGH POINT
North Carolina's International City

N
W E
S

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: City of High Point **County:** Guilford

TIP: EB-5874

Project: NC 68 (Eastchester Drive) Sidewalk

Scope: constructing sidewalk on NC 68 (Eastchester Drive) from Johnson Street to SR 1278 (N University Parkway) in High Point.

Eligible Activities:

CON	47330.3.1	Construction
OTHER		
FEDERAL-AID	0068016	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
Transportation Alternatives Program	$504,000	80%	$126,000	20%
Total Estimated Cost			**$630,000**	

Responsibility: The City of High Point shall be responsible for all aspects of the project.

NORTH CAROLINA

GUILFORD COUNTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

CITY OF HIGH POINT

LOCALLY ADMINISTERED PROJECT - FEDERAL

DATE: 12/09/2022

TIP #: EB-5874

WBS Elements: PE

ROW

CON 47330.3.1

OTHER FUNDING:

FEDERAL-AID NUMBER: 0068016

CFDA #: 20.205

Total Funds [NCDOT Participation] $504,000

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

W I T N E S S E T H:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for NC 68 (Eastchester Drive) Sidewalk, hereinafter referred to as the Project, in Guilford County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of $504,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of constructing sidewalk on NC 68 (Eastchester Drive) from Johnson Street to SR 1278 (N University Parkway) in High Point.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Transportation Alternatives Program. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Five Hundred Four Thousand Dollars ($504,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
Transportation Alternatives Program	$504,000	80%	$126,000	20%
Total Available Funding			**$630,000**	

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total available funding, or $63,000 to use towards the costs related to review

and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has three (3) years to complete all work outlined in the Agreement from the date of authorization of Federal Construction funds. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.

- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.

- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain

or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the NC 68 (Eastchester Drive) Sidewalk, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in

Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

  Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

  At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

  The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

  All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of $504,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

  Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project.

These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

  Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

  Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

  Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

  The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

  Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

  The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

  All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated

to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

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

L.S. ATTEST:

BY: _____

TITLE: _____

CITY OF HIGH POINT

BY: _____

TITLE: _____

DATE: _____

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

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

(SEAL)

_____
(FINANCE OFFICER)

Federal Tax Identification Number

_____

City of High Point

Remittance Address:

_____

_____

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 1/19/2023 (Date)

CITY OF HIGH POINT
AGENDA ITEM

Title: **New Position Request - Planner**

From: Sushil Nepal, AICP
Planning & Development Director

Meeting Date: February 6, 2023

Public Hearing: N/A
Attachments: Position Description

Advertising Date: N/A
Advertised By: N/A

PURPOSE:
The Planning and Development Department requests an entry-level Planner position within the Development Services Division.

BACKGROUND:
The Planning and Development Department requests the addition of a Planner position within the Development Services Division. The Development Services Department has seen an increase in the number of land development records in recent years, and an increase in public inquiries related to development. An additional staff member is needed to assist with land development record review, including but not limited to site plans, subdivision plats, group development plans, street addressing and sign permits. This position is expected to be able to explain development regulations, including zoning, subdivision and other standards, and the development review process to the public, as well as regulatory problems and procedures to developers, architects, engineers, and citizens to assist with land development and board action review items.

The organizational structure of the Development Services Center within the Inspections Services Department was recently altered, leaving the previous Planner position within the department to be reclassified. This position previously served as a first point of contact for the public with relation to zoning and development inquiries. Adding a Planner position within the Planning and Development Department would fill that void and provide an opportunity to free senior staff and senior planners to continue their review work as needed and provide timely review and approvals to the applicants.

BUDGET IMPACT:
This position will be funded by vacancy savings in FY23. The full cost of the position will be included in the FY24 budget recommendation.

RECOMMENDATION / ACTION REQUESTED:
Staff Recommendation
The Planning and Development Department recommends approval of the new Planner position and asks that the necessary funding be appropriated.

Planner

DEPARTMENT:	Planning & Development	**FLSA Status**:	Exempt
REPORTS TO:	Development Administrator	**PAY GRADE**:	27
Salary Range:	$43,434+ Depending on Qualifications	**Position No.**:	2340-XX

Summary

Performs routine and moderately difficult professional work in the handling of a variety of assignments within the Development Services Division of the Planning and Development Department. Will contribute to the review of land development plans, commercial construction projects and zoning permits; does related work as required. Work is performed under the regular supervision of the Development Administrator.

Essential Tasks

- Provides general information to the public regarding development regulations, including zoning, subdivision and other standards, and the development review process;
- Assists developers, architects, engineers and general public with specific regulatory requirements and procedures for development projects;
- Reviews or assists in the review of moderately difficult land development plans for compliance with development regulations;
- Assists in the review and processing of construction permits for zoning compliance (including commercial, residential, and zoning permits);
- Assists in supporting street addressing functions within the department;
- Evaluates and assists in the review of voluntary annexations, rezonings, text amendments, special use permits, street closings, variances and other development proposals;
- Conducts field evaluations and assessments, collect data and information, analyze and summarize existing conditions, derive conclusions, make recommendations, and prepare technical reports;
- Presents oral reports to boards and commissions and attends meetings, as needed;
- May be required to drive to various locations to accomplish assignments;
- Assists division head and staff as needed;
- Ensures that all work is performed in accordance with OSHA and City Safety Standards and Policies.

Qualifications

- Formal Education
    - Bachelor's Degree in Planning, architecture, public policy or a closely related field with at least one (1) year of experience; OR
    - High School Diploma with 5 years of progressive planning and/or project management experience.
- Knowledge
    - Knowledge of the principles and practices of planning;

  - Knowledge of principles and practices of research and data collection;
  - Knowledge of effective writing techniques;
  - Knowledge of computer programs and applications, which may include Microsoft Office and Geographic Information Systems (GIS)
- Skills
  - Ability to establish and maintain effective working relationships with associates, officials, developers and the public.
  - Ability to read and interpret development plans;
  - Ability to work with computer software as it relates to development;
  - Ability to comprehend and apply development ordinances and regulations;
  - Knowledge of theories, principles, techniques and practices of urban and regional planning;
  - Ability to prepare and present technical reports in oral and written form
- Supervision
  - Not required.
- Certifications
  - None required.
- Valid North Carolina Driver's License

Preferred Qualifications

- Master's degree in urban planning, architecture, public policy or related field.

Physical Requirements

Hearing/Speaking - Expressing and/or receiving information by means of spoken word are both necessary to converse with internal and external customers including co-workers, citizens and applicants.

Visual Abilities – the ability to perceive via eyesight is required for this position:

- Acuity, far – clarity of vision at 20 feet or more. Must be able to see from a distance when administering and observing employment tests, operating a motor vehicle or addressing an audience.
- Acuity, near – clarity of vision at 20 inches or less. Must be able to see work-related business documents close at hand.
- Depth perception – Three-dimensional vision and the ability to judge distance and space relationships.
- Field of Vision – the area that can be seen up and down or to the right or left while eyes are focused on one point. Must be able to see a wide span of area.
- Accommodation – Must be able to adjust the eye lens to glance quickly.

Physical Strength – degree of physical demands typically associated with this position include:

- Light Work
  - Exerting up to 20 pounds of force occasionally; and/or
  - Exerting up to 10 pounds of force frequently; and
  - A negligible amount of force constantly to handle or move materials related to the position
- Type of Physical Demands

- Reaching - Extending the hand(s) or arm(s) in any direction.
- Handling - Seizing, holding, grasping, turning, or otherwise working with hand(s).
- Fingering - Picking, pinching or otherwise working with fingers primarily rather than the entire hand or arm.

Mental Activity/Requirements

Reasoning

- Ability to apply principles of logical thinking combined with knowledge of principles and practices of public personnel and employment laws to work tasks and handle practical situations, comprehend and respond to a variety of situations in a timely fashion and exercise good judgment.

Mathematics Ability

- Using arithmetic and/or Statistics: Ability to direct and oversee the use of arithmetic and/or statistics in the preparation of a variety of records and reports.

Language Ability

- The ability to speak, read and write the English Language are required for this position.

Environmental Conditions

Physical Surroundings

- The Planner is subject to working inside or outdoors.

Hazards

- No environmental hazards indicated for this classification.

Machinery/Tools/Work Aids/Other Equipment

- Computer, calculator, VCR/TV/DVD player, projector, audio/video still and motion recorders, printer/fax/copy machine, measuring devices, manuals, ordinances, Personnel Resolution, regulations, reports, evaluations, records, correspondence, periodicals, two-way radio, reference materials, statutes, building codes, telephone, regular office supplies.

Disclaimer

This job description may not be all-inclusive, as jobs evolve over time to meet the ever-changing needs of the City of High Point's workforce. This job description is not intended to and does not create a contract or offer of employment to any individual. In accordance with the Americans with Disabilities Act, it is possible that requirements may be modified to reasonably accommodate disabled individuals. However, no accommodations will be made which may pose serious health or safety risks to the employee or others or which impose undue hardships on the City of High Point. Candidates selected for employment must pass a background screening as well as a pre-employment physical to ensure medical clearance to perform the essential functions of the job prior to receiving a full offer of employment.

The City of High Point is an at-will employer and employees may be terminated or may terminate their employment at any time with or without reason for any reason not prohibited by law.

NORTH CAROLINA

GUILFORD COUNTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

CITY OF HIGH POINT

LOCALLY ADMINISTERED PROJECT - FEDERAL

DATE: 12/09/2022

TIP #: EB-5873

WBS Elements: PE _____

ROW _____

CON 47329.3.1

OTHER FUNDING:

FEDERAL-AID NUMBER: 1278004

CFDA #: 20.205

Total Funds [NCDOT Participation] $288,000

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

W I T N E S S E T H:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for SR 1278 (S University Parkway) Sidewalk, hereinafter referred to as the Project, in Guilford County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of $288,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: City of High Point **County:** Guilford

TIP: EB-5873

Project: SR 1278 (S University Parkway) Sidewalk

Scope: construction of a sidewalk on SR 1278 (S University Parkway) from SR 1300 (E Green Drive) to SR 1113 (E Martin Luther King Jr Drive)

Eligible Activities:

CON	47329.3.1	Construction
FEDERAL-AID	1278004	

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
Transportation Alternatives Program	$288,000	80%	$72,000	20%
Total Available Funding		**$360,000**		

Responsibility: The City of High Point shall be responsible for all aspects of the project.

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook.*

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of construction of a sidewalk on SR 1278 (S University Parkway) from SR 1300 (E Green Drive) to SR 1113 (E Martin Luther King Jr Drive).

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Transportation Alternatives Program. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Two Hundred Eighty Eight Thousand Dollars ($288,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
Transportation Alternatives Program	$288,000	80%	$72,000	20%
Total Available Funding			**$360,000**	

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total available funding, or $36,000, to use towards the costs related to review

and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has three (3) years to complete all work outlined in the Agreement from the date of authorization of Federal Construction funds. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.

- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.

- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain

or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the SR 1278 (S University Parkway) Sidewalk, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in

Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

  Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

  At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

  The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

  All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of $288,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

  Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project.

These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

  The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

  All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated

to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

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

L.S. ATTEST: CITY OF HIGH POINT

BY: _____ _____

TITLE: Sandra Keeney, City Clerk____ TITLE: Jay W. Wagner, Mayor_____

DATE: 2-6-2023

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

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

_____

(FINANCE OFFICER)

Federal Tax Identification Number

_____

City of High Point

Remittance Address:

_____

_____

DEPARTMENT OF TRANSPORTATION

BY: _____

(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 1/19/2023 (Date)

CITY OF HIGH POINT
AGENDA ITEM

Title: **1,000 kVA Transformers for Various Electric Projects**
Bid #29-011823

From: Tyler Berrier, PE; Electric Utilities Director **Meeting Date:** February 6th, 2023

Public Hearing: N/A **Advertised By:** Purchasing

Attachments: Attachment A: Bid Tabulation
Attachment B: Recommendation Form

PURPOSE:
Purchase of Large Commercial/Industrial Voltage (277/480V) Transformers (1,000 kVa). Warehouse Stock Items, not associated with a specific project.

BACKGROUND:
There are 4 total transformers being encumbered under this bid. Wesco was the lowest of the qualified bidders.

BUDGET IMPACT:
Funds are included in the operating budget to cover this purchase.

RECOMMENDATION / ACTION REQUESTED:
Staff is recommending that the city council approve, and the department be given the ability to procure these transformers. The department is recommending that the bid for these transformers be awarded to WESCO Distribution, Inc. for **$194,680**.

BIDDERS LIST & TABULATION

FORMAL BID #29-011823 –XFMR 1000 KVA 3 PHASE PAD MOUNT WHS# 835					
VENDOR NAME & ADDRESS	**ITEM #**	**QTY.**	**UNIT PRICE (UOM=EA)**	**TOTAL PRICE**	**DLVRY. A.R.O.**
IRBY P.O. BOX 7457 ROCKY MOUNT, NC 27804	**835**	**4**	**N/Q**	**N/Q**	**N/A**
BORDER STATES P.O. BOX 8597 COLUMBIA, SC 29202	**835**	**4**	**$63,400.00**	**$253,600.00**	**112 WEEKS**
WESCO 3025 STONYBROOK DR. RALEIGH, NC 27604	**835**	**4**	**$48,670.00**	**$194,680.00**	**19 WEEKS**

*Bids emailed

FORMAL BID RECOMMENDATION
REQUEST FOR COUNCIL APPROVAL

DEPARTMENT:

COUNCIL AGENDA DATE:

BID NO.: CONTRACT NO.: DATE OPENED:

DESCRIPTION:

PURPOSE:

COMMENTS:

RECOMMEND AWARD TO: AMOUNT:

JUSTIFICATION:

ACCOUNTING UNIT	ACCOUNT	ACTIVITY	CATEGORY	BUDGETED AMOUNT
TOTAL BUDGETED AMOUNT				

DEPARTMENT HEAD: DATE:

The Purchasing Division concurs with recommendation submitted by the and recommends award to the lowest responsible, responsive bidder in the amount of $.

PURCHASING MANAGER: DATE:

Approved for Submission to Council
FINANCIAL SERVICES DIRECTOR: DATE:

CITY MANAGER: DATE:

NORTH CAROLINA

GUILFORD COUNTY

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

CITY OF HIGH POINT

LOCALLY ADMINISTERED PROJECT - FEDERAL

DATE: 12/09/2022

TIP #: EB-5874

WBS Elements: PE

ROW

CON 47330.3.1

OTHER FUNDING:

FEDERAL-AID NUMBER: 0068016

CFDA #: 20.205

Total Funds [NCDOT Participation] $504,000

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

W I T N E S S E T H:

WHEREAS, Fixing America's Surface Transportation (FAST) Act allows for the allocation of federal funds to be available for certain specified transportation activities; and,

WHEREAS, the Municipality has requested federal funding for NC 68 (Eastchester Drive) Sidewalk, hereinafter referred to as the Project, in Guilford County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of $504,000 for the Project; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a Supplemental Agreement.

LOCAL PUBLIC AGENCY TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

PERSON IN RESPONSIBLE CHARGE

The Municipality shall designate a person or persons to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;

- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of constructing sidewalk on NC 68 (Eastchester Drive) from Johnson Street to SR 1278 (N University Parkway) in High Point.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Construction

as further set forth in this Agreement.

3. FUNDING

PROGRAMMING AND AUTHORIZATION OF FEDERAL FUNDS

The funding currently programmed for the project in the State Transportation Improvement Program (STIP) is Transportation Alternatives Program. The funding source may be modified with the coordination and approval of the respective Metropolitan Planning Organization (MPO) and/or the Department prior to authorization of funds. The Department will authorize and reimburse federal funding based on the type of federal funding that is programmed in the STIP at the time of the authorization request. The Department will notify the Municipality of the type of federal funds authorized by issuing a Technical Amendment – Funds Authorization letter. A modification in the source of funds will have no effect on project responsibilities outlined in this agreement.

REIMBURSEMENT FOR ELIGIBLE ACTIVITIES

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall reimburse 80% of eligible expenses incurred by the Municipality up to a maximum amount of Five Hundred Four Thousand Dollars ($504,000), as detailed below. The Municipality shall provide the non-federal match, as detailed in the FUNDING TABLE below, and all costs that exceed the total available funding.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match $	Non-Federal Match Rate
Transportation Alternatives Program	$504,000	80%	$126,000	20%
Total Available Funding			**$630,000**	

WORK PERFORMED BY NCDOT

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total available funding, or $63,000 to use towards the costs related to review

and oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

4. PERIOD OF PERFORMANCE

The Municipality has three (3) years to complete all work outlined in the Agreement from the date of authorization of Federal Construction funds. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

5. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality is requesting reimbursement for the Preliminary Engineering contract or the Construction Contract Administration / Construction Engineering and Inspection contract.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 2 Code of Federal Regulations Part 200; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legsregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

- All Professional Services Firms shall be pre-qualified by the Department in the Work Codes advertised.

- A pre-negotiation audit will be conducted by the Department's External Audit Branch. The Municipality shall not execute a consultant contract until the Department's review has been completed.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Design, Planning, Contract Administration and/or Construction Engineering and Inspection required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. PLANNING / ENVIRONMENTAL DOCUMENTATION

The Municipality shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

- The Municipality shall advertise and conduct any required public hearings.

- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The Municipality shall bear all costs associated with penalties for violations and claims due to delays.

- The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at www.ncleg.net/gascripts/Statues/Statutes.asp and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

8. DESIGN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

9. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the Municipality shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the Municipality receives written authorization from the Department to proceed.

10. PROJECT LIMITS AND RIGHT OF WAY (ROW)

The Municipality shall comply with the policies and procedures of this provision regardless of whether the Municipality is requesting reimbursement for the Right of Way phase of the Project.

SPONSOR PROVIDES ROW

The Municipality, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

ROW GUIDANCE

The Municipality shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp; and the North Carolina Department of Transportation Right of Way Manual.

APPRAISAL

The Municipality shall submit the appraisal to the Department for review and approval in accordance with Departmental policies and procedures.

CLEARANCE OF PROJECT LIMITS / ROW

The Municipality shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the Municipality shall secure an encroachment agreement for any utilities (which shall remain

or are) to be installed within the Department's ROW, or follow other applicable approval process, for utilities within the Municipality's ROW. The Municipality shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The Municipality shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

RELOCATION ASSISTANCE

The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

11. UTILITIES

The Municipality, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to Municipality beginning construction of the project. This Agreement does not modify or supersede any existing Utility Encroachment Agreements that may be in place.

12. RIGHT OF WAY / UTILITY / RAILROAD CERTIFICATION

The Municipality, upon acquisition of all right of way/property necessary for the Project, relocation of utilities, and coordination with the railroad shall provide the Department all required documentation (deeds/leases/easement/plans/agreements) to secure certification. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document; utilities in conflict with the project are relocated, or a plan for their relocation during construction has been approved; and coordination with the railroad (if applicable) has occurred and been documented.

13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE

CONTRACT PROPOSAL

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

ENGINEER'S ESTIMATE

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

14. CONSTRUCTION AUTHORIZATION

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

15. CONTRACTOR PROCUREMENT

ADVERTISE FOR BIDS

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at

www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm; and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at www.ncleg.net/gascripts/Statutes/Statutes.asp.

CONSTRUCTION CONTRACTOR REQUIREMENTS

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx.

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

AWARDING CONTRACT

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

DELAY IN PROCUREMENT

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for

documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

FORCE ACCOUNT

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.

16. CONSTRUCTION

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

CONSTRUCTION CONTRACT ADMINISTRATION

The Municipality shall comply with the NCDOT Construction Manual as referenced at http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

RETAINAGE

The Municipality shall not retain any portion of a payment due the contractor.

SIGNAGE

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

SITE LAYOUT

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design (www.usdoj.gov/crt/ada/stdspdf.htm).

RIGHT TO INSPECT

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

CONTRACTOR COMPLIANCE

The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

CHANGE ORDERS

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

SHOP DRAWINGS

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

17. CLOSE-OUT

Upon completion of the Project, the Municipality shall be responsible for the following:

FINAL INSPECTION

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

FINAL PROJECT CERTIFICATION

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

18. MAINTENANCE

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the NC 68 (Eastchester Drive) Sidewalk, or as required by an executed encroachment agreement.

19. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

- Construction

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 (www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards." Reimbursement to the Municipality shall be subject to the policies and procedures contained in

Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm. Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

- **WORK PERFORMED BEFORE NOTIFICATION**

  Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

  At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

  The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

  All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of $504,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

  Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project.

These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

  Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

  Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the agreed upon just compensation for the property, at the reimbursement rate as shown in the FUNDING TABLE.

- **FORCE ACCOUNT**

  Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

BILLING THE DEPARTMENT

- **PROCEDURE**

  The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

  Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

  The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

  All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

20. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

21. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for the funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," Subpart F – Audit Requirements, and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated

to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.

AUTHORIZATION TO EXECUTE

The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.

FACSIMILE SIGNATURES

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

22. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

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

L.S. ATTEST: CITY OF HIGH POINT

BY: _____ _____

TITLE: Sandra Keeney, City Clerk____ TITLE: Jay W. Wagner, Mayor_____

DATE: 2-6-2023

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

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

_____
(FINANCE OFFICER)

Federal Tax Identification Number

_____

City of High Point

Remittance Address:

_____

_____

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 1/19/2023 (Date)