



AGENDA

Henderson City Council Regular Short Meeting

Monday, 24 September 2012, 6:00 p.m.

R. G. (Chick) Young, Jr. Council Chambers, Municipal Building

134 Rose Avenue

Henderson, North Carolina

Mayor and City Council Members

Mayor James D. O'Geary, Presiding

Councilmember James C. Kearney, Jr.

Councilmember Sara M. Coffey

Councilmember Michael C. Inscoe

Councilmember D. Michael Rainey

Councilmember Brenda G. Peace—Jenkins

Councilmember Garry D. Daeke

Councilmember Vernon L. Brown

Councilmember George M. Daye

City Officials

A. Ray Griffin, Jr., City Manager

John H. Zollicoffer, Jr., City Attorney

Esther J. McCrackin, City Clerk

I. CALL TO ORDER

II. ROLL CALL

III. INVOCATION AND PLEDGE OF ALLEGIANCE

IV. OPENING REMARKS

In order to provide for the highest standards of ethical behavior and Transparency in Governance as well as provide for good and open government, the City Council has approved Core Values regarding Ethical Behavior¹ and Transparency in Governance². The Mayor now inquires as to whether any Council Member knows of any conflict of interest, or appearance of conflict, with respect to matters before the City Council. If any Council Members knows of a conflict of interest, or appearance of conflict, please state so at this time.

¹ **Core Value 4: Ethical Behavior:** We value the public trust and will perform our duties and responsibilities with the highest levels of integrity, honesty, trustworthiness and professionalism.

² **Core Value 10: Transparency in Governance:** We value transparency in the governance and operations of the City.

V. ADJUSTMENTS TO AND/OR APPROVAL OF THE AGENDA

VI. APPROVAL OF MINUTES

- a) 10 September 2012 Regular Meeting [See Notebook Tab 1]*
- b) 13 September 2012 Ride-Around*
- c) 14 September 2012 Special Called Meeting*

VII. PRESENTATIONS/RECOGNITIONS

- a) 2011 Life Safety Achievement Award*
- c) National Fire Prevention Week Proclamation - October 7-13, 2012*

VIII. PUBLIC COMMENT PERIOD ON AGENDA ITEMS

Citizens may only speak on Agenda items at this time. Citizens wishing to address the Council must sign-in on a form provided by the City Clerk prior to the beginning of the meeting. The sign-in form is located on the podium. When recognized by the Mayor, come forward to the podium, state your name, address and if you are a city resident, and identify the Agenda Item about which you wish to speak on the sign up sheet. Please review the Citizen Comment Guidelines that are provided on the last page of this Agenda.³

IX. NEW BUSINESS

- a) Consideration of Approval of Resolution 12-81, Authorizing the Execution of a Contract with the H.G. Reynolds Company for a Water Main Relocation and Tie-In in Conjunction with a Red Bud Creek Bridge Replacement Project. (Project #BD-5105C, WBS Elements: 45351.3.3) (CAF 12-118) [See Notebook Tab 2]*
 - Resolution 12-81
- b) Consideration of Approval of Resolution 12-80, Appointments to the Henderson Zoning Board of Adjustment Committee, and Henderson Recreation and Parks Commission. (CAF 12-117) [See Notebook Tab 3]*
 - Resolution 12-80

X. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS

Citizens may only speak on non-Agenda items at this time. Citizens wishing to address the Council must sign-in on a form provided by the City Clerk prior to the beginning of the meeting. The sign-in form is located on the podium. When recognized by the Mayor, come forward to the podium, state your name, address and if you are a city resident. Please review the Citizen Comment Guidelines that are provided on the last page of this Agenda.³

³ Citizen Comment Guidelines

The Mayor and City Council welcome and encourage citizens to attend City Council meetings and to offer comments on matters of concern to them. Citizens are requested to review the following public comment guidelines prior to addressing the City Council.

XII. REPORTS

- a)** Mayor/Mayor Pro-Tem
- b)** City Manager
- c)** City Attorney
- d)** City Clerk
 - i. Calendar Notes and Schedule Update *[See Notebook Tab 4]*

ADJOURNMENT

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- 1)** Citizens are requested to limit their comments to five minutes; however, the Mayor, at his discretion, may limit comments to three minutes should there appear to be a large number of people wishing to address the Council;
 - 2)** Comments should be presented in a civil manner and be non-personal in nature, fact-based and issue oriented. Except for the public hearing comment period, citizens must speak for themselves during the public comment periods;
 - 3)** Citizens may not yield their time to another person;
 - 4)** Topics requiring further investigation will be referred to the appropriate city official, Council Committee or agency and may, if in order, be scheduled for a future meeting agenda;
 - 5)** Individual personnel issues are confidential by law and will not be discussed. Complaints relative to specific individuals are to be directed to the City Manager;
 - 6)** Comments involving matters related to an on-going police investigative matter and/or the court system will not be permitted; and
 - 7)** Citizens should not expect specific Council action, deliberation and/or comment on subject matter brought up during the public comment section unless and until it has been scheduled as a business item on a future meeting agenda.

City Council Minutes--DRAFT

Regular Meeting

10 September 2012

PRESENT

Mayor James D. O'Geary, Presiding; and Council Members James C. Kearney, Sr., Sara M. Coffey, Michael C. Inscoe, D. Michael Rainey, Brenda G. Peace-Jenkins, Vernon Brown, Garry D. Daeke, and George M. Daye.

ABSENT

STAFF PRESENT

City Manager Ray Griffin, City Attorney John Zollicoffer, City Clerk Esther J. McCrackin, Assistant City Manager Frank Frazier, Code Compliance Director Corey Williams, Planning Director Erris Dunston and Recreation and Parks Director Alan Gill.

CALL TO ORDER

The 10 September 2012 Regular Meeting of the Henderson City Council was called to order by Mayor James D. O'Geary at 6:00 p.m. in the R. G. "Chick" Young, Jr. Council Chambers, Municipal Building, 134 Rose Avenue, Henderson, NC.

Mayor O'Geary welcomed everyone present and asked the City Clerk to call Roll.

ROLL CALL

The City Clerk called the roll and advised Mayor O'Geary a quorum was present.

INVOCATION AND PLEDGE OF ALLEGIANCE

Council Member Peace-Jenkins led those in attendance in prayer and the Pledge of Allegiance.

ADJUSTMENTS TO/APPROVAL OF AGENDA

Mayor O'Geary asked if there were any adjustments to the Agenda. City Clerk McCrackin said the City Attorney added a line to the *Be It Resolved* section of Resolution 12-05 *Consideration of Declaring the Old First National Bank Building on Garnett Street as Surplus Property and Authorizing the Solicitation of Proposals from Realtors to Market and Sell said Building*. Council Member Inscoe moved to accept the Agenda as adjusted. Motion seconded by Council Member Daye and unanimously approved.

APPROVAL OF MINUTES

Mayor O'Geary asked for any corrections to and/or approval of the minutes. City Clerk McCrackin said there was a technical error with the date of the minutes on the Mid-Year Team Building Retreat which has already been corrected. Council Member Inscoe moved to accept the adjusted minutes for 23 August 12 Mid-Year Retreat, and the 27 August 12 Short Regular and Work Session minutes as presented. Motion seconded by Council Member Rainey and unanimously approved.

PUBLIC COMMENT PERIOD ON AGENDA ITEMS

The City Clerk advised the Mayor and Council Members that no citizen wished to speak to Council on agenda matters.

NEW BUSINESS

An Amendment to the FY 2012-2013 Recreation Department Budget to Include Donations for Babe Ruth Softball Tournament Expenses, FY 12-13 Budget Amendment #11 (Reference: CAF 12-114; Ordinance 12-65)

City Manager Griffin said this is a housekeeping item. Mr. Griffin said the girls' softball team did well during the tournament but expenses exceeded budget. This budget amendment allows for an intra-fund transfer along with accepting donations received from various donors to cover the overage.

There was no discussion. Mayor O'Geary asked for the pleasure of Council.

Council Member Kearney moved the approval of Ordinance 12-65, *An Amendment to the FY 2012-2013 Recreation Department Budget to Include Donations for Babe Ruth Softball Tournament Expenses, FY 12-13 Budget Amendment #11*. Motion seconded by Council Member Coffey and APPROVED by the following vote: YES: Kearney, Coffey, Inscoe, Rainey, Peace-Jenkins, Daeke, Brown and Daye. NO: None. ABSTAIN: None. ABSENT: None. (See Ordinance Book 8, p 481)

FY12-13 Budget Amendment #10 Appropriating Tap Fee from Vance County for Phases 2A and 2B to Rate Stabilization. (Reference: CAF: 12-116; Ordinance 12-68)

City Manager Griffin said this is a housekeeping item which allows for the one time tap fee dollars received from Vance County to be appropriated properly into the Rate Stabilization account.

Council Member Kearney asked if the USDA had approved the fee. Mr. Griffin said yes; the contract has been signed by the USDA and the tap fee was part of the contract between the City and Vance County. Mr. Kearney asked if Granville County paid a similar fee and whether the

tap fee could legally be divided so some of the funds would go into the general fund. Mr. Griffin said no: Granville County's agreement is to pay significantly more for water than Vance County. He went on to say all tap fees go into a specific revenue line item in the Water Fund, and he felt the Vance County tap fee should not be separated.

City Attorney Zollicoffer said Vance County's Phase 2A and 2B is different from Granville County's agreement because the water allotment differs.

There was no further discussion and Mayor O'Geary asked for the pleasure of Council.

Council Member Rainey moved the approval of Ordinance 12-68, *FY12-13 Budget Amendment #10 Appropriating Tap Fee from Vance County for Phases 2A and 2B to Rate Stabilization*. Motion seconded by Council Member Inscoe and APPROVED by the following vote: YES: Coffey, Inscoe, Rainey, Peace-Jenkins, Daeke, Brown, Daye and Kearney. NO: None. ABSTAIN: None. ABSENT: None. (See Ordinance Book 8, p. 487)

Providing for the Disposition of Certain Jointly Held Properties by the City and County Otherwise Identified as 1) 434 Whitten Avenue; 2) 1029 North Garnett Street; and 3) 514 High Street. (Reference: CAF 12-121; Resolution 12-79)

City Manager Griffin said County and City administrators recently met and agreed to draft an inter-local agreement for the sale of jointly owned properties. Although the agreement is not finalized, interest from the private sector has prompted this request to transfer three (3) properties to Vance County with the understanding that the sale proceeds be shared on a pro-rata basis on the amount of taxes owed the City and County.

Council Member Inscoe asked if there would be a separate agreement for each future transaction. City Manager Griffin said once the inter-local agreement is signed there would be no need for separate agreements. Council Member Kearney asked what fund the sales dollars would go into and Mr. Griffin said once the sales amount is known it would go into the General Fund and could be appropriated for specific purposes as Council advises by reverting to the fund balance.

Council Member Coffey asked if there would be a set price for the properties. Mr. Griffin said the County would set the price with the goal being to recover all monies owed. He went on to say selling the properties would benefit the City by bringing in more tax revenue and removing liability from the City. Council Member Daeke expressed concern that the properties would be sold to individuals who currently are not taking responsibility for their property. Mr. Griffin said he could discuss the issue with Fair Housing and Code Compliance but he was hopeful that between Code enforcement and tax collections this would not happen. Ms. Coffey commented that once the property is put up for sale the City would lose control of who buys the property.

There was no further discussion. Mayor O'Geary asked for Council's pleasure.

Council Member Rainey moved the approval of Resolution 12-79, *Providing for the Disposition of Certain Jointly Held Properties by the City and County Otherwise Identified as 1) 434 Whitten Avenue; 2) 1029 North Garnett Street; and 3) 514 High Street.* Motion seconded by Council Member Coffey and APPROVED by the following vote: YES: Inscocoe, Rainey, Peace-Jenkins, Daeke, Brown, Daye, Kearney and Coffey. NO: None. ABSTAIN: None. ABSENT: None. (See Resolution Book 3, p.53)

Granting a Ninety (90) Day Extension to Allow the Owner of the Property Located at 301 Charles Street to Secure the Structure and Improve the Property. (Reference: CAF 12-A-106; Resolution 12-75)

City Manager Griffin asked Code Compliance Director Corey Williams to update Council on this property, along with the following three properties. Mr. Williams reminded Council this was discussed at the previous Work Session and all four properties are owned by the same individuals (Luis Medina and wife, Veronica Medina). He said he has been in contact with the owners and received an e-mail late this afternoon saying Mr. Medina has read and understands the agreements sent to him for each property. Mr. Williams said in verbal conversation, Mr. Medina is optimistic the work can be completed in a timely manner, and also felt selling of the property will occur within the ninety (90) days.

Mayor O'Geary asked if this included the grass cutting and boarding up the structures. Mr. Williams said yes.

City Attorney Zollicoffer said if the owner defaults on one property, the separate ordinances will allow the property owner to proceed with the remaining properties. He also said no matter who owns the property, the condemnation order still exists.

Council Member Rainey asked for verification that all four properties must comply within ninety (90) days to comply as opposed to one property at a time complying. Both Mr. Williams and Attorney Zollicoffer responded each of the four properties must comply by December 10th. Council Member Coffey asked for clarification that if one property is not done, the City has the right to proceed with that one without waiting for the other three. Mr. Williams said that was correct.

City Manager Griffin said the first Council meeting in December is on the 10th. He said this issue will be on the agenda for December 10 and if all requirements are met, Council will be so advised during the meeting. If requirements are not met, Council will be able to proceed during the December 10 meeting. There was no further discussion so Mayor O'Geary asked for the pleasure of Council.

Council Member Rainey asked if Mr. Williams would keep Council up-to-date. Mr. Griffin said Mr. Williams has been and will continue to keep on top of the situation.

There was no further discussion. Mayor O'Geary asked for the pleasure of Council.

Council Member Inscoe moved the approval of Resolution 12-75, *Granting a Ninety (90) Day Extension to Allow the Owner of the Property Located at 301 Charles Street to Secure the Structure and Improve the Property*; Resolution 12-76, *Granting a Ninety (90) Day Extension to Allow the Owner of the Property Located at 309 Charles Street to Secure the Structure and Improve the Property*; Resolution 12-77, *Granting a Ninety (90) Day Extension to Allow the Owner of the Property Located at 315 Charles Street to Secure the Structure and Improve the Property*; and Resolution 12-78, *Granting a Ninety (90) Day Extension to Allow the Owner of the Property Located at 318 Rowland Street to Secure the Structure and Improve the Property*; and Resolution 12-79 Motion seconded by Council Member Daeke and APPROVED by the following vote: YES: Rainey, Peace-Jenkins, Daeke, Brown, Daye, Kearney, Coffey and Inscoe. NO: None. ABSTAIN: None. ABSENT: None. (See Resolution Book 3, p 45, 47, 49 and 51)

Consideration of FY 13 Airport Funding.

City Manager Griffin said Council Member Rainey was approached by Mr. David Thomas from the Airport Authority regarding the City's contribution to the Airport and then asked Mr. Rainey to present the concerns.

Council Member Rainey began by saying Council worked hard to balance the budget during lean times and that the Manager did what Council requested which was to provide the Airport Authority with \$26,100. However, all the other partners in the Airport Authority contributed \$27,500 and the Authority is now asking Council to match that amount. Mr. Rainey was informed by Mr. Thomas that the Authority has received a letter from the NC Department of Transportation of a possible grant opportunity of \$2.25M, with a \$250,000 match, to upgrade the airport. Since the recommended budget provided for the requested \$28,800 from the Authority, the Authority is now asking for an additional \$2,700 from the City. Mr. Rainey felt this was a good opportunity to *invest in the future*.

Council Member Brown asked if he was correct in understanding that \$2,700 was holding up a \$2.25M grant. Council Member Coffey asked how close the Authority is in meeting the \$250,000 match and Council Member Inscoe asked when the grant application needed to be submitted. Mr. Rainey was unsure of the answers and said if Council wished he would be happy to speak with Mr. Thomas and report back.

Motion was made by Council Member Coffey to delay a decision until the next meeting when it was hoped Mr. Thomas could be present to answer Council's questions. Motion was seconded by Council Member Daye and Approved by the following vote: YES: Peace-Jenkins, Daeke, Brown, Daye, Coffey and Inscoe. NO: Kearney and Rainey. ABSTAIN: None. ABSENT: None.

CONSENT AGENDA

The City Clerk read the Consent Agenda, summarized as follows:

- a) Approving the Submission of the Application of an Urban Progress Zone Designation.** Approval of this North Carolina Department of Commerce application would qualify enterprises and activities to receive significant tax credits for job creation and investment in machinery and equipment. (*Reference: CAF 12-93; Resolution 12-64*) (*See Resolution Book 3, p 23*)
- b) Authorizing the Execution of a Contract with Environmental Engineering & Technology (EE&T) for Engineering/Inspection Services in Conjunction with a State Revolving Fund Loan for the High Service Pump Replacement and New Warren County Meter Vault for the Regional Water System.** Execution of this agreement with EE&T allows for engineering services related to the High Service Pump Replacement and the New Warren County Meter Vault relocation project in the amount of \$40,100. (*Reference: CAF 12-A-88, Resolution 12-71*) (*See Resolution Book 3, p 37*)
- c) Consideration of Declaring the Old First National Bank Building on Garnett Street as Surplus Property and Authorizing the Solicitation of Proposals from Realtors to Market and Sell said Building.** This resolution declares the First National Bank Building (also known as the SNB Building) to be surplus property and authorized the solicitation of proposals to sell the building. (*Reference: CAF 12-18; Resolution 12-05*) (*See Resolution Book 2, p 259*)
- d) Approving Demolition of 587 Beckford Drive.** This structure meets the requirements in Section 21A (Abandoned Structure) of the City Code and proper enforcement procedures have been followed. This resolution allows the enforcement process to continue. (*Reference: CAF 12-110; Ordinance 12-62*) (*See Ordinance Book 8, p. 475*)
- e) Approving Demolition of 707 Marshall Street.** This structure meets the requirements in Section 21A (Abandoned Structure) of the City Code and proper enforcement procedures have been followed. This resolution allows the enforcement process to continue. (*Reference: CAF 12-111; Ordinance 12-63*) (*See Ordinance Book 8, p 477*)
- f) Approving Demolition of 710 Marshall Street.** This structure meets the requirements in Section 21A (Abandoned Structure) of the City Code and proper enforcement procedures have been followed. This resolution allows the enforcement process to continue. (*Reference: CAF 12-112; Ordinance 12-64*) (*See Ordinance Book 8, p 479*)

Mayor O'Geary asked if anyone wished to remove an item from the Consent Agenda. No request was made. Mayor O'Geary then asked for a motion to approve the consent Agenda as presented.

Council Member Inscoe moved the approval of the Consent Agenda as presented. Motion seconded by Council Member Rainey and APPROVED by the following vote: YES: Daeke, Brown, Daye, Kearney, Coffey, Inscoe, Rainey and Peace-Jenkins. NO: None. ABSTAIN: None. ABSENT: None.

PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS

City Clerk McCrackin advised one citizen wished to address City Council.

Mr. Donald French, 551 Vance Academy Road. Mr. French said he signed a lease to rent at 551 Vance County Road on July 6, 2012 and moved in on July 20. He said on August 18, 2012 he moved into the rental property. Mr. French said Ms. Lloyd, the landlord along with Dennis Lloyd, came to City Hall with a cut off agreement but that one of the customer service representatives told Ms. Lloyd it was not needed and to destroy the agreement. Mr. French said he has been billed for water from July 6 and requests a \$120.00 credit. He said the problem is with the City employees and the problems need to be corrected.

Mayor O'Geary thanked Mr. French and asked the City Manager to look into the situation. Mr. Griffin said he had spoken to Mr. French earlier and would be happy to provide documentation to Council.

REPORTS

a) Mayor/Mayor Pro-Tem

Mayor Pro-Tem Rainey said he has been asked why the City has never erected a sign recognizing the girls' softball team that won the World's Series several years back. He felt citizens and visitors should know about this accomplishment and asked that prices be requested for erecting a sign.

b) City Manager

- 1) Mr. Griffin advised that although no action is required by Council, he wanted to make the surplus property list available for review by Council. There were no questions from Council members.
- 2) As a follow up to the Team Building Retreat, Mr. Griffin said a flyer will be going out in the coming weeks to citizens briefly explaining the budget. Council Member Inscoe asked if the information could be placed on the web and Mr. Griffin said as soon as the proof comes back it can be put on the City's web page. Mr. Griffin said there are plans to do another flyer with important contact numbers and explanations regarding sanitation requirements/beautifying the City, etc.
- 3) Mr. Griffin said the Police Chief will be making a public announcement emphasizing parking issues and the department will be clamping down specifically on those parking vehicles illegally on the wrong side of the street.

Council Member Coffey took a moment to thank the *Dispatch* for their well-written Editorial regarding Mopeds.

Council Member Brown asked for clarification regarding the City not picking up more than 200 pounds at a time. He felt with gas prices the truck should pick up more. After a brief discussion, Assistant City Manager Frazier clarified that there is a charge for picking up more than 200 pounds but it is assumed anything placed at the street is there for pickup and the truck picks up until it is full. He also addressed the fact that sometimes contractors do not complete their job and leave items such as felled trees at curbside and that the City will notify the property owner that there will be a charge for removing such items.

c) City Attorney (No Report)

d) City Clerk - Ms. McCrackin reminded Council that there is a Special Called Meeting for Friday 14 September 2012 at Noon; the *Ride-Around* is scheduled for Thursday 13 September 2012 from 2-4 p.m.; and the Crime Stoppers Banquet will be held on October 4th. She also said the 31 January 2013 date set for the Strategic Plan meeting is in conflict with the Clerk's Academy and if acceptable, the Mayor and City Manager would like to move the meeting to a Wednesday in January. Council was agreeable and Council Member Kearney said the end of the month would be better for him.

Mayor O'Geary asked if there were any further items for discussion. He then asked if Council was prepared to adjourn.

ADJOURNMENT

Council Member Rainey moved for adjournment. Motion seconded by Council Member Incoe and unanimously approved. The meeting adjourned at 7:07 p.m.

James D. O'Geary
Mayor

ATTEST:

Esther J. McCrackin
City Clerk

City Council Ride-Around Minutes and Comments 13 September 2012

PRESENT

Council Members James C. Kearney, Sr., Sara M. Coffey, Michael C. Inscoe, D. Michael Rainey, Brenda G. Peace—Jenkins, Garry Daeke, Vernon Brown and George M. Daye.

ABSENT

Mayor O'Geary

STAFF PRESENT

City Manager Ray Griffin, City Clerk Esther McCrackin, Code Compliance Director Corey Williams and Youth Services Program Supervisor Linwood Martin.

The Ride-Around began from City Hall, 134 Rose Avenue at approximately 2:10 p.m. with Mr. Linwood Martin serving as chauffeur. Code Compliance Director Corey Williams prepared a route that exposed Council Members to blighted areas of the City they might otherwise never see. Areas were also toured that were in need of service by City crews. Mr. Williams distributed a form that the PIT Team has been working on where concerns can be noted for investigation. He said the team is still working on the form and input would be welcome.

Ward 4

The first concern pointed out the broken window at the Tip Top Restaurant in the area of Norlina Road and Old Norlina Road. It was pointed out that you can see clearly into the building where the interior looks like it is open for customers. City Attorney Zollicoffer and County Attorney Care are preparing this property, along with several others for purchase, as approved by Council.

Graffiti was pointed out in this area along with numerous other locations.

Next Mr. Williams took the group toward the Bobbitt Street/Birch Street area (ETJ) as there will be a public hearing tomorrow on installing sewer/water on those streets. Council Member Inscoe pointed out an area in the *David Street area that needed to be investigated for a possible water leak.*

While traveling Bobbitt St., Mr. Williams pointed out a horse in a backyard. He said enforcing animal control code is difficult in this area because the owners just move the animal to another location.

Concern was express about *dead trees at North Henderson Park* at the end of Bobbitt Street and a *brush pile in the Wood Street/Robinson Street* area. Council Member Brown asked if the

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tree(s) on the city owned lot on Robinson Street could be removed, saying he often sees kids playing in the lot.

While traveling Lamb Street, City Manager Griffin said he has talked with the Tax Collector and it is anticipated that the inter-local agreement on jointly held properties can be brought before Council in October.

Mr. Williams pointed out properties owned by the City or City/County throughout the tour. He mentioned problems with asbestos with many of the structures and was asked frequently how long the structures had been in the demolition list. Mr. Williams said some of the structures have been on the list for well over three years. Council Member Coffey asked how the City came to own all the houses. Mr. Williams responded through foreclosure. Mr. Griffin said the Tax Collector is working with Mr. Williams. Ms. Brooks has said she will not foreclose if there is a house that is in the process of condemnation. Council Member Rainey wondered if some of the vacant lots in the area could be developed with duplexes.

On Boddie Street, Council Member Brown asked that the *debris on the side of the road* be removed. He also expressed concern about the narrowness of streets in the neighborhood.

There was also *debris on 618 Adams Street, including household items*, which need to be removed. There was also debris left by the power company that needs to be cleaned up.

Council Member Coffey asked about the policy for depositing of carpet. She had heard if it was over a certain poundage the City would not remove it.

Mr. Williams was able to answer many of Council's questions regarding the plans property owners have for structures.

East Avenue has several structures that needed to be brought up to code and *626 East Avenue has too many junk vehicles* and specifically, someone needs to check on *604 East Avenue* to see if they are in the process of renovating because of the *mess between the houses*.

While traveling between Andrews and Rock Spring Street, on Clark Street, Mr. Williams pointed out a City owned property that the neighbor expressed interest in buying. He said that problem for many potential buyers is the frustration of having to work with both the City and County (as they both own the property) and expressed the importance of finalizing the agreement to allow the County to sell the properties with the City receiving its portion. Mr. Griffin asked Mr. Williams to speak with the City Attorney to see if this property could be added to the agreement currently being worked on with the County Attorney. Council Member Kearney made the comment that the monies received should remain in Code Compliance for more structural removals.

Council Member Daeke suggested making Hatch Street a one-way street because of the narrowness of the street.

On Vance Street Council Member Coffey asked if the *fence* could be repaired. Mr. Griffin said Code Compliance could probably cite them for a *public safety violation*. Mr. Williams said he

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thought there would be graffiti on the buildings on Vance Street but the owner had once again painted over the graffiti.

Council Member Inscoe requested the City to *mow on Cherry Street*.

Mr. Williams pointed out the properties owned by the Medina family. These parcels recently came before Council and have been put on hold for demolition until December. Another property (not part of the parcels before Council) owned by the Medina's had an open front door and appeared vacant --- Mr. Williams said he would look into.

Ward Three

On Hillside, there was a question regarding the status of the street work that has already been approved but has not begun.

Mr. Williams mentioned a structure that he was told prior to 2009 that he could not tear down. Mr. Griffin advised him to "bring it back" for reconsideration by Council.

There is *debris on Lucy/Arch Street* that needs to be removed.

It was noted the *picnic table at the Owen Davis City Park* needs repair. Council Member Brown commented on the good job the Recreation Department has done in keeping the parks neat.

Street work has been done on S. William and Council questioned when the repairs will be completed.

Debris needs to be removed in an area off Nicholas Street.

Ward One

Concern was expressed about a *tree on Cross Street*.

Remains of signage at Kings Daughter Park needs to be removed.

Ms. Coffey asked if why the City owned properties are not better maintained. Mr. Griffin said mainly because of costs.

The tour concluded at this time and Mr. Martin returned Council to City Hall safely at 4:10 p.m.

D. Michael Rainey, Mayor Pro-Tem

ATTEST:

Esther J. McCrackin, City Clerk

City Council Minutes

Special Called Meeting - DRAFT

14 September 2012

PRESENT

Mayor James D. O'Geary, Presiding; and Council Members James C. Kearney, Sr., Sara M. Coffey, Michael C. Inscoe, D. Michael Rainey, Brenda G. Peace-Jenkins, Garry D. Daeke, Vernon L. Brown., and George M. Daye.

ABSENT

None.

STAFF PRESENT

City Attorney John Zollicoffer, Jr., City Clerk Esther J. McCrackin, Assistant City Manager, Frank Frazier, Planning Director Erris Dunston and City Engineer Peter Sokalski.

CALL TO ORDER

The 14 September 2012 Special Called Meeting, was called to order by Mayor James D. O'Geary at 12:01 p.m. in the R. G. "Chick" Young, Jr. Council Chambers, Municipal Building, 134 Rose Avenue, Henderson, NC.

ROLL CALL

The City Clerk called the roll and advised Mayor O'Geary that a quorum was present.

Mayor O'Geary welcomed both Council and citizens to the public hearing.

PUBLIC COMMENT PERIOD

Assistant City Manager Frank Frazier gave a summary of the grant by saying this is a public hearing for the preliminary application. The area being considered has no sanitary and has failing septic systems. Mr. Frazier said Mr. Rick Seekins, Community and Economic Development Director from the Council of Government is present and will address a portion of the grant but asked Planning Director Erris Dunston to come forward first.

Ms. Dunston said the CDBG Infrastructure grant can be used to install sewer lines on Birch and Bobbitt Streets which are in the ETJ and is an area in dire need of sanitarysewer services. Ms. Dunston said the anticipated cost would be \$746,000.

Council Members Rainey and Daeke asked if the project would be entirely in the ETJ or if any of it would be within City limits. Ms. Dunston said only the ETJ.

Council Member Kearney asked who would oversee the project. Ms. Dunston replied that would be up to the City Manager but that the Planning Department, Code Compliance Department and Engineering had prepared the preliminary grant. Mr. Kearney felt the process should be kept in-house as much as possible.

Council Member Coffey asked how these streets were selected and if there was a match required. Ms. Dunston said the area was one with the most severe needs and it also met the criteria of the grant regarding income requirements. She said since Vance County is a Tier One county, no match is required.

Council Member Rainey asked if the households would be required to tap into the system and how many households are in the area. Ms. Dunston said yes and said there are approximately 23-25 households (one burned recently).

Council Member Daeke compared the area to the Orange/Breckenridge area. Ms. Dunston said that area already had water and sewer service.

Council Member Inscoe asked if the septic systems were failing in that area. Ms. Dunston said yes.

Council Member Kearney asked if there would be any assistance with tapping on to the system. Ms. Dunston said the decommissioning of the septic system would be part of the grant and would also include the service lines.

City Attorney Zollicoffer said that per the City Code, he did not think the City could require households to tap onto the system but the Health Department might be able to require this action.

Ms. Dunston said the last CDBG grant for the City was in 2006, and she felt this was an opportunity that should not be passed by. She said there are two segments being offered by the North Carolina Department of Commerce Division of Community Investments for 2012 which Mr. Rick Seekins would address.

Mr. Seekins began by reminding everyone that this is just a preliminary hearing to glean ideas and interest. Then there will be a second hearing to explain how those ideas will be submitted. He said the State has not provided all the grant guidelines so the information is very broad however, there seems to be four (4) categories to be addressed:

- 1) General housing
- 2) General revitalization (rehabilitation and reconstruction)
- 3) General special projects (improving public/non-profit owned structures and property)
- 4) General public services (foreclosure prevention)

Council Member Coffey asked about existing programs. Mr. Seekins said he anticipated partnerships to form with existing groups so expertise in areas needed would be utilized to the fullest.

Council Member Kearney asked about recreation assistance. Mr. Seekins said this was an area of consideration and elaborated by saying green areas add value to neighborhoods. He said an idea had been suggested for urban gardens --- perhaps in the Orange/Breckenridge area.

Council Member Daeke felt the homeless would fit into these general categories.

Mr. Seekins said from the general information provided by the State, it seems the programs are very broad and provide a lot of flexibility.

Assistant City Manager Frazier said the Engineering Department had prepared a map of the area for interested citizens and thought this would be a good time to show the area. However, the projector was uncooperative so printed maps were distributed.

Engineering Director Sokalski said this project would involve 8" sewer lines only and would flow into the Harris Street pump station which is currently functioning at approximately 25% capacity. He said with all the contingencies added in, the project is anticipated to cost \$746,700.

Council Member Kearney asked if both sides of Bobbitt Street would be included in the project. Mr. Sokalski said yes but that only the North side of Birch would be included as those on the South side did not want to participate.

Council Members Daeke and Kearney both asked if they were homeowners and learned that is was a combination of landowners and rental.

With no further questions, Mayor O'Geary opened the Public Hearing by asking if there was anyone present who wished to speak in favor of this Grant.

Elissa Yount, 216 Chavasse Avenue. Ms. Yount commended the City for applying for the grant and said it was shame so many years had gone by since the last CDBG grant. She also expressed concerns regarding the urgency in submitting the grant today since it was first discussed in July. She said when Spring Street has problems, the odor can be smelled throughout the area. She also expressed concern regarding the size of the line and wondered if it would allow for growth. She asked if the Transportation plan and the High Speed Rail plan had been considered in reviewing this project. Ms. Yount said the project cost was \$37,000 per house (based on the City's estimated total cost). She said that at one time the sewer lines in Kittrell had high priority and wondered why this project is now such a high priority. In summary, she asked Council to look at the needs of the city in a logical manner and to read the application carefully before proceeding.

Gary Morgan, a resident of Drewery, with a business in Henderson (Tarheel Regional CDC). Mr. Morgan distributed and read a copy of a document which explained how he felt it would be more affordable to salvage and repair homes rather than demolishing homes. A printed copy of this document is attached to these minutes and incorporated herein by reference.

No other citizens came forward so Mayor O'Geary asked if there was anyone present who wished to speak against this grant.

Roger Silva, 506 Franklin Lane. Mr. Silva said he agreed with the need for the sanitary sewer line. His only concern was that residents could not afford to pay for the service.

No other citizen came forward so Mayor O'Geary closed the Public Hearing and asked for Council's pleasure.

Council Member Daeke said he would like to know how many homes would connect. Ms. Dunston said they had interviewed nine (9) homes so far. Mr. Daeke expressed concern regarding the cost without knowing how many would benefit. Mayor O'Geary said the area needs the service.

Council Member Brown said in light of Ms. Yount's comment on the smell and the short window provided by the State he felt the preliminary application should be submitted.

Council Member Inscoe asked if the application could be modified and revised. Ms. Dunston responded yes. She reminded Council that this is just a preliminary application that starts the full the application process.

Council Member Peace-Jenkins verified there would be time to study the application. Ms. Dunston said yes.

Council Member Rainey asked if there are any funds to help homeowners remove their septic systems. Ms. Dunston responded the grant would include demolishing the septic tank and include the cost of hook-up. She also explained that this is the last year the State will offer the Capacity Grant. Mr. Seekins elaborated on this by saying in the future, the State will only assist municipalities that have consent orders and constant violations in operating its sewer systems.

There was no further discussion. Mayor O'Geary thanked everyone for their comments and said citizens are always welcome.

Council Member Kearney introduced Resolution 12-83, *Authorizing the Submission of a Preliminary Application for the North Carolina Department of Commerce 2012 CDBG Infrastructure Grant to Obtain Approval for Full Grant Application*. Motion was seconded by

Council Member Coffey and approved by the following vote: YES: Kearney, Coffey, Inscoe, Rainey, Peace-Jenkins, Daeke, Brown and Daye. NO: None. ABSTAIN: None. ABSENT: None

Council Member Kearney asked that the City Manager obtain a consensus from Council regarding the Capacity Grant for the Work Session.

Mr. Frazier updated Council on the status of two projects: 1) Hillside Avenue project has not begun due to H. G. Reynolds' backlog of work; however, the City is pushing to have the project completed; and 2) a small water line is being replaced on S. Williams Street from Lehman Street to Champion Street, which is why the pavement is cut.

With no other comment, Mayor O'Geary asked Council was prepared to adjourn.

ADJOURNMENT

Council Member Rainey moved for adjournment. Motion seconded by Council Member Daeke and unanimously approved. The meeting adjourned at 12:59 p.m.

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin
City Clerk

Tarheel Regional CDC
P.O. Box 2301 Henderson, NC 27536
(252) 915-1650

Inner City Redevelopment Proposal

1. Common Irrational Approach To Inner City Redevelopment:

It is all too common to hear local leaders express "the best thing to do with our decaying inner city neighborhoods is to bulldoze them and rebuild", and in fact that has generally been the approach followed.

However, there are some major issues to accepting such a simple minded approach that makes the reality of such a proposal unworkable. Namely:

- A. The high combined cost of demolition and reconstruction in an inner city neighborhood makes it impossible to get a mortgage appraisal equal or greater than the cost, forcing a significant loss being incurred by the developer.
- B. Even with significant discounting, the current inner city residents are largely retired, disabled and/or unemployed making the cost (mortgage, taxes and insurance) of such a home well beyond what they can afford.
- C. Those few who can afford the resulting mortgage have no incentive to move into an inner city property that will most certainly depreciate due to the continuing deterioration of surrounding properties, and when they are numerous property options in "better" neighborhoods.
- D. The cost is so prohibitively high and the buyers so few in number that the rate of demolition and reconstruction will never overtake the inner city's accelerating rate of deterioration.

2. A More Rational Cost Effective Approach To Inner City Redevelopment:

Once we come into agreement that the statements made in section 1 above are accurate representations of fact, we can begin an honest discussion on how to redevelop our inner city. The following steps outline one such method and tie our specific demographics to the redevelopment process. The steps to be considered are as follows:

- A. Identify the price point that our buyers (largely inner city residents) can afford and build to that price. Based on the average fixed income and low wage availability for our area and target group that establishes a target home sales price of \$30,000 - \$50,000, and monthly principle, interest, taxes and insurance payment of \$300 - \$400 per month.
- B. Establish a revolving fund to finance the renovated homes through lease-purchase agreements at below market rates.
- C. Acquire and renovate existing inner city homes. Rationale and advantages include:
 - 1. It is the only option, short of demolition and installing mobile homes that will meet our demographic affordability level.
 - 2. Ready, near unlimited, number of buyers.
 - 3. Quick turnover with minimal financial investment and risk.
 - 4. Job creation. Because of the large number of homes available for acquisition and renovation and minimal cost for each project, there will be a need for construction labor.
 - 5. Property tax revenue increase.
 - 6. Beautified inner city.
 - 7. Etc., etc., etc.



PROCLAMATION 12-22

A PROCLAMATION of the Mayor and City Council recognizing
National Fire Prevention Week
October 7 – 13, 2012

WHEREAS, the National Fire Protection Association was established to commemorate the Great Chicago Fire in 1871; *and*

WHEREAS, President Woodrow Wilson issued the First National Fire Prevention Day proclamation in 1920; *and*

WHEREAS, the men and women of the Henderson Fire Department are to be commended for their dedication and service every day to individuals in potentially dangerous circumstances; *and*

WHEREAS, citizens should recognize and understand the duties, responsibilities, hazards, and sacrifices of the Henderson Fire Department in safeguarding life and property of individuals living in and around Henderson, North Carolina.

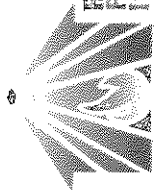
NOW, THEREFORE, BE IT RESOLVED THAT, I, JAMES D. O'GEARY, Mayor of the City of Henderson, North Carolina, along with Henderson City Council Members, call upon all citizens to express appreciation to these men and women who are willing to sacrifice their lives, if necessary, to protect and serve the City of Henderson.

Proclaimed this 24th day of September 2012.

James D. O'Geary, Mayor

Attest:

Esther J. McCrackin, City Clerk



Residential
Fire Safety
Institute

GRINNELL MUTUAL
REINSURANCE SINCE 1909



2011 Life Safety Achievement Award

This certificate is awarded to

City of Henderson Fire Dept.

For your outstanding efforts on behalf of fire and life safety

September 15, 2012

J. William Dognan

J. William Dognan, President
NASEM Fire Research & Education Foundation

Larry Jansen

Larry Jansen, President
Grinnell Mutual Reinsurance

City Council Action Form

Office of City Manager
P. O. Box 1434
Henderson, NC 27536
252.430.5701



Agenda Item: _____

Council Meeting: 24 Sept 12 Short Reg. Meeting

10 September 2012

TO: The Honorable Mayor James D. O'Geary and Members of City Council

FR: A. Ray Griffin, Jr., City Manager

RE: CAF: 12-118

Consideration of Approval of Resolution 12-81, Authorizing the Execution of A Contract With The H. G. Reynolds Company for a Water Main Relocation and Tie-In in Conjunction With Red Bud Creek Bridge Replacement Project (Project # BD-5105C, WBS Elements: 45351.3.3)

Ladies and Gentlemen:

Council Retreat Goals Addressed By This Item:

- KSO 5: *Provide Reliable, Dependable and Environmentally Compliant Infrastructure Systems.*

Recommendation:

- Approval of Resolution 12-81, Authorizing the Execution of A Contract With The H. G. Reynolds Company for a Water Main Relocation and Tie-In in Conjunction With Red Bud Bridge Replacement Project (Project # BD-5105C, WBS Elements: 45351.3.3).

Executive Summary

The North Carolina Department of Transportation (NCDOT) contacted the City of Henderson staff relative to a bridge replacement project BD-5105C, WBS Elements: 45351.3.3 over Red Bud Creek on SR 1120 (Vance Academy Road). There is an existing water main extending along the edge of the bridge to be relocated during the construction of the new bridge. The City Council approved Resolution 11-71 on 8 August 2011 authorizing the execution of a municipal agreement with NCDOT relative to reimbursement of the cost for the waterline relocation work.

Work has been ongoing with the bridge and during construction it was discovered that there were changes needed within the water main of the NCDOT plan to insure that there was minimal disruption of service. The City obtained a quote from H.G. Reynolds Company, Inc. to compare to the quote the NCDOT received from the Fred Smith Company, which is the same company

performing the bridge work. The quote obtained from Fred Smith Company, Inc. was \$39,725.56 and the quote from H. G. Reynolds Company, Inc. was \$20,990.00.

The 10" bore and pipe constructed by the Fred Smith Company was installed at a cost of \$38,000. After discussing with NCDOT, they were agreeable to allow the City to complete the tie in to the existing bore and pipe after the completion of the bridge construction, since the water main tie-in would be outside the pavement area. This would bring the total cost of construction (\$20,990 to H.G. Reynolds Company & \$38,000 to Fred Smith Company) for a total project cost of \$58,990. The original cost estimate prepared by the NCDOT to perform this work was \$119,034, so any savings, once this project is complete, could be returned to capital reserve or utilized for other water main replacement needs.

Enclosures:

1. Resolution 12-81
2. Resolution 11-71

RESOLUTION 12-81

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH H.G. REYNOLDS COMPANY, INC. FOR WATER MAIN RELOCATION AND TIE IN IN CONJUNCTION WITH RED BUD BRIDGE REPLACEMENT PROJECT (BD-5105C WBS ELEMENTS: 45351.3.3)

WHEREAS, the Henderson City Council (Council) identified eight Key Strategic Objectives (KSO) at its 2012 Strategic Planning Retreat; *and*

WHEREAS, one of the Key Strategic Objectives is addressed by this Resolution as follows:
KSO 5: To Provide Reliable, Dependable and Environmental Compliant Infrastructure Systems; and

WHEREAS, the NCDOT has prepared and adopted plans to make certain street and highway improvements including project BD-5105C, a bridge replacement project on Vance Academy Road in Vance County; *and*

WHEREAS, the City of Henderson (City) has an existing water main that is located within the NCDOT right of way that must be relocated in conjunction with the project; *and*

WHEREAS, upon completion of the project, the City is required to reimburse the NCDOT 100% of the cost for relocating the water line; *and*

WHEREAS, during construction it was discovered that there were changes needed to the design of the water main to insure that there was minimal disruption of service; *and*

WHEREAS, the City and NCDOT received a quote from Fred Smith Company and H. G. Reynolds Company to perform said work in accordance with the changes; *and*

WHEREAS, the quote received from H. G. Reynolds Company, Inc. to perform said work was the lowest quote.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Henderson, North Carolina that it does hereby **1)** authorize the execution of the contract with H. G. Reynolds Company Inc. in the amount of \$20,990, said agreement being more fully articulated in ***Attachment A to this Resolution***; *and* **2)** authorize the Mayor to execute said agreement with H. G. Reynolds Company, Inc.

The foregoing Resolution 12-81, upon motion of Council Member *** and second by Council Member ***, and having been submitted to a roll call vote received the following votes and was ***** on this the ***** day of ----- 2012: YES: . NO . ABSTAIN: . ABSENT: .

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk

Approved as to Legal Form:

John H. Zollicoffer, Jr., City Attorney
*Reference: Minute Book 42, p. ***.*

CONTRACT

THIS CONTRACT made and entered into this _____ day of _____, in the year 2012 by and between the City of Henderson, North Carolina, party of the first part, hereinafter called the Owner, and Kenneth A. Long of _____ H.G. Reynolds Company, Inc., party of the second part, hereinafter called the Contractor.

WITNESSETH

THAT, WHEREAS, a Contract for:

Red Bud Creek Watermain Replacement Project

has recently been awarded to the Contractor by the Owner at and for a sum equal to the aggregate cost of the work to be done and labor, materials, equipment, apparatus and supplies furnished at the prices and rates respectively named therefore, in the Proposal attached hereto:

Total Bid Accepted: \$ 20,990.00

AND WHEREAS, it was one of the conditions of said Award that a formal Contract should be executed by and between the Owner and the Contractor, evidencing the terms of said award, and that the Contractor shall commence the work to be performed under this agreement on a date to be specified in a written order of the Owner, and shall fully complete all work hereunder within 30 Consecutive Calendar Days, of the date specified in the Notice to Proceed.

NOW THEREFORE, THIS CONTRACT FURTHER WITNESSETH THAT, the Contractor doth hereby covenant and agree with the Owner that they will and faithfully perform and execute such work and furnish such labor, materials, equipment, apparatus and supplies, in accordance with each and every one of the conditions, covenants, stipulations, terms and provisions contained in the Specifications and in accordance with the Plans, at and for a sum equal to the aggregate cost of the work done and labor, materials, equipment, apparatus and supplies furnished at the prices and rates respectively named therefore in the Proposal attached hereto, and will well and faithfully comply with and perform each and every obligation imposed upon them by said Plans and Specifications and the terms of said Award.

The Contractor shall promptly make payments to all persons supplying materials in the prosecution of the work, and to all laborers and others employed thereon.

The Contractor shall be responsible for all damages to the property of the Owner that may be consequent upon the normal procedure of their work or that may be caused by or result from the negligence of the Contractor, his, its or their employees or agents, during the progress of, or connected with the prosecution of the work, whether within the limits of the work or elsewhere. The Contractor must restore all property so injured to a condition as good as it was when the Contractor entered upon the work.

The Contractor shall furthermore be responsible for, and be required to make good at his, its or their expense, any and all damages of whatever nature, to persons or property, arising during

the period of this Contract, caused by carelessness, neglect, or want of due precaution on the part of the Contractor, shall also indemnify and save harmless the Owner, and the officers and agents thereof, from all claims, suits, and proceedings of every name and description which may be brought against the Owner, or the officers and agents thereof, for or on account of any injuries or damages to persons or property received or sustained by any person or persons, firm or corporation, or by or in consequence of any materials or workmanship in its construction, or by or on account of any accident, or of any other act of omission of the said Contractor, his, its or their agents, employees, servants or workmen.

It is agreed and understood that the Notice to Bidders, Information to Bidders, Instruction to Bidders, General Conditions, Supplementary Conditions, Special Project Conditions, Technical Specifications together with the enumerated Addenda, if any, the Proposal, and the Plans and/or Drawings are a part and parcel to this Contract to the same extent as if incorporated herein in full.

It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the performance and payment bonds (or other approved security) hereto attached for its faithful performance and payment, the Owner shall deem the surety or sureties upon such Bonds to be unsatisfactory, or if, for any reason, such Bonds cease to be adequate to cover the performance or payment of the work, the Contractor shall, at his, its or their expense, within five (5) days after the receipt of notice from the Owner to do so, furnish an additional Bond or Bonds or other approved security in such form and amount and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Contractor shall be deemed to be due under this agreement until such new or additional security for the faithful performance and payment of the work shall be furnished in a manner and form satisfactory to the Owner.

And the Owner does hereby covenant and agree with the Contractor that it will pay to the Contractor, when due and payable under the terms of the Contract Documents and the Award, the sum mentioned above, and that it will well and faithfully comply with and perform each and every obligation imposed upon it by said Contract Documents and the terms of said Award.

Completion for above listed item(s) shall be defined as completely installed including all associated appurtenances, tested and ready for the intended service.

ANTI-DISCRIMINATION AND EQUAL OPPORTUNITY

All funds will be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders in accordance to local, state and federal regulations.

HISTORICALLY UNDERUTILIZED BUSINESS

Please check the following:

Is your organization registered with HUB office? Yes_____ No_____

Is your organization a minority contractor, small contractor, physically handicapped contractor, a woman contractor, a disabled business enterprise, or a non-profit work center for the blind and severely disabled?

Yes _____ No _____

FURTHER AGREEMENTS

See Attached HG Reynolds letter dated August 24, 2012 with subject 10" Watermain
(See Contract Attachment 1)

In Testimony Whereof, of the City of Henderson has caused these presents to be signed in its name by its Mayor and its Corporate seal to be hereto affixed and attested by the City Clerk, all by order of the City Council of the City of Henderson and said party of the second part, acting under and by virtue of the Authority in them vested, have hereunto set their hand seal, the day and year first written above.

OWNER:

ATTEST

THE CITY OF HENDERSON, NORTH CAROLINA

_____(SEAL) BY
Esther McCrackin, City Clerk

James D. O'Geary, Mayor

CONTRACTOR:

ATTEST:

H.G. REYNOLDS COMPANY, INC. (SEAL)

Witness

BY

Kenneth A. Long, III, Vice President
(If contractor is a corporation, a partnership, or a joint
venture, attach evidence of authority to sign.)

FINANCIAL CERTIFICATION

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

Katherine C. Brafford, CPA

Date

CERTIFICATE OF ATTORNEY

I hereby certify that I am the duly appointed attorney for the Owner of the Project and that I have examined the foregoing instrument and Bond, and insurance documents and I have approved the same as being legal and in proper form.

This _____ day of _____, 20_____.

John H. Zollicoffer, Jr., City Attorney



P.O. Box 209
Henderson, N.C. 27536
252-492-3071
fax 252-492-2590

August 24, 2012

Peter Sokalski, PE
City of Henderson
134 Rose Avenue
Henderson, NC 27536

RE: 10" Watermain
Vance Academy Road

Dear Sokalski:

We propose to furnish all labor, material and equipment to complete the tie in of new 10" DIP and fittings per your drawing for the lump sum price of Twenty Thousand Nine Hundred Ninety Dollars (\$20,990.00).

This price includes the following:

1. Cut into the existing 10" DIP in two places and install new 10" tee and gate valves. These cuts will be done at one time after the City takes the line out of service. After installation City will refill the existing line. Estimated total time to install tees and valves is six hours. City to reinstate service of the existing line.
2. Furnish and install new 10" DIP and fittings from the cut ins to each end of existing 10" HDPE.
3. Pressure test and chlorinate the new DIP and HDPE. Repairs to the HDPE piping by others are not included.
4. Dress up and seed disturbed areas.

Excluded from this price is the following:

1. Rock excavation, undercut and stabilization stone.
2. Haul off of any clearing debris or trash.

Very truly yours,
H. G. REYNOLDS COMPANY, INC.

Kenneth L. Long, III
Vice President

RESOLUTION 11—71

A RESOLUTION AUTHORIZING THE EXECUTION OF A UTILITY AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT)

WHEREAS, the Henderson City Council (Council) identified eight Key Strategic Objectives (KSO) at its 2010 Strategic Planning Retreat; *and*

WHEREAS, one of the Key Strategic Objectives is addressed by this Resolution as follows: KSO 5: To Provide Reliable, Dependable and Environmental Compliant Infrastructure Systems; *and*

WHEREAS, the NCDOT has prepared and adopted plans to make certain street and highway improvements including project BD-5105C, a bridge replacement project on Vance Academy Road in Vance County; *and*

WHEREAS, the City of Henderson (City) has an existing water main that is located within the NCDOT Right of Way that must be relocated in conjunction with the project; *and*

WHEREAS, upon completion of the project, the City is required to reimburse the NCDOT 100% of the cost for relocating the water line.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Henderson, North Carolina that it does hereby 1) authorize the approval of the Utility Agreement with NCDOT, said agreement being more fully articulated in **Attachment No. 1** to this Resolution; *and* 2) authorize the Mayor to execute said agreement with NCDOT.

The foregoing Resolution 11—71, upon motion of Council Member Kearney and second by Council Member Inscoe and having been submitted to a roll call vote received the following votes and was APPROVED on this the 8th day of August 2011: YES: Inscoe, Rainey, Peace-Jenkins, Daye, Kearney and Coffey. NO: Daeke. ABSENT: Davis.

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk
Approved as to Legal Form:

John H. Zollicoffer, Jr., City Attorney
Reference: Minute Book 42, p. ***.

NORTH CAROLINA
VANCE COUNTY

UTILITY AGREEMENT

DATE: 5/20/2011

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Project: BD-5105 C

AND

WBS Elements: 45351.3.3

CITY OF HENDERSON

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 Henderson, hereinafter referred to as the "Municipality";

WITNESSETH:

WHEREAS, the Department has prepared and adopted plans to make certain street and highway improvements under Project BD-5105 C, in Vance County, said plans consists of Bridge No. 67 on SR 1120 (Vance Academy Rd) over Red Bud Creek, Vance County; said project having a right-of-way width as shown on the project plans on file with the Department's office in Raleigh, North Carolina; and,

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

NOW, THEREFORE, it is agreed as follows:

1. The Department shall place provisions in the construction contract for Project BD-5105 C Vance County, for the contractor to adjust and relocate water lines. Said work shall be accomplished in accordance with project, cost estimate attached hereto as Exhibit "A" and the plan sheets attached hereto as Exhibit "B".
2. The Municipality shall be responsible for water lines cost as shown on the attached Exhibit "B". The estimated cost to the Municipality is \$119,034.00 as shown on the attached Exhibit "A". It is

Agreement ID # 2395

1

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

- A. Upon completion of the utility work, the Department shall submit an itemized invoice to the Municipality for cost incurred. Billing will be based upon the actual bid prices and actual quantities used.
 - B. Reimbursement shall be made by the Municipality in one final payment within sixty (60) days of said invoice.
 - C. If the Municipality does not pay said invoice within sixty (60) days of the date of the invoice, the Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105.241.21.
 - D. Any cost incurred due to additional utility work requested by the Municipality after award of the construction contract, shall be solely the responsibility of the Municipality. The Municipality shall reimburse the Department 100% of the additional utility cost.
3. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by North Carolina General Statute, Section 136-41.1, until such time as the Department has received payment in full.
4. Upon the satisfactory completion of the relocations and adjustments of the utility lines covered under this Agreement, the Municipality shall assume normal maintenance operations to the said utility lines. Upon completion of the construction of the highway project, the Municipality shall release the Department from any and all claims for damages in connection with adjustments made to its utility lines; and, further, the Municipality shall release the Department of any future responsibility for the cost of maintenance to said utility lines. Said releases shall be deemed to be given by the Municipality upon completion of construction of the project and its acceptance by the Department from its contractor unless the Municipality notifies the Department, in writing, to the contrary prior to the Department's acceptance of the project.

5. It is further agreed that the following provisions shall apply regarding the utilities covered in this Agreement.
- A. The Municipality obligates itself to service and to maintain its facilities to be retained and installed over and along the highway within the Department's right-of-way limits in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.
- B. If at any time the Department shall require the removal of or changes in the location of the encroaching facilities which are being relocated at the Municipality's expense, the Municipality binds itself, its successors and assigns, to promptly remove or alter said facilities, in order to conform to the said requirement (if applicable per G.S. 136-27.1), without any cost to the Department.
6. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

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

L.S. ATTEST:

CITY OF HENDERSON

BY: _____ BY: _____

TITLE: _____ TITLE: _____

DATE: _____

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

Approved by _____ of the local governing body of the City of Henderson

as attested to by the signature of Clerk _____ of said governing body on

_____, (Date)

(SEAL)

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

(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:

City of Henderson

DEPARTMENT OF TRANSPORTATION

BY: _____
(STATE HIGHWAY ADMINISTRATOR)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)

Exhibit A

	ENGLISH UNITS			QUANTITY	TOTAL COST
Type	Item Number	Section#	Description	Units	
U	5325800000-E	1510	8" WATER LINE	LF	40
U	5326000000-E	1510	10" WATER LINE	LF	400
U	5801000000-E	1530	ABANDON 8" UTILITY PIPE	LF	440
U	5871600000-E	1550	TRENCHLESS INSTALLATION OF 10" IN	LF	400
			SOIL		
	TOTAL				

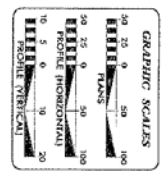
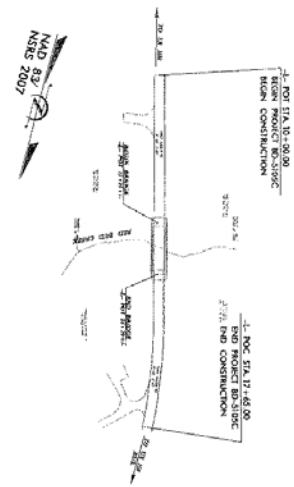
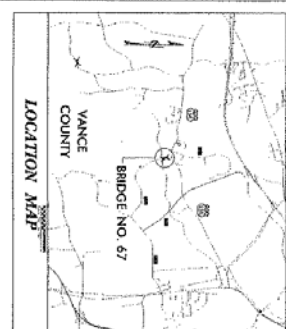
\$119,034

Exhibit B

TITLE: BD-5105C
SHEET NO: UC-1

STATE OF NORTH CAROLINA
DIVISION OF HIGHWAYS
UTILITY CONSTRUCTION PLANS
VANCE COUNTY

LOCATION: BRIDGE NO. 67 ON SR 1120
(VANCE ACADEMY RD.) OVER RED BUD CREEK
TYPE OF WORK: WATER LINE RELOCATION



SHEET NO.	INDEX OF SHEETS
UC-1	DESCRIPTION
UC-2	TITLE SHEET
	UTILITY CONSTRUCTION PLAN SHEETS

WATER AND SEWER OWNERS ON PROJECT
(1) WATER - CITY OF HENDERSON
(2) SANITARY SEWER - CITY OF HENDERSON

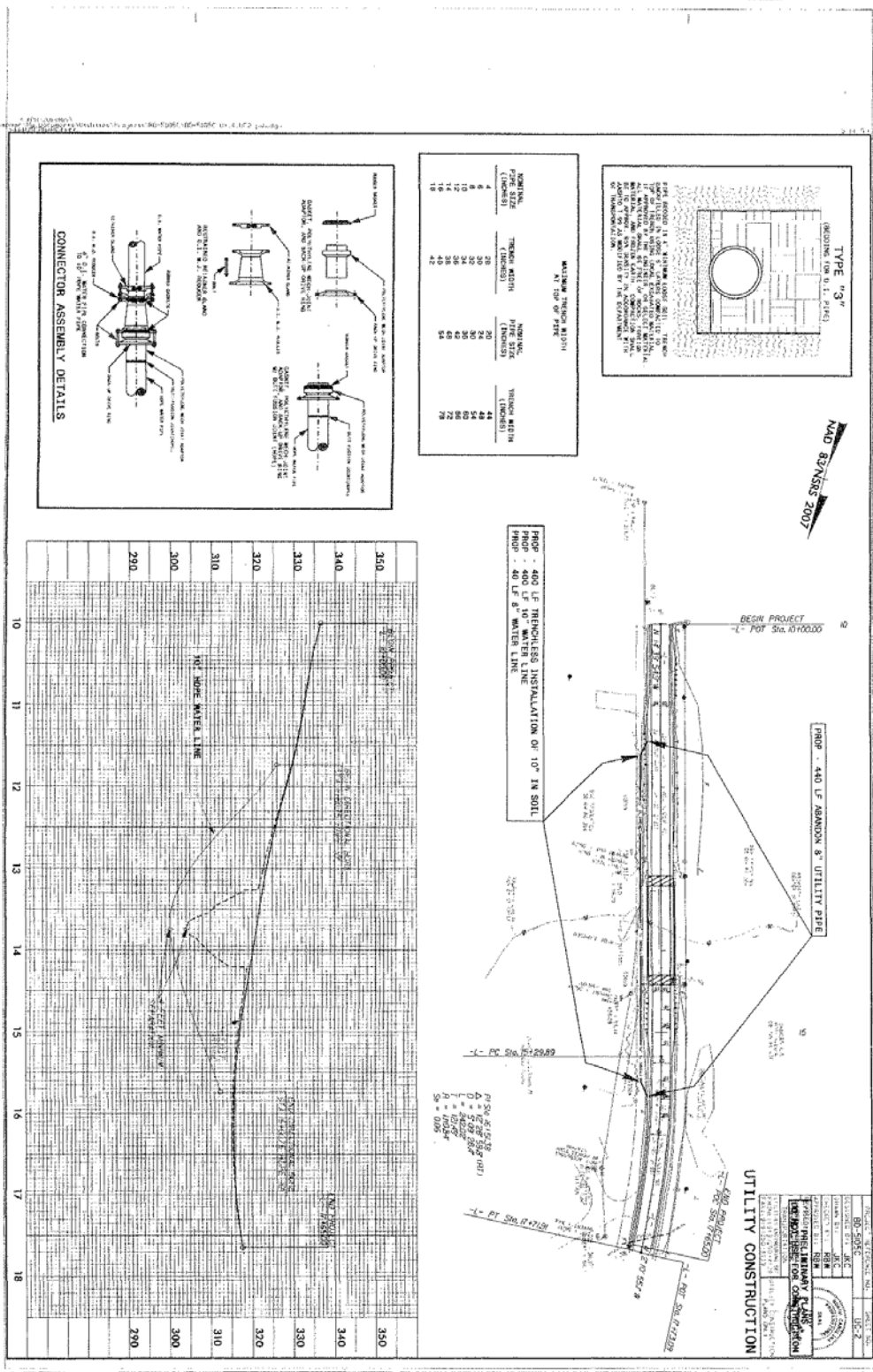
DO NOT USE FOR CONSTRUCTION

Scale: 1" = 40'

Engineer: R. A. Williams, P.E.
Firm: R. A. Williams & Associates, Inc.
Professional Seal: R. A. Williams, P.E., No. 11207, State of North Carolina

Project: BRIDGE NO. 67 ON SR 1120 (VANCE ACADEMY RD.) OVER RED BUD CREEK

11/11/2011 11:11:11 AM UC-1.dwg UC-1



City Council Action Form

Office of City Manager
P. O. Box 1434
Henderson, NC 27536
252.430.5701



Agenda Item:

Council Meeting: 24 Sept 12 Short Meeting

10 September 2012

TO: The Honorable Mayor James D. O'Geary and Members of City Council

FR: A. Ray Griffin, Jr., City Manager

RE: CAF: 12—117

Consideration of Approval of Resolution 12-80, Appointments to the Henderson Zoning Board of Adjustment Committee, and Henderson Recreation and Parks Commission.

Ladies and Gentlemen:

Recommendation:

- Approval of Resolution 12-80, Appointments to the Henderson Zoning Board of Adjustment Committee, and Henderson Recreation and Parks Commission.

Executive Summary

The Boards and Commissions' Committee (B&CC) met on 6 September 2012 to review applications on various committees and recommends the following appointments:

Recreation and Parks Commission

1. Mr. Jay Arthur Andrews – Appoint to serve a three-year term expiring on 30 June 2015.
2. Mr. Daniel Young, Jr. – Appoint to serve a three-year term expiring on 30 June 2015.
3. Mr. Vernon Brown – Appoint to serve a three-year term expiring on 30 June 2015.

Board of Adjustment

1. Ms. Sara Coffey – Reappoint to serve as a full member with a three-year term expiring on 30 June 2015.

Enclosures:

1. Resolution 12-80
2. Individual Applications

RESOLUTION 12-80

A RESOLUTION MAKING APPOINTMENTS TO THE FOLLOWING COMMITTEES/COMMISSIONS: HENDERSON ZONING BOARD OF ADJUSTMENT AND HENDERSON RECREATION AND PARKS COMMISSION

WHEREAS, the Henderson City Council (Council) has created several boards and commissions as a means to include citizen input to and participation within the governance process;
and

WHEREAS, the Council periodically appoints individuals to serve on said boards and commissions; *and*

WHEREAS, there are vacancies on the following Committees/Commissions: Henderson Zoning Board of Adjustment and the Henderson Recreation and Parks Commission; *and*

WHEREAS, applications have been received and reviewed by the Council's Boards and Commissions' Committee for available positions.

**NOW THEREFORE BE IT RESOLVED BY THE HENDERSON CITY COUNCIL THAT IT
DOES HEREBY** appoint the following individuals:

1. Ms. Sara Coffey, a city resident living at 339 W. Young Ave. to serve on the Henderson Zoning Board of Adjustment as a full member with a term expiring 30 June 2015; *and*
2. Mr. Jay Arthur Andrews, a city resident living at 1107 Hargrove St., to serve on the Henderson Recreation and Parks Commission for a three-year term expiring on 30 June 2015.
3. Mr. Vernon Brown, a city resident living at 915 Hicks St., to serve on the Henderson Recreation and Parks Commission for a three-year term expiring on 30 June 2015.
4. Mr. Daniel Young, Sr., a city resident living at 221 W. Belle St., to serve on the Henderson Recreation and Parks Commission for a three-year term expiring on 30 June 2015.

The foregoing Resolution 12-80, upon motion of Council Member ***and second by Council Member ***, and having been submitted to a roll call vote during a regularly scheduled and open meeting, received the following votes and was *** on this the 24th day of September 2012: YES:. NO: None. ABSTAIN: None. ABSENT:.

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk

Approved to Legal Form:

John H. Zollicoffer, Jr., City Attorney

*Reference: Minute Book 42, p ***, CAF 12-117*

rec'd
8/19/12

CITY OF HENDERSON
Application for Boards/Commissions/Committees

Please complete each section

Full Name JAY ARTHUR ANDREWS Date of Birth 2/7/57
Home Address 1107 HARGROVE ST. HENDERSON NC
Home Phone 252-492-7916 City of Henderson Resident: ☒ Yes ☐ No
Current Employers MAINTENANCE ENGINEERING
Job Title SALES REP. Years in current position 4
Business Phone 252-213-1869 Fax _____
E-Mail Address jandrews@embargo@mail.com
Duties _____

Other employment history _____

It is the City Council's goal to maintain a balance of membership on its Boards/Commissions/Committees based on race, gender and Council Ward residency.

Council Ward No. 2

Male ☒ Female ☐

White ☒ Black ☐ Hispanic ☐ Native American ☐ Asian ☐ Other ☐

Board/Commission/Committee Applying for (list only one per form)

RECREATION

Generally, the Council desires to broaden participation on Boards/Commissions/Committees for as much citizen involvement as possible; therefore, the goal is to limit appointees to no more than two (2) Boards/Commissions/Committees. Please list any other Board/Commission/Committee on which you currently serve: _____

Why are you interested in serving on this Board/Commission/Committee? I AM INTERESTED
IN SERVING THE CITY/COUNTY RECREATION DEPT.
AND WOULD LIKE TO HELP CONTINUE THIS IMPORTANT DEPT.

DO NOT SUBMIT RESUMES/ATTACHMENTS
(OVER)

Interests/Skills/Areas of Expertise/Professional Organizations/Activities I CURRENTLY
SERVE ON THE BOARD OF VANCE CHARTER SCHOOL
AND THE VANCE CHARTER FOUNDATION. I HAVE ALSO
SERVED ON THE BOARD OF DIRECTORS OF KERR LAKE CC AND
WARRENTON GOLF CLUB

Affirmation of Eligibility:

Has any formal charge of professional misconduct, criminal misdemeanor or felony ever been filed against you in any jurisdiction?

Yes _____ No ☒ If yes, please explain disposition: _____

Are there any conflicts of interest or other matters that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the City Council? Yes _____ No ☒

If yes, please explain: _____

I understand this application is public record, and I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize and consent to background checks and to the investigation and verification of all statements contained herein as deemed appropriate. I further authorize all information concerning my qualifications to be investigated and release all parties from all liability for any damages that may result from this investigation. I understand and agree that any misstatement may be cause for my removal from any Board/Commission/Committee. I understand regular attendance to any Board/Commission/Committee is important and accordingly, I further understand that if my attendance is less than the standards established for any such body that this is cause for removal. Lacking any written standards for attendance by any Board/Commission/Committee, it is expected that I will attend at least 75% of all meetings during any one calendar year to maintain my seat on any Board/Commission/Committee to which I may be appointed. This form will remain on file in the Office of the City Clerk and requests for updates will be sought prior to any consideration for reappointment (or future appointment) to any Board/Commission/Committee.

Signature Jay A Anderson Date: 8/17/12
Form is invalid if not signed and dated

Return Completed Form to:

Esther J. McCrackin
City Clerk
134 Rose Avenue
P O Box 1434
Henderson, NC 27536
Phone: (252) 430-5705 Fax: (252) 492-7935 Email: emccrackin@ci.henderson.nc.us

Do not submit any resumes or attachments
Applicants are required to be a resident of the City of Henderson

rec'd
7/20/12

CITY OF HENDERSON
Application for Boards/Commissions/Committees

Please complete each section

Full Name Daniel A. Young Sr Date of Birth 1/24/42
Home Address 221 W. Belle Street, Henderson, NC 27536
Home Phone 252-492-7073 City of Henderson Resident: ☒ Yes ☐ No
Current Employers First Transit - Part-Time
Job Title Transit Operator Years in current position 7
Business Phone Retired N/A Fax _____
E-Mail Address Truth-Justice@earthlink.net
Duties _____

Other employment history _____

It is the City Council's goal to maintain a balance of membership on its Boards/Commissions/Committees based on race, gender and Council Ward residency.

Council Ward No. _____

Male ☒ Female ☐

White ☐ Black ☒ Hispanic ☐ Native American ☐ Asian ☐ Other ☐

Board/Commission/Committee Applying for (list only one per form)

Recreation Commission

Generally, the Council desires to broaden participation on Boards/Commissions/Committees for as much citizen involvement as possible; therefore, the goal is to limit appointees to no more than two (2) Boards/Commissions/Committees. Please list any other Board/Commission/Committee on which you currently serve: _____

Why are you interested in serving on this Board/Commission/Committee? Having participated in the sport of Baseball, basketball, football, fencing and tennis, I believe my skills, knowledge, community interest will be an asset to the recreation commission.

DO NOT SUBMIT RESUMES/ATTACHMENTS
(OVER)

Interests/Skills/Areas of Expertise/Professional Organizations/Activities Member of
the United States Tennis Association, American
Tennis Association + founder of the National
Tennis Teacher's College, that train Tennis Teachers

Affirmation of Eligibility:

Has any formal charge of professional misconduct, criminal misdemeanor or felony ever been filed against you in any jurisdiction?

Yes ☒ No ☐ If yes, please explain disposition: _____

prefer to discuss personally

Are there any conflicts of interest or other matters that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the City Council? Yes ☐ No ☒

If yes, please explain: However, I do still actively

play Tournament Tennis, but don't envision a conflict

I understand this application is public record, and I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize and consent to background checks and to the investigation and verification of all statements contained herein as deemed appropriate. I further authorize all information concerning my qualifications to be investigated and release all parties from all liability for any damages that may result from this investigation. I understand and agree that any misstatement may be cause for my removal from any Board/Commission/Committee. I understand regular attendance to any Board/Commission/Committee is important and accordingly, I further understand that if my attendance is less than the standards established for any such body that this is cause for removal. Lacking any written standards for attendance by any Board/Commission/Committee, it is expected that I will attend at least 75% of all meetings during any one calendar year to maintain my seat on any Board/Commission/Committee to which I may be appointed. This form will remain on file in the Office of the City Clerk and requests for updates will be sought prior to any consideration for reappointment (or future appointment) to any Board/Commission/Committee.

Signature Daniel A. Young Date: 7/19/12

Form is invalid if not signed and dated

Return Completed Form to:

Esther J. McCrackin

City Clerk

134 Rose Avenue

P O Box 1434

Henderson, NC 27536

Phone: (252) 430-5705 Fax: (252) 492-7935 Email: _____

Do not submit any resumes or attachments
Applicants are required to be a resident of the City of Henderson

CITY OF HENDERSON
Application for Boards/Commissions/Committees

Please complete each section

Full Name VERNON L. BROWN Date of Birth 3/9/1954

Home Address 915 HICKS ST. HENDERSON

Home Phone 252-492-7409 City of Henderson Resident: ☒ Yes ☐ No

Current Employers _____

Job Title RETIRED - COUNCIL MEMBER Years in current position _____

Business Phone _____ Fax _____

E-Mail Address vbrown74@nc.rr.com

Duties _____

Other employment history _____

It is the City Council's goal to maintain a balance of membership on its Boards/Commissions/Committees based on race, gender and Council Ward residency.

Council Ward No. 4

Male ☒ Female ☐

White ☐ Black ☒ Hispanic ☐ Native American ☐ Asian ☐ Other ☐

Board/Commission/Committee Applying for (list only one per form)

PARKS & RECREATION

Generally, the Council desires to broaden participation on Boards/Commissions/Committees for as much citizen involvement as possible; therefore, the goal is to limit appointees to no more than two (2) Boards/Commissions/Committees. Please list any other Board/Commission/Committee on which you currently serve: _____

Why are you interested in serving on this Board/Commission/Committee? _____

MOVING FROM COUNTY SIDE OF COMMITTEE TO
CITY SIDE OF THIS COMMITTEE

DO NOT SUBMIT RESUMES/ATTACHMENTS
(OVER)

Please share how your Interests/Skills/Areas of Expertise/Professional Organizations/Activities will contribute to this Board/Commission.

Affirmation of Eligibility:

Has any formal charge of professional misconduct, criminal misdemeanor or felony ever been filed against you in any jurisdiction?

Yes _____ No ☒ If yes, please explain disposition: _____

Are there any conflicts of interest or other matters that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the City Council? Yes _____ No _____

If yes, please explain: _____

I understand this application is public record, and I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize and consent to background checks and to the investigation and verification of all statements contained herein as deemed appropriate. I further authorize all information concerning my qualifications to be investigated and release all parties from all liability for any damages that may result from this investigation. I understand and agree that any misstatement may be cause for my removal from any Board/Commission/Committee. I understand regular attendance to any Board/Commission/Committee is important and accordingly, I further understand that if my attendance is less than the standards established for any such body that this is cause for removal. Lacking any written standards for attendance by any Board/Commission/Committee, it is expected that I will attend at least 75% of all meetings during any one fiscal year to maintain my seat on any Board/Commission/Committee to which I may be appointed. This form will remain on file in the Office of the City Clerk and requests for updates will be sought prior to any consideration for reappointment (or future appointment) to any Board/Commission/Committee.

Signature

Heather Brown

Date:

9/13/12

Form is invalid if not signed and dated

Return Completed Form to:

Esther J. McCrackin

City Clerk

134 Rose Avenue

P O Box 1434

Henderson, NC 27536

Phone: (252) 430-5705 Fax: (252) 492-7935 Email: emccrackin@ci.henderson.nc.us

Do not submit any resumes or attachments
Applicants are required to be a resident of the City of Henderson

CITY OF HENDERSON
Application for Boards/Commissions/Committees

Please complete each section

Full Name SARA M. COFFEY Date of Birth 04/18/50

Home Address 339 W YOUNG AVE HENDERSON N.C. 27536

Home Phone 252 430-6300 City of Henderson Resident: ☒ Yes ☐ No
252 767-3187

Current Employers COFFEY'S BAIL BONDS & INVESTIGATIONS

Job Title OWNER / AGENT Years in current position 14

Business Phone 252-430-6300 Fax 252 430-7885

E-Mail Address Colleys bonding @ gmail .com

Duties handle all bondings set by Court, follow-up on fugitives, fugitive apprehension, handle bond forfeiture hearings

Other employment history police officer, U.S. Army

It is the City Council's goal to maintain a balance of membership on its Boards/Commissions/Committees based on race, gender and Council Ward residency.

Council Ward No. WARD 1 AT LARGE

Male ☐ Female ☒

White ☒ Black ☐ Hispanic ☐ Native American ☐ Asian ☐ Other ☐

Board/Commission/Committee Applying for (list only one per form)

BOARD OF ADJUSTMENTS I AM ALTERNATE AT PRESENT TIME

Generally, the Council desires to broaden participation on Boards/Commissions/Committees for as much citizen involvement as possible; therefore, the goal is to limit appointees to no more than two (2) Boards/Commissions/Committees. Please list any other Board/Commission/Committee on which you currently serve: E-911 ALTERNATE BOARD OF ADJUSTMENTS

Why are you interested in serving on this Board/Commission/Committee? I AM INTERESTED IN ANYTHING IN OUR CITY THAT CAN IMPROVE, OFFER EMPLOYMENT, AND MAKE DECISIONS BASED ON FAIRNESS & LEGALITY

DO NOT SUBMIT RESUMES/ATTACHMENTS
(OVER)

Please share how your Interests/Skills/Areas of Expertise/Professional Organizations/Activities will contribute to this Board/Commission.

I AM VERY INTERESTED IN THE BUSINESS ASPECT OF THIS CITY.
I WOULD LIKE TO BE A PART OF THE DECISION MAKING BOARD
THAT OVERSEES THE LEGAL DECISIONS OF BUSINESS

Affirmation of Eligibility:

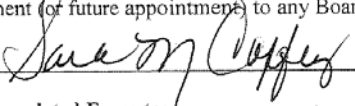
Has any formal charge of professional misconduct, criminal misdemeanor or felony ever been filed against you in any jurisdiction?

Yes _____ No ☒ If yes, please explain disposition: _____

Are there any conflicts of interest or other matters that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the City Council? Yes _____ No ☒

If yes, please explain: _____

I understand this application is public record, and I certify that the facts contained in this application are true and correct to the best of my knowledge. I authorize and consent to background checks and to the investigation and verification of all statements contained herein as deemed appropriate. I further authorize all information concerning my qualifications to be investigated and release all parties from all liability for any damages that may result from this investigation. I understand and agree that any misstatement may be cause for my removal from any Board/Commission/Committee. I understand regular attendance to any Board/Commission/Committee is important and accordingly, I further understand that if my attendance is less than the standards established for any such body that this is cause for removal. Lacking any written standards for attendance by any Board/Commission/Committee, it is expected that I will attend at least 75% of all meetings during any one fiscal year to maintain my seat on any Board/Commission/Committee to which I may be appointed. This form will remain on file in the Office of the City Clerk and requests for updates will be sought prior to any consideration for reappointment (or future appointment) to any Board/Commission/Committee.

Signature  Date: 8-7-2012
Form is invalid if not signed and dated

Return Completed Form to:

Esther J. McCrackin
City Clerk
134 Rose Avenue
P O Box 1434
Henderson, NC 27536
Phone: (252) 430-5705 Fax: (252) 492-7935 Email: emccrackin@ci.henderson.nc.us

Do not submit any resumes or attachments
Applicants are required to be a resident of the City of Henderson

Meetings and Events Calendar

Date	Time	Event	Location
Sept 28 th	10:00 AM	Henderson-Vance E911 Advisory Board Meeting	E 911 Operation Center
Oct 1 st	3:30 PM	Henderson Planning Board	City Council Chambers
Oct 2 nd	3:30 PM	Henderson Zoning Board of Adjustments	City Council Chambers
Oct 8 th	9:30 AM	KLRWS Advisory Board Meeting	City Hall Large Conference Room
Oct 8 th	6:00 PM	City Council Regular Meeting	City Council Chambers
Oct 9 th	3:00 PM	Henderson Appearance Committee	City Council Chambers
Oct 11 th	12:00 PM	Henderson-Vance Parks & Recreation Commission	Aycock Recreation Center
Oct 18 th	7:00 PM	Human Relations Commission	City Council Chambers
Oct 22 nd	Cancelled	City Council Meeting CANCELLED	CANCELLED DUE TO NCLM CONFERENCE
Nov 5 th	3:30 PM	Henderson Planning Board	City Council Chambers
Nov 6 th	3:30 PM	Henderson Zoning Board of Adjustments	City Council Chambers
Nov 8 th	12:00 PM	Henderson-Vance Parks & Recreation Commission	Aycock Recreation Center
Nov 12 th	5:00 PM	Library Board of Trustees	H. Leslie Perry Memorial Library Board Room
Nov 12 th		City Hall Closed Veterans Day / City Council Meeting Cancelled	Happy Veterans Day 
Nov 13 th	3:00 PM	Henderson Appearance Committee	City Council Chambers
Nov 15 th	7:00 PM	Human Relations Commission	City Council Chambers
Nov 22nd & Nov 23rd		CITY HALL CLOSED Thursday the 22nd & Friday the 23rd HAPPY THANKSGIVING	
Nov 26 th	6:00 PM	City Council Meeting Work Session to Follow	City Council Chambers
Nov 30 th	10:00 AM	Henderson-Vance E911 Advisory Board Meeting	E 911 Operation Center
Dec 3 rd	3:30 PM	Henderson Planning Board	City Council Chambers
Dec 4 th	3:30 PM	Henderson Zoning Board of Adjustments	City Council Chambers
Dec 10 th	6:00 PM	City Council Regular Meeting	City Council Chambers
Dec 11 th	3:00 PM	Henderson Appearance Committee	City Council Chambers

Last Updated: 9/19/2012 12:12 PM



AGENDA

**Henderson City Council Work Session
Monday, 24 September 2012 Immediately Following Regular Session
R. G. (Chick) Young, Jr. Council Chambers, Municipal Building
134 Rose Avenue
Henderson, North Carolina**

Mayor and City Council Members

Mayor James D. O'Geary, Presiding

Councilmember James C. Kearney, Sr.
Councilmember Sara M. Coffey
Councilmember Michael C. Inscoe
Councilmember D. Michael Rainey

Councilmember Brenda G. Peace—Jenkins
Councilmember Garry D. Daeke
Councilmember Vernon L. Brown
Councilmember George M. Daye

City Officials

A. Ray Griffin, Jr., City Manager
John H. Zollicoffer, Jr., City Attorney
Esther J. McCrackin, City Clerk

I. CALL TO ORDER

II. ROLL CALL

III. ADJUSTMENTS TO AND/OR APPROVAL OF THE AGENDA

IV. REGULAR WORK SESSION

- a)** Beyond the Barriers Outreach Program Presentation. *[See Notebook Tab 6]*
- b)** Consideration of FY13 Airport Funding. *[See Notebook Tab 7]*
- c)** Consideration of Approval of Ordinance 12-52, Amending the Provisions for Cuts and Excavations of Streets and for Right of Way Management. *(CAF 12-95)*
[See Notebook Tab 8]
 - Ordinance 12-52

- d)** Consideration of Approval of Resolution 12-82, Amendments to City Administrative Policy 4.13, The Pay Plan and 10.01, Types of Separation. *(CAF 12-119) [See Notebook Tab 9]*
- Resolution 12-82
- e)** Consideration of Approval of Resolution 12-84, Supporting the Completion of the Widening of SR 1228 (Chavasse Avenue) From US 1 Business (Raleigh Road) to SR 1143 (S. William Street). *(CAF 12-124) [See Notebook Tab 10]*
- Resolution 12-84
- f)** Consideration of Approval of 1) Ordinance 12-71, FY 12-13 Budget Amendment #13, Amending Fund 73: Economic Development Capital Reserve Fund; and 2) Resolution 12-A-16, Authorizing an Amendment to the Capital Reserves Economic Development Fund in Regards to the North Carolina RURAL Center and Golden Leaf Foundation Grants' Applications for Water Line for Economic Development Prospect 12-2; and Authorizing an Inter-Local Agreement with Vance County for Eligibility for Said Mentioned Grants. *(CAF 12-126) [See Notebook Tab 11]*
- Ordinance 12-71
 - Resolution 12-A-16
- g)** Consideration of Approval of CM12-13, Consideration of Meal Tax Authority via Local Act of General Assembly. *[See Notebook Tab 12]*
- CM12-13

V. ADJOURNMENT



Office of the City Manager

134 Rose Avenue, P. O. Box 1434, Henderson, NC 27536

Phone 252.430.5701 : Fax 252.492.7935 : E-mail rgriffin@ci.henderson.nc.us

www.ci.henderson.nc.us

6 September 2012

TO: Mayor O'Geary and Members of City Council

FR: Ray Griffin, City Manager

RE: FY13 Airport Funding

Ladies and Gentlemen:

Councilmember Rainey has received a call from the City's Airport Authority member, Mr. David, Thomas, inquiring why the City's FY13 appropriation is less than requested and less than provided by the other three regional partners—Vance County, Granville County and Oxford. Mr. Thomas advises these additional funds are needed in order to provide the necessary match for a State grant providing for airport facility improvements.

The Recommended Budget provided for the requested \$28,800. During budget deliberations and as part of the process to delete the recommended two cents property tax increase, or \$164,000, and reduce the fund balance appropriation by \$41,000, many line items were adjusted down. The combined total of the reductions to the Recommended Budget was \$205,000. Consequently, the airport budget was reduced to last year's (FY12) appropriation, or \$26,100.

Mr. Rainey has requested this item be placed on the Agenda for discussion.

City Council Action Form

Office of City Manager
P. O. Box 1434
Henderson, NC 27536
252.430.5701



Agenda Item: _____

Council Meeting: 24 Sept.12 Work Session

10 September 2012

TO: The Honorable Mayor James D.O'Geary and Members of City Council
FR: A. Ray Griffin, Jr., City Manager
RE: **CAF: 12-95**
Consideration of Approval of Ordinance 12-52, Amending the Provisions for Cuts and Excavations of Streets and for Right of Way Management.

Ladies and Gentlemen:

Council Retreat Goals Addressed By This Item:

- KSO 5– Provide Reliable, Dependable Infrastructure: *To provide reliable, dependable and environmentally compliant infrastructure systems.*

Recommendation:

- Approval of Ordinance 12-52, Amending the Provisions for Cuts and Excavations of Streets and for Right of Way Management.

Executive Summary

The Right-of-Way Management Ordinance (City Code 16A) was last approved in March 2007 and was written to regulate development and use of the City's right-of-way areas by contractors, utility providers with and without franchises. The current ordinance was hard to follow on who was being charged fees, fees were difficult to calculate and the permitting requirements excessive. This was realized during the current work being performed for fiber optic cable installation being done by MCNC through sections of the City.

Due to this, City Attorney Zollicoffer reviewed the ordinance and provided a moderate and easier to understand schedule of fees as well as clarifications for dealing with the permitting and some other minor changes. The staff has reviewed the changes, are in agreement with those changes and recommends approval of the modification to the right-of-way ordinance, Section 16A, of the City Code.

Enclosures:

1. Ordinance 12-52
2. Original City Code 16A

ORDINANCE 12-52

AN ORDINANCE AMENDING THE PROVISIONS FOR CUTS AND EXCAVATIONS OF STREETS AND FOR RIGHT OF WAY MANAGEMENT

The City Council of the City of Henderson, North Carolina doth ordain:

Section 1. That Section 16-24 of the City Code be amended to read as follows:

“Sec. 16-24. Same – Fees.

See Section 16A-11 and other provisions of Chapter 16A.”

Section 2. That Section 16A-03 be amended by deleting the subparagraphs entitled “Five-year project plan” and “Obstruction permit fee”.

Section 3. That Section 16A-07 be amended by replacing the “;and” with a period at the end of Subparagraph (1) under “Operations”, by deleting subparagraph (2) under “Operations” and by deleting the last paragraph of Section 16A-07 relating to Five-year projects.

Section 4. That Section 16A-11 Permit Fees be amended by deleting Subparagraphs (a), (b), (c), (d), (e), (f), (i) and (j) together with footnotes 1, 2 and 3, and by inserting in lieu thereof the following:

“(a) Excavation permit fee. There shall be a permit fee charged by the City of Henderson in the sum of \$150.00 for administration of the permit. In addition where any street or sidewalk is cut (except where the same is made in conjunction with a water or sewer tap) the following fee shall be charged as an excavation fee:

Concrete base more than four inches thick.....	\$600.00
Concrete base four inches thick or less.....	500.00
Asphalt street with no concrete base.....	250.00
Dirt street.....	150.00
Paved sidewalk (except Garnett Street between Spring and Church Streets)...	150.00
Garnett Street sidewalk between Spring and Church Streets.....	250.00
Curb and gutter cut.....	250.00
Dirt sidewalk.....	50.00

(Code 1967, § 16-24; 6-25-73; 6-23-80, § 4; 6-29-89, § 1; Ord. of 11-26-01, § 1)

Section 5. That Subparagraph (g) under Section 16A-11 be renumbered as Subparagraph (b), and that Subparagraph (h) under said 16A-11 be renumbered as Subparagraph (c).

Section 6. That Section 16A-12 be amended by deleting the Overlays box together with the Hypothetical example under Footnote 4 in Subparagraph (4) of the same so that Footnote 4 and Footnote 5 are adjacent to each other.

Section 7. That Section 16A-12 is amended by adding the words “(plus 15% administrative and managerial fee)” following the words “right of way” in Section 16A-12(e).

Section 8. That the words “a penalty pay double” appearing in Section 16A-19(b) be amended to read “a civil penalty pay triple”.

Section 9. That the following be added as an additional sentence in Section 16A-22(a) (relative to mapping information required):

“At the City’s request, maps of all prior encroachments by the encroacher shall be provided to the City if the same are reasonably available.”

Section 10. That the following be added as an additional sentence at the end of Section 16A-22(b) (relative to failure to comply):

“Such failure shall, after thirty days notice from the City, also subject said violator with the civil penalties set forth in Section 16A-30.”

Section 11. That in Section 16A-27(d) (relative to regulatory fees and reimbursements not a tax), the words “or franchise fees or taxes” be added at the end of the phrase “local City and County taxes,”.

Section 12. That Section 16A-28(i) (relative to general liability insurance) be amended by deleting the words “Until otherwise increased by the City,” and inserting the following words in lieu thereof “Until otherwise determined by the City Manager,”.

Section 13. That the heading for Section 16A-30 be amended to read: “Civil Penalty Provisions”.

Section 14. The foregoing Ordinance shall be in full force and effect from and after the date of its passage.

The foregoing Ordinance 12-_____, upon motion of Council member _____ and seconded by Council Member _____, and having been submitted to a roll call vote and received the following votes and was **APPROVED/DISAPPROVED** on this the ____ day of _____, 2012: YES: . NO: . ABSTAIN: . ABSENT: .

James D. O’Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk
Approved to Legal Form:

John H. Zollicoffer, Jr., City Attorney

*Reference: Minute Book 4**, p. **.*

**STATE OF NORTH CAROLINA
CITY OF HENDERSON**

I, Esther J. McCrackin, the duly appointed, qualified City Clerk of the City of Henderson, do hereby certify the foregoing Ordinance is a true and exact copy of *Ordinance 12-52, An Ordinance Amending The Provisions For Cuts And Excavations Of Streets And For Right Of Way Management*, adopted by the Henderson, City Council in Regular Session on ** ** 20** (See *Minute Book 4**, p. **). This Ordinance is recorded in *Ordinance Book # 8*, pp. **.

Witness my hand and corporate seal of the City, this ** day of *** 20**.

Esther J. McCrackin
City Clerk
City of Henderson, North Carolina

Chapter 16A - RIGHT-OF-WAY MANAGEMENT

Sec. 16A-01. - Findings, purpose and intent.

To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its streets and the appropriate use of the right-of-way, the city strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, the city hereby enacts this new chapter of this code relating to right-of-way permits and administration. This chapter imposes reasonable regulation on the placement and maintenance of facilities and equipment currently within its right-of-way or to be placed therein at some future time. Under this chapter, persons excavating and obstructing the right-of-way will bear financial responsibility for their work. Finally, this chapter provides for recovery of actual and projected costs from persons using the public right-of-way.

This chapter shall be interpreted as consistent with North Carolina Statutes and the other laws governing applicable rights of the city and users of the right-of-way. This chapter shall not be interpreted to limit the regulatory and police powers of the city to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

(Ord. of 3-26-07)

Sec. 16A-02. - Election to manage the right-of-way.

Pursuant to the authority granted to the city under state and federal statutory, administrative and common law, the city hereby elects, pursuant G.S. 160A-273 and 160A-296(a), to manage public right-of-way within its jurisdiction.

(Ord. of 3-26-07)

Sec. 16A-03. - Definitions.

The following definitions apply in this chapter of this Code. References hereafter to "sections" are, unless otherwise specified, references to sections in this chapter.

Defined terms remain defined terms whether or not capitalized.

Abandoned facility means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is in use or still carries service.

Applicant means any person requesting permission to excavate or obstruct a right-of-way.

City means the city of Henderson, North Carolina. For purposes of section 16A-28, city means its elected officials, officers, employees and agents.

Commission means the North Carolina Public Utilities Commission.

Completion certificate means a certificate provided by the city following its acceptance that the work performed meets all city right-of-way requirements and standards.

Congested right-of-way means a crowded condition in the subsurface of the public right-of-way that occurs when the maximum lateral spacing between existing underground facilities does not allow for construction of new underground facilities without using hand digging to expose the existing lateral facilities over a continuous length in excess of five hundred (500) feet.

Construction performance bond means any of the following forms of security as stipulated by the city:

- (1) Individual project bond;
- (2) Cash deposit;
- (3) Security of a form listed;
- (4) Letter of credit, in a form acceptable to the city;
- (5) Self insurance, in a form acceptable to the city;
- (6) A blanket bond for projects within the city, or other form of construction bond, for a time specified and in a form acceptable to the city.

Degradation means a decrease in the useful life of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation or disturbance did not occur.

Degradation cost means the cost to achieve a level of restoration as determined by the city at the time the permit is issued.

Degradation fee(s) means the estimated fee(s) established at the time of permitting by the city to recover costs associated with the decrease in the useful life of the right-of-way caused by the excavation, and which equals the degradation cost.

Department means the department of public works of the city.

Director means the director of the department of public utilities of the city, or her or his designee.

Delay penalty is the penalty imposed as a result of unreasonable delays in right-of-way excavation, obstruction, patching, or restoration as established by permit.

Emergency means a condition that (1) poses a danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of facilities to restore service to a customer.

Equipment means any tangible asset used to install, repair, or maintain facilities in any right-of-way.

Excavate means to dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.

Excavation permit means the permit that, pursuant to this chapter, must be obtained before a person may Excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.

Excavation permit fee means money paid to the city by an applicant for an excavation permit to cover the city's costs and expenses.

Facility or facilities means any tangible asset in the right-of-way required to provide utility service.

Five-year project plan shows projects adopted by the city for construction within the next five (5) years.

Local representative means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.

Management costs means the actual costs the city incurs in managing its right-of-way, including such costs, if incurred, as those associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user facilities during right-of-way work; determining the adequacy of right-of-way restoration; restoring work inadequately performed after providing notice and the

opportunity to correct the work; and revoking right-of-way permits. Management costs do not include payment by a telecommunications or other right-of-way user for the use of the right-of-way, the fees and cost of litigation relating to the interpretation of this chapter or the city fees and costs related to appeals taken pursuant to section 16A-32 of this chapter.

NCDOT ROW policies means the Policies and Procedures For Accommodating Utilities On Highway Rights-of-Way, published by the North Carolina Division of Highways, January 1, 1975, revised April 1, 1993 as shall be amended from time to time.

Obstruct means to place any tangible object in a right-of-way so as to hinder free and open passage over that or any part of the right-of-way.

Obstruction permit means the permit which, pursuant to this chapter, must be obtained before a person may obstruct any portion of a right-of-way, allowing the holder to hinder free and open passage over the specified portion of that right-of-way, for the duration specified therein.

Obstruction permit fee means money paid to the city by a permittee to cover the costs as provided in section 16A-11.

Patch or patching means a method of pavement replacement that is temporary in nature. A patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two (2) feet beyond the edges of the excavation in all directions. A patch is considered full restoration only when the pavement is included in the city's adopted replacement plan.

Pavement means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

Permit means authority granted by the city to place specific facilities in the "right-of-way" under the city's jurisdiction pursuant to G.S. 160A-296 and 160A-273.

Permittee means any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.

Person means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

Probation means the status of a person that has not complied with the conditions of this chapter.

Probationary period means one year from the date that a person has been notified in writing that they have been put on probation.

Registrant means any person who (1) has or seeks to have its equipment or facilities located in any public right-of-way, or (2) in any way occupies or uses, or seeks to occupy or use, the right-of-way (other than as normal traffic flow) or place its facilities or equipment in the right-of-way. This does not include persons properly temporarily utilizing a designated parking space for its respective designated use.

Restore or restoration means the process by which an excavated right-of-way and surrounding area, including pavement and foundation, is returned to the same condition and life expectancy that existed before excavation.

Restoration cost means the amount of money paid to the city by a permittee to achieve the level of restoration prescribed by the city.

Right-of-way or *public right-of-way* or "*rights-of-way*" means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane or public sidewalk in which the city has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the city.

Right-of-way permit means either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.

Right-of-way user means a person owning or controlling a facility in a public right-of-way that is used or intended to be used for providing a public or private utility service, and who has a right under law, franchise, certificate or ordinance to use the public right-of-way.

Service or utility service as defined in G.S. 62-3(27) and also means any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility used in connection with such service.

Supplementary application means an application made to excavate or obstruct more of the right-of-way than allowed in, or to extend, a permit that had already been issued.

Temporary surface means the compaction of subbase and aggregate base and replacement, in kind, of the existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the city's two (2) year plan, in which case it is considered full restoration.

Trench means an excavation extending on or across the public right-of-way.

Telecommunication right-of-way user means a person owning or controlling a facility in the right-of-way, or seeking to own or control a facility in the right-of-way, that is used or is intended to be used for transporting public or private telecommunication or other voice or data information. For purposes of this chapter, a cable system defined under 47 U.S.C. § 522 is not a telecommunication facility.

Underground damage prevention act as defined by G.S. 87-100 refers to the rules and regulations to which right-of-way users must comply when installing or working around underground facilities.

Underground utility as defined in G.S. 87-101(12) refers to any underground line, system or facility used for producing, storing, conveying, transmitting, or distributing communications or telecommunications, electricity, gas, petroleum and petroleum products, coal slurry, hazardous liquids, water under pressure, steam, or sanitary sewage, or for providing storm sewers or drainage systems but not including traffic signal control cables and vehicle detection cables of the North Carolina Department of Transportation.

(Ord. of 3-26-07)

Sec. 16A-04. - Administration.

The director of public utilities is the principal city official responsible for the administration of the right-of-way, right-of-way permits, and the ordinances related thereto. The director may delegate any or all of the duties hereunder.

(Ord. of 3-26-07)

Sec. 16A-05. - Registration and right-of-way occupancy.

(a) *Registration.* Each person or entity who occupies, uses, or seeks to occupy or use, any public right-of-way or place any equipment or facilities in or on any public right-of-way, including persons or entities with installation and maintenance responsibilities by lease, sublease or assignment, must register with the city. Registration will consist of providing application information and paying a registration fee.

(b) *Registration prior to work.* No person may construct, install, repair, remove, relocate, or perform any work on, or use any facilities or any part thereof in any public right-of-way without first being registered with the city.

(c) *Continuing responsibilities.* Registrant and any permittee acting on its behalf must comply with the national electrical safety code (NESEC) and the national electric code (NEC) as well as with other federal, state and local regulations.

(d) *Exceptions.* Without relinquishing or modifying the city's rights of control of its public rights of way, nothing herein shall be otherwise construed to limit the rights of persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter; provided the city shall retain the rights to cut, remove, or otherwise regulate such plantings, gardens, etc. However, nothing herein relieves a person from complying with the provisions of the G.S. ch. 87, art. 3, "Underground Damage Prevention Act." (Ord. of 3-26-07)

Sec. 16A-06. - Registration information.

(a) *Information required.* The information provided to the city at the time of registration shall include, but not be limited to each of the following:

(1) Each registrant's name, N.C. One-Call registration certificate number (if applicable), address and email address if applicable, and telephone and facsimile numbers.

(2) The name, address (e-mail address, if applicable), and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

(3) A certificate of insurance:

a. Verifying that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of North Carolina, or a form of self insurance acceptable to the city;

b. Verifying that the registrant is insured against claims for personal injury, including death, as well as claims for property damage in the minimum amounts set forth in section 16A-29, arising out of the (i) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees, and (ii) placement and use of facilities and equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground facilities and collapse of property;

c. If the registrant is a public utility, franchise holder, or the grantee of a public easement, naming the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverage; and requiring the city to be notified thirty (30) calendar days in advance of cancellation of the policy or material modification of a coverage term; (4) Certificates indicating comprehensive liability coverage, motor vehicle liability coverage, required workers compensation, and umbrella coverage in amounts hereafter in this chapter sufficient to protect the city and the public and to carry out the purposes established in 16A-29 and policies of this chapter. The city may require a copy of the actual insurance policies.

(5) If the registrant is a corporation, a limited liability company or other legal entity, a copy of a current certificate of good standing issued by the North Carolina Secretary of State.

(6) A copy of the registrant's certificate of authority from the North Carolina Public Utilities Commission, North Carolina Secretary of State or other applicable state or federal agency, whenever the registrant is lawfully required to have such certificate from said commission or other state or federal agency.

(b) *Notice of changes.* The registrant shall keep all of the information listed above current at all times by providing to the city information as to changes within fifteen (15) calendar days following the date on which the registrant has knowledge of any change.

(Ord. of 3-26-07)

Sec. 16A-07. - Reporting obligations.

Operations. Each registrant shall, at the time of registration and by December 1 of each year, file with the city a construction and major maintenance plan showing all anticipated construction and maintenance for said registrant's underground facilities within the city. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be useful or necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of right-of-way.

The plan shall include, but not be limited to, the following information:

(1) The locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year ("next year projects"); and

(2) To the extent known, the tentative locations and estimated beginning and ending dates for all projects contemplated for the five (5) years following the next calendar year ("five-year projects").

By January 1 of each year, the city will have available for inspection by the director of public utilities' office, a composite list of all registrant construction and maintenance plans. All registrants are responsible for keeping the city informed of the current status of their respective list.

By February 1 of each year, each registrant shall update next year projects or five (5) year projects, and must notify the city and all other registrants of these changes.

(Ord. of 3-26-07)

Sec. 16A-08. - Permit requirement.

(a) *Permit required.* Except as otherwise provided in this chapter, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.

(1) *Excavation permit.* An excavation permit is required by a registrant to excavate that part of the right-of-way described in such permit and to hinder free and open passage over the specified portion of the right-of-way by placing facilities described therein, to the extent and for the duration specified therein.

(2) *Obstruction permit.* An obstruction permit is required by a registrant to hinder free and open passage over the specified portion of right-of-way by placing Equipment described therein on the right-of-way, to the extent and for the duration specified therein. An obstruction permit is not required if a person already possesses a valid excavation permit for the same project.

(b) *Permit extensions.* No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless (i) such person makes a supplementary application for another right-of-way permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

(c) *Delay penalty.* The city shall establish and impose a delay penalty for unreasonable delays in right-of-way excavation, obstruction, patching, or restoration. The delay penalty shall be one hundred dollars (\$100.00) per day with each day or part thereof constituting a separate delay period.

(d) *Permit display.* Permits issued under this chapter shall be conspicuously displayed or otherwise available at all times at the indicated work site and shall be available for inspection by the city.

(Ord. of 3-26-07)

Sec. 16A-09. - Permit applications.

Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

(a) Registration with the city pursuant to this chapter;

(b) Submission of documentary evidence of applicant's authority to excavate, obstruct or operate in the right-of-way (*e.g.* state notice of franchise, signed local cable franchise agreement; certificate of public, service and convenience issued by North Carolina Public Utility Commission);

(c) Submission of a permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all known existing and proposed facilities.

(d) Payment of money due the city for:

(1) Permit fees, estimated restoration costs and other management costs;

(2) Prior obstructions or excavations;

(3) Any undisputed loss, damage, or expense suffered by the city because of applicant's prior excavations or obstructions of any public right-of-way or any Emergency actions taken by the city;

(4) Franchise fees or other charges, if applicable.

(e) Payment of any disputed amounts due the city by posting security or depositing in an escrow account an amount equal to one hundred (100) percent of the amount owed.

(f) Posting an additional or larger construction performance bond for additional facilities when applicant requests an excavation permit to install additional facilities and the city deems the existing construction performance bond inadequate under applicable standards.

(Ord. of 3-26-07)

Sec. 16A-10. - Issuance of permit; conditions.

(a) *Permit issuance.* If the applicant has satisfied the requirements of this chapter, the city shall issue a permit.

(b) *Conditions.* The city may impose reasonable conditions upon the issuance of the permit and the performance of the applicant thereunder to protect the health, safety and welfare or when necessary to protect the right-of-way and its current use.

(Ord. of 3-26-07)

Sec. 16A-11. - Permit fees.

(a) *Excavation permit fee.* The following shall constitute its following excavation permit fees that are deemed to be in an amount sufficient to recover the following costs:

(1) The city's administrative and management costs shall be calculated as follows:

$$[(\text{Labor} + \text{Indirect Costs}) \times \text{Time} + \text{Other Costs}] / \text{Units} = \text{Cost per Unit Hypothetical}$$

Example

a. $[(\$30,000 + \$13,500) \times 25\% + \$2500] / 300 = \text{Recovery cost per permit}$

b. $[\$33,500 + \$8375 + \$2500] / 300 = \text{Recovery cost per permit}$

c. $\$44,375 / 300 = \$147.91 \text{ recovery cost per permit issued}$

d. Assumptions:

1. Salary (e.g., public works employee) = \$30,000.00

2. Benefits = 45% of salary or \$13,500.00

3. Administrative - Management Overhead = 25% of salary (\$33,500.00) or \$8,375.00

4. Other costs (e.g., permit forms) = \$2,500.00

5. Time devoted to right-of-way management = 25%

6. Units = 300 ROW permits (estimated) issued during the year.

(2) Plus all applicable degradation costs as set forth in section 16A-12.

(b) *Construction permit fee.* Prior to issuance of a construction permit, the permittee shall pay the greater of the permit fee specified herein or one (1) percent of the estimated cost¹ of constructing the facilities, as certified by the applicant's engineer and approved by the city.

(c) *Annual ROW cost recovery fees² for underground facilities.* Unless otherwise agreed in a license or encroachment agreement, each licensee or permittee shall pay an annual fee³ equal to: (1) fifty cents (\$0.50)/linear foot for facilities up to six inches (6") or less in diameter in residential areas; (2) one dollar (\$1.00)/linear foot for facilities up to six inches (6") or less in diameter in commercial areas; (3) one dollar (\$1.00)/linear foot for facilities six inches (6") to twelve inches (12") in diameter in residential areas; and (4) two dollars (\$2.00)/linear foot for facilities six inches (6") to twelve inches (12") in diameter in commercial areas as reimbursement for the city's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways in behalf of the public and existing or future users. The ROW use fee for underground encroachments exceeding twelve inches (12") in diameter shall

be negotiated separately and set by the city council. Said fee shall be paid on an annual basis, due January 30th, for each ensuing calendar year. A prorated payment shall be made upon execution of any license or agreement, for the period from the effective date of the license or agreement to the end of the year. If a license or agreement is terminated during the fiscal year, the city shall refund payments, without interest, on a prorated monthly basis. Should a registrant fail to make the payments required herein, the city, at its option, by written notice may declare the license or agreement canceled and terminated and all rights acquired hereunder by the registrant shall thereupon terminate, except the registrant shall be responsible for removing the facilities installed pursuant to all ROW use agreements terminated by the city.

(d) *Annual ROW cost recovery fees for aerial facilities.* Unless otherwise agreed in a license or encroachment agreement, each licensee or permittee shall pay an annual fee equal to (1) twenty-five cents (\$0.25)/linear foot for facilities carried by a single strand or messenger cable in residential areas, and (2) two dollars (\$2.00)/linear foot for facilities carried by a single strand or messenger cable in commercial areas, as reimbursement for the city's costs in connection with reviewing, inspecting and supervising the use and occupancy of the public ways in behalf of the public and existing or future users. Said fee shall be paid on an annual basis for the ensuing year, due January 30th. A prorated payment shall be made upon execution of any license or agreement, for the period from the effective date of the license or agreement to the end of the year. If a license or agreement is terminated during the year, the city shall refund payments, without interest, on a prorated basis. Should a registrant fail to make the payments required herein, the city, at its option, by written notice may declare the license or agreement canceled and terminated and all rights acquired hereunder by the registrant shall thereupon terminate, except the registrant shall be responsible for removing the facilities installed pursuant to all row use agreements terminated by the city.

(e) *Annual ROW cost recovery fees for surface and underground enclosures.* Unless otherwise agreed in a license or encroachment agreement, each licensee or permittee shall pay an annual fee to the city equal to (1) five dollars (\$5.00)/square foot for enclosures placed in residential areas, and (2) twenty dollars (\$20.00)/square foot for enclosures placed in commercial areas as reimbursement for the city's costs associated with reviewing, inspecting and supervising the use and occupancy of the public ways in behalf of the public and existing or future users. Said fee shall to be paid on an annual basis, due January 30th, for each ensuing calendar year. A prorated payment shall be made upon execution of any license or agreement, for the period from the effective date of the license or agreement to the end of the year. If a license or agreement is terminated during the fiscal year, the city shall refund payments, without interest, on a prorated basis. Should a registrant fail to make the payments required herein, the city, at its option, by written notice may declare the license or agreement canceled and terminated and all rights acquired hereunder by the registrant shall thereupon terminate, except the registrant shall be responsible for removing the facilities installed pursuant to all ROW use agreements terminated by the city.

(f) *Obstruction permit fee.* The following shall constitute the obstruction permit fee are deemed to be in an amount sufficient to recover the city's administrative and management costs as set forth in section 16A-11.

(g) (b) *Payment of permit fees.* No excavation permit or obstruction permit shall be issued without payment of excavation or obstruction permit fees. The city may allow applicant to pay such fees to the city within thirty (30) calendar days of billing.

(h) (c) *Nonrefundable.* Permit fees that were paid for a permit that was issued but not used or that the city has revoked for a breach as stated in section 16A-21 are not refundable.

(i) *Application to encroachment agreements.* Unless otherwise agreed to in an encroachment agreement, management costs may be charged separately from and in addition to the fees imposed on a right-of-way user in the encroachment agreement. (Ord. of 3-26-07)

;sz=9.5q;Notes:

;sz=9.5q;¹ Construction cost, capital equipment cost, aerial/underground facilities and buildings.

;sz=9.5q;² The "ROW cost recovery fee" paid to the city by the registrant shall be net of any gross receipt telecommunication tax or utility tax paid by the recipient to the State of North Carolina attributed to the provision of services within the city. Evidence of such payment must be presented to the city together with remittance of the encroachment fee payment by the registrant.

;sz=9.5q;³ CPI adjustment. Effective commencing on the fifth (5th) anniversary of the effective date of this chapter and continuing on each fifth (5th) anniversary thereafter during the term, the annual ROW use fee with respect to the ensuing five (5) year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index which occurred during the previous five (5) year period for the Henderson Consolidated Micropolitan Statistical Area (CBSA #25780).

“(a) Excavation permit fee. There shall be a permit fee charged by the City of Henderson in the sum of \$150.00 for administration of the permit. In addition where any street or sidewalk is cut (except where the same is made in conjunction with a water or sewer tap) the following fee shall be charged as an excavation fee:

Concrete base more than four inches thick.....
\$600.00

Concrete base four inches thick or less.....
500.00

Asphalt street with no concrete base.....
250.00

Dirt street.....
150.00

Paved sidewalk (except Garnett Street between Spring and Church Streets)...
150.00

Garnett Street sidewalk between Spring and Church Streets.....
250.00

Curb and gutter cut.....
250.00

Dirt sidewalk.....

50.00

(Code 1967, § 16-24; 6-25-73; 6-23-80, § 4; 6-29-89, § 1; Ord. of 11-26-01, § 1)

Sec. 16A-12. - Right-of-way patching and restoration.

(a) *Timing.* The work to be done under the excavation permit, and the patching and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as determined by the director because the work could not be done due to circumstances beyond the control of the permittee or when work was prohibited by the city.

(b) *Patch and restoration.* permittee shall patch its own work. The city may choose either to have the permittee restore the right-of-way or to have the city restore the right-of-way itself.

(1) *City restoration.* If the city restores the right-of-way, permittee shall pay the costs thereof within thirty (30) calendar days of billing. If, following such restoration, the pavement settles due to permittee's improper backfilling or other work, the permittee shall pay to the city, within thirty (30) calendar days of billing, all costs associated with correcting the defective work.

(2) *Permittee restoration.* If the permittee restores the right-of-way itself, it shall at the time of application for an excavation permit post a construction performance bond.

(3) *Degradation fee in lieu of restoration.* In lieu of right-of-way restoration, a right-of-way user may elect to pay a degradation fee(s). The degradation fee(s) is based on a twenty (20) year street design standard and shall be calculated by applying the information in the below tables in the following formula.

(4) *Formula* (Cost per square yard for street, overlays plus sealcoats) × depreciation rate × area of influence⁴

;sz=9.5q;⁴ Area of influence is equal to area of the cut plus three (3.0) feet on each side as expressed in square yards.

Overlays	
Age	Rate Percent (%)
1	90
2	80
3	70
4	60
5	50
6	40
7	30
8	20
9	10
10	0

Hypothetical example:	
Cost Per Square Yard ⁵	
Type	Cost
Asphalt street	
reconstruction	\$45.00
Overlays	5.00
Seal coats	1.10

;sz=9.5q;⁵ Cost values are based on service and material purchases by the city during the last two fiscal years.

Depreciation Rate ⁶	
Age	Rate Percent (%)
0	100
1	99
2	98
3	97
4	96
5	95
6	90
7	84
8	79
9	74
10	68
11	63
12	58
13	52
14	47
15	42
16	36
17	31
18	26
19	20
20	15

;sz=9.5q;⁶ Depreciation rates are based on twenty (20) year street design standard. Depreciation for the first five (5) years is one (1) percent per year, followed by straight-line depreciation less fifteen (15) percent for the remaining street design standard (fifteen (15) years). Depreciation can occur at one (1) percent per year after this time for up to fifteen (15) years or street reconstruction or whichever comes first. This reflects the understanding that streets retain some value beyond their design standard or expected useful life.

Hypothetical example (see calculation table below) assumptions:

1. Street is sixteen (16) years old.
2. Overlay is five (5) years old.
3. Sealcoat is one (1) year old.
4. Area of cut is three feet by three feet (3 ft.×3 ft.)or nine square feet (9 sq. ft.).
5. Area of influence is nine feet by nine feet (9 ft.×9 ft.) or eighty-one (81) square feet (81 sq. ft.) or nine square yards (9 sq. yds.).

			Cost/Square yard		
Depreciation Rate					
Percent					
Area of					
Influence	Degradation Cost				
Street	\$45.00	36	9.0	\$ 145.80	
Overlay	5.00	50	9.0	22.50	
Sealcoat	1.10	80	9.0	7.92	
Total cost					

(c) *Standards.* The permittee shall perform excavation, backfilling, patching and restoration according to the standards and with the materials specified by the city.

(d) *Duty to correct defects.* The permittee shall correct all defects in patching, or restoration performed by permittee or its agents. The permittee upon notification from the city, shall correct all restoration work to the extent required by the city, using the method required by the city. Said work shall be completed within five (5) calendar days of the receipt of the notice from the city, excluding calendar days where the director of public utilities determines that work cannot be done because work is prohibited as unseasonal or unreasonable under section 16A-16.

(e) *Failure to restore.* If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all restoration required by the city, the city at its option may do such work. In that event the permittee shall pay to the city, within thirty (30) calendar days of billing, the city's cost of restoring the right-of-way **(plus 15% administrative and managerial fee)**. If permittee fails to pay as required, the city may exercise its rights under the construction performance bond.

(Ord. of 3-26-07)

Sec. 16A-13. - Joint applications.

CAF 12-95: 24 September 12 Work Session

- (a) *Joint application.* Registrants may jointly apply for permits to excavate or obstruct the right-of-way at the same place and time.
- (b) *Shared fees.* Registrants who apply for permits for the same obstruction or excavation, which the city does not perform, may share in the payment of the obstruction or excavation permit fee. To obtain a joint permit, registrants must agree among themselves as to the portion each will pay and indicate the same on their applications, but the same shall in no way restrict their joint and several liability to the city for any costs, expenses or liabilities for the failure of either registrant to fully comply with the provisions of this chapter.
- (c) *Joint projects with city.* Registrants who join in a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two (2) or more registrants or a single application, are not required to pay the excavation relative to those portions of the work performed solely by the city or obstruction and degradation portions of the permit fee, but a permit is still be required.
- (Ord. of 3-26-07)

Sec. 16A-14. - Supplementary applications.

- (a) *Limitation on area.* A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may do any work outside the area specified in the permit, except as provided herein. Any permittee which determines that an area greater than that specified in the permit must be obstructed or excavated must before working in that greater area and shall:
- (1) Make application for a permit extension and pay any additional fees required thereby; and
 - (2) Be granted a new permit or permit extension.
 - (3) Provided that where obstruction of a greater area is required by an unforeseen emergency that involves an imminent threat to the health and safety of others, the additional area can be temporarily obstructed provided an application is immediately made for the permit extension.
- (b) *Limitation on dates.* A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be submitted before the permit end date.
- (Ord. of 3-26-07)

Sec. 16A-15. - Other obligations.

- (a) *Compliance with other laws.* Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the city or other applicable rule, law or regulation. A permittee shall comply with all requirements of local, state and federal laws and regulations, including NCDOT ROW Policies and chapter 87 of the North Carolina General Statutes (Underground Damage Prevention Act); the National Electric Safety Code (NESC), the National Electric Code (NEC) and Occupational Safety and Health Administration (OSHA) regulations. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is

responsible for all work performed in the right-of-way pursuant to its permit, regardless of who does the work. The permittee shall place all such barriers and use all traffic controls and necessary personnel required to assure the safety of all persons using or coming in contact with the right-of-way and as needed to protect the rights of others having utilities in the area.

(b) *Prohibited work.* Except in an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be performed when seasonally prohibited, or when conditions are unreasonable for such work, as determined by the city.

(c) *Interference with right-of-way.* A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall not be interfered. Private vehicles of those doing work in the right-of-way may not be parked within or next to a permit area, unless parked in conformance with city parking regulations. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

(d) *Traffic control devices.* The permittee shall place all such barriers and utilize all traffic controls and necessary personnel required to ensure the safety of persons using or coming in contact with the right-of-way and to protect the rights of others having utilities or other uses in the area.

(Ord. of 3-26-07)

Sec. 16A-16. - Denial of permit.

The city may deny a permit for failure to meet the requirements and conditions of this chapter or if the city determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the right-of-way in its current use or due to a congested right-of-way, or where the city has experienced prior problems with the applicant's cooperation or compliance with provisions of this chapter.

(Ord. of 3-26-07)

Sec. 16A-17. - Installation requirements.

(a) *Excavation.* The excavation, backfilling, patching and restoration, and all other work performed in the right-of-way shall be done in conformance with NCDOT ROW policies and other applicable local requirements.

(b) *Stealth installation.* Any registrant placing facilities on or within the right-of-way shall make certain they are installed in such a way as to be not immediately noticeable. The registrant is required to place facilities in such a manner as to minimize any adverse aesthetic or visual impact on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the intended location of pedestals, equipment cabinets, and uninterruptible power supplies, etcetera. The registrant shall use the least visually and physically intrusive facilities and/or use camouflage to disguise and render the facilities visually unobtrusive. All such facilities shall not block or obscure the visual observation of vehicular traffic by the drivers of vehicles entering, exiting or traversing streets, sidewalks and roadways. All such installations shall be subject to the director of public utilities prior approval.

(Ord. of 3-26-07)

Sec. 16A-18. - Inspection.

(a) *Notice of completion.* When the work under any permit is completed, the permittee shall file a completion certificate with the director.

(b) *Site inspection.* Permittee shall make the work-site available to the city (and to other utilities using that area of the right-of-way) for inspection upon request and at all reasonable times during the execution of and upon completion of the work.

(c) *Authority of director.*

(1) At the time of any inspection, the director may order the immediate cessation of any work on the basis that it poses a serious threat to the life, health, safety or well being of the public.

(2) The director may issue any appropriate order to the permittee to remedy, correct, and or complete any work that does not conform to the terms of the permit or other applicable standards, conditions or codes. If said order is not promptly fulfilled under the existing circumstances, as found by the director, the permit shall be revoked.

(3) The director of public utilities may either issue an order to revoke the permit of a permittee for any work that does not conform to the terms of the permit or other applicable standards, conditions, or codes (e.g., NESC, NEC and OSHA) or issue an order directing the permittee to remedy, correct and finish any work.

(Ord. of 3-26-07)

Sec. 16A-19. - Work performed without a permit.

(a) *Emergency situations.* Each registrant shall immediately notify the director (and the appropriate, city manager, fire or police chief) of any event regarding its facilities that it considers an emergency. The registrant may proceed to take whatever actions are necessary to immediately respond to the emergency. Within two (2) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay associated fee, and fulfill all requirements necessary to reestablish its compliance with this chapter for any actions that made it noncompliant during the emergency.

If the city becomes aware of an emergency regarding a registrant's facilities, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary to respond to the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.

(b) *Nonemergency situations.* Except in an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way, must subsequently obtain a permit, and as a penalty pay double a civil penalty, pay triple the normal fee for said permit, pay all the other fees required by the City Code, deposit with the city the fees necessary to correct any damage to the right-of-way as determined by the city, and immediately comply with all of the requirements of this chapter.

(Ord. of 3-26-07)

Sec. 16A-20. - Supplementary notification.

If the obstruction or excavation of the right-of-way begins later or ends sooner than the date stated on the permit, permittee shall notify the director of the accurate information as soon as this information is known.

(Ord. of 3-26-07)

Sec. 16A-21. - Revocation of permits.

(a) *Substantial breach.* The city reserves its right, as provided herein, to revoke any right-of-way permit, without a fee refund, if there is a substantial breach of the terms

and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- (1) The violation of any material provision of the right-of-way permit;
- (2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- (3) Any material misrepresentation of fact in the application for a right-of-way permit;
- (4) The failure to complete the work in a timely manner; unless a permit extension is obtained or unless the failure to complete work is due to reasons beyond the permittee's control; or
- (5) The failure to correct, in a timely manner, work that does not conform to a condition indicated on an order issued pursuant to section 16A-18.
- (6) The failure to comply with any lawful order of the city issued pursuant to this chapter.

The order to revoke a permit shall state the violation and that failure to correct the violation will be cause for revocation of the permit. Within ten (10) calendar days after issuance of the order, the permittee shall present proof to the director that the violation has been corrected. If such proof has not been presented within the required time, or if the proof is determined to be unacceptable by the director, the director may revoke the permit and implement penalties in accordance with section 16A-30.

(b) *Written notice of breach.* If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the city, at his or her discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach.

(c) *Response to notice of breach.* Within twenty-four (24) hours of receiving notification of the breach, permittee shall provide the city with a plan, acceptable to the city, to cure the breach. permittee's failure to so contact the city, or permittee's failure to timely submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the city, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan, shall automatically place the permittee on probation for one (1) full year.

(d) *Cause for probation.* From time to time, the city may establish a list of conditions of the permit, which if breached will automatically place the permittee on probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on right-of-way grossly outside of the permit authorization.

(e) *Automatic revocation.* If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked and permittee will not be allowed further permits for one full year, except for emergency repairs.

(f) *Revocation.* Notwithstanding any other provision hereof, the city shall have the right to immediately revoke any permit without further notice, if the city finds that

such action is necessary to protect people or property from serious and immediate danger.

(g) *Reimbursement of city costs.* If a permit is revoked, the permittee shall promptly reimburse the city for the city's expenses, including restoration costs and the costs of collection of all funds owed and reasonable attorneys' fees incurred in connection with such revocation and/or collection.

(Ord. of 3-26-07)

Sec. 16A-22. - Mapping data.

(a) *Mapping information required.* Each registrant and permittee shall provide mapping information required by the city, such as drawings in paper and electronic (e.g., Autocad files) form showing the precise location of the encroachment, and in the case of encroachments for transmission devices the drawing shall show the location of other adjacent utilities in the public right-of-way at the time of permit application. **At the City's request, maps of all prior encroachments by the encroacher shall be provided to the City if the same are reasonably available.**

(b) *Failure to comply.* It shall be unlawful for any person to fail, refuse, or neglect to file any map or set of maps at the time, and in all respects as required by this section. **Such failure shall, after thirty days notice from the City, also subject said violator with the civil penalties set forth in Section 16A-30.**

(Ord. of 3-26-07)

Sec. 16A-23. - Location and relocation of facilities.

(a) Placement, location, and relocation of facilities must comply with this chapter and the permits issued hereunder together and with all federal, state and local laws, and with NCDOT ROW Policies Rules.

(b) *Corridors.* The city may assign specific areas within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the city expects will someday be located within the right-of-way. All excavation, obstruction, or other permits issued by the city involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue.

Any registrant who has facilities in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities at no cost to the city to the assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

(c) *Nuisance.* One year after the passage of this chapter, any public facilities a right-of-way that have not been registered shall be declared to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the facilities and restoring the right-of-way to a useable condition.

(d) *Limitation of space.* To protect health, safety, and welfare or when necessary to protect the right-of-way and its current use, the city shall have the power to prohibit or limit the placement of new or additional facilities within the right-of-way. In making such decisions, the city shall strive to the extent possible to accommodate all

existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing facilities in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest unless this requirement is waived by the city for good cause shown, upon consideration of such factors as public safety, customer service need and hardship to the registrant.

(e) *Relocation.* The registrant shall be required to relocate its facilities at no cost to the city to accommodate improvements to or within the right-of-way, such as street widening projects, water/sewer line projects and the like.

(f) *Right-of-way use required.* Whenever a public right-of-way exists to accommodate the registrant's facilities, the registrant shall locate its facilities, other than customer drops or gravity sewer lines, in the city's public right-of-way.

(g) *Restoration.* Permittee shall within thirty (30) calendar days restore and replace with like materials any landscaped areas, pavement, pedestrian lighting, sidewalks, curbs, gutters or other facilities damaged or disturbed by permittee within the public right-of-way or by its contractors with like material and restored to their former condition at permittee's expense, and shall thereafter, from time to time, but no longer than one (1) year from the completion of the job, readjust, reseed, fill and finish the same as may be necessary due to settling of the earth, failure of vegetation to germinate or other matters associated with permittee's disruption of the public right-of-way.

(Ord. of 3-26-07)

Sec. 16A-24. - Pre-excavation facilities location.

In addition to complying with the requirements of Chapter 87 of the North Carolina General Statutes ("Underground Damage Prevention Act") before the start date of any right-of-way excavation, each registrant who has facilities or equipment in the area to be excavated shall mark the horizontal and vertical placement of all said facilities. Any registrant whose facilities are less than twenty (20) inches below a concrete or asphalt surface shall notify, and work closely with, the excavation contractor to establish the exact location of its facilities and determine the best procedure for excavation.

(Ord. of 3-26-07)

Sec. 16A-25. - Damage to other facilities.

When the city performs work in the right-of-way and finds it necessary to maintain, support, or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. The costs associated therewith will be billed to that registrant and must be paid within thirty (30) calendar days from the date of billing. Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way that it, or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by that registrant's facilities.

(Ord. of 3-26-07)

Sec. 16A-26. - Vacating rights-of-way.

If the city vacates a right-of-way that contains the facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by North Carolina law. (Ord. of 3-26-07)

Sec. 16A-27. - Right-of-way use fees, reimbursements and review.

(a) *Purpose.* It is the purpose of this chapter to provide for the payment and recovery of all direct and indirect costs and expenses of the city related to the enforcement and administration herein.

(b) *Reserved fees for work in public right-of-way.* The city council reserves its right to establish on a periodic basis, fair, equitable, and reasonable reimbursement/regulatory fees to be paid for the rights granted to an entity seeking use of the public right-of-way. Nothing in this section shall prohibit the city and a permittee from agreeing to the compensation to be paid for the granted rights.

(c) *Regulatory fees for work on city property.* If the right is granted, by lease, license, franchise or other manner, to use and occupy city property for the installation of cable television, gas, power, telephone, telecommunications, sanitary and storm sewer, and water distribution facilities, the reimbursement/regulatory fees to be paid shall be determined by the city.

(d) *Regulatory fees and reimbursements not a tax.* The regulatory fees and costs provided for in this chapter, and any reimbursements charged and paid for work in or use of the public right-of-ways provided by this chapter, are separate from, and additional to, any and all federal, state, local city and county taxes or franchise fees or taxes as may be levied, imposed or due from a telecommunications carrier or provider or other user of the public rights of way, their respective customers or subscribers, or on account of the lease, sale, delivery or services.

(e) *Late payment penalty.* In the event the registrant fails to make any payment on or before the date it is due, the registrant shall pay interest at a rate of one (1) percent per month on any such under-payment and/or late payment.

(f) *Additional remedies.* The remedy provisions set forth in this chapter are not exclusive, and do not preclude the city or the city manager, director, or his or her designee from pursuing any other or additional remedy in the event that payments become overdue.

(Ord. of 3-26-07)

Sec. 16A-28 - Liability and insurance.

(a) *Certificate of insurance.* Prior to commencement of construction and thereafter continuously throughout the duration of the registrant's use of the right-of-way, the registrant shall furnish to the city certificates of insurance, approved by the city's finance director, for all types of insurance required under this chapter. Failure to furnish the certificates of insurance in a timely manner shall constitute a violation of this chapter.

(b) *Required provisions.* The permittee shall furnish the city a certificate as the evidence of insurance coverage by these provisions. The certificate shall include a provision providing for a thirty (30) day notification to the city in the event of cancellation, exhaustion of policy aggregates, non-renewal or reduction of coverage of policy limits. Any language in the certificate that relieves the insurance company and its agents from liability for failure to provide such notice shall be deleted by the insurance company. The endorsements required by the subsection (d) of this section

shall be attached to the certificate. The city reserves the right to require a complete, certified copy of the required insurance policy, at any time. The permittee shall provide certificates annually after renewal of coverage.

(c) *Liability waiver not authorized.* Neither the provisions of this section or any damages recovered by the city under this section shall be construed to limit the liability of the permittee under any license or encroachment agreement issued under this chapter.

(d) *Endorsement.* All insurance policies maintained pursuant to this chapter shall contain the following, or a comparable, endorsement: "The City of Henderson is recognized as an insured for the purpose of receiving thirty (30) calendar days notice of non-renewal, reduction of coverage or policy limits, exhaustion of policy limits or cancellation for any reason, and the company shall agree to provide such notice."

(e) *Hold harmless.* All contractual liability insurance policies maintained pursuant to this chapter shall include provision of the following hold harmless clause: "The insured agrees to indemnify, save harmless and defend the city, its officials, agents, servants and employees, and each of them from and against and hold each of them harmless from any and all lawsuits, claims (including without limitation workers' compensation claims against the city or others), demands, liabilities, losses and judgments for personal injury, death, property damage, or the infringement of rights, arising out of or in any way related to the construction, operation, maintenance or ownership of its facilities, or otherwise from the exercise or performance of any actions taken, or alleged to have been taken under this chapter the City Code of the City of Henderson. This indemnity shall apply in any and all cases, save and except only those cases in which the injury, death, damage, loss, claim or demand is caused by, or results from, the direct negligence or intentional conduct of the city, its agents, public officials or employees."

(f) *Authorized insurers.* All insurance policies required under provisions of this chapter shall be issued by a company or companies authorized to conduct business in the State of North Carolina, and approved by the state Department of Insurance.

(g) *Additional named insured.* At all times during any period of work hereunder by a permittee, and for a period of four (4) years thereafter, the permittee shall cause each of its insurers to name the city as an additional named insured for all insurance policies, except worker's compensation, written under the provision of this chapter.

(h) *Inflation adjustment required.* To offset the effects of inflation and to reflect changing liability limits, all of the coverage, limits and amounts of the insurance provided for in this section are subject to reasonable increases at the end of every three (3) year period, applicable to the next three (3) year period, in an amount determined by the city finance director.

(i) *General liability insurance.* Until otherwise increased by the city, **Until otherwise determined by the City Manager** the permittee shall maintain general liability insurance insuring the permittee in the minimum of:

- (1) Two million dollars (\$2,000,000.00) for property damage per occurrence to any one person;
- (2) Two million dollars (\$2,000,000.00) for property damage per accident or occurrence;

(3) Five million dollars (\$5,000,000.00) for personal bodily injury or death to any one person; and

(4) Ten million dollars (\$10,000,000.00) bodily injury or death aggregate per single accident or occurrence.

(j) *Coverage.* Such general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage and personal injury.

(k) *Automobile liability insurance.* The permittee shall continuously maintain motor vehicle liability insurance for all owned, or leased, or rented vehicles in the minimum amount of two million dollars (\$2,000,000.00) combined single limit per accident for bodily injury and property damage.

(l) *Umbrella/excess liability.* At the option of the permittee, the limits of the primary general liability and motor vehicle liability coverage may be less than stipulated in this section, provided an excess policy is continuously in effect covering the additional limits needed, and such excess coverage is at least as broad as the primary policy.

(m) *Worker compensation and employer's liability insurance.* The permittee shall maintain worker's compensation and employer's liability, valid in the State of North Carolina, in the minimum amount of:

(1) Statutory limit for worker's compensation.

(2) Employee liability with limits of five hundred thousand dollars (\$500,000.00) for each accident; five hundred thousand dollars (\$500,000.00) bodily injury or disease policy limit.

(Ord. of 3-26-07)

Sec. 16A-29. - Indemnification and liability.

(a) *Indemnification required.* The permittee shall, as its sole cost and expense, fully indemnify, defend and hold harmless the city, its officials, agents, servants and employees from and against any and all lawsuits, claims, causes of action, liability and judgments for injury or damages (including but not limited to expenses for reasonable attorneys fees and for all disbursements and liabilities not expressly assumed by the city) in connection with, arising from or damaging:

(1) To persons or property, in any way arising out of or through the acts or omissions of the permittee, its servants, agents or employees, to which the permittee's negligence shall in any way contribute, unless caused solely by negligence or other fault of the city, its agents, servants or employees, or any other person indemnified under this chapter, or

(2) Arising out of the permittee's failure to comply with the provisions of any federal, state or local statute, ordinance or regulation applicable to the permittee in its business under this chapter.

(b) *The foregoing indemnity is preconditioned on the following.* The city shall give the permittee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing in this section shall be deemed to prevent the city from cooperating with the permittee and participating in the defense of any litigation by its own counsel at its sole costs and expense. No recovery by the city of any sum by reason of any liquidated damages

from a third party shall be subject to litigation by the permittee, except that any sum so received by the city shall be deducted from any recovery that the city might have against the permittee under the terms of this section.

(Ord. of 3-26-07)

Sec. 16A-30. – Civil Penalty Provisions.

For failure to comply with any provisions of this chapter, the city council may impose the following civil penalties (unless otherwise provided in this chapter):

- (1) First noncompliance: Seven hundred fifty dollars (\$750.00) per day;
- (2) Second noncompliance within two (2) consecutive calendar quarters: One thousand five hundred dollars (\$1,500.00) per day;
- (3) Third and subsequent non compliances within four (4) consecutive calendar quarters: Three thousand dollars (\$3,000.00) per day.
- (4) Each days vilolation or part thereof shall be deemed a separate failure, violation and offence.

(Ord. of 3-26-07)

Sec. 16A-31. - Abandonment of underground facilities.

(a) *Discontinued operations.* A registrant who chooses to discontinue all or a portion of its operations in the city must demonstrate to the city that the registrant's obligations for its facilities in the right-of-way under this chapter have been lawfully assigned to and assumed by another registrant or abandoned in accordance with this chapter.

(b) *Reports and maps.*

(1) Whenever any facility/facilities is abandoned in the public right-of-way, the person owning, using, controlling or having an interest therein, shall, within thirty (30) calendar days after such abandonment, file in the office of the director a statement in writing, giving in detail the location of the facility/facilities so abandoned. Each map, set of maps, or plans filed pursuant to the provisions of this chapter, including those maps or plans required by section 16A-22 shall show in detail the location of each such facility/facilities abandoned subsequent to the filing of the last preceding map, set of maps, or plans.

(2) It shall be unlawful for any person to fail, refuse, or neglect to file any map or set of maps at the time, and in all respects as required by this section.

(c) *Removal.* Any registrant who has abandoned facilities in the right-of-way (without a valid assuming registrant) shall remove those facilities from the right-of-way and complete such removal within one hundred eighty (180) calendar days (unless the city agrees to have said facilities conveyed to the city in accordance with subsection (d), below).

(d) *Conveyance to city.* the city council may elect to take title to abandoned facilities in the name of the city (or its assignee), provided the registrant submits to the city an instrument satisfactory to the city transferring ownership of such property and facilities.

(Ord. of 3-26-07)

Sec. 16A-32. - Appeal.

(a) *A right-of-way user that:*

- (1) Has been denied registration;
- (2) Has been denied a permit;

(3) Has had its permit revoked; or
(4) Believes that the fees imposed are invalid, may have the denial, revocation, or fee imposition reviewed, upon written request, by the city manager. The city manager shall act on a timely written request within thirty-five (35) calendar days following receipt of such request. A decision by the city manager affirming the denial, revocation, or fee imposition will be in writing and shall be final. Upon the written request of the appealing party before a decision is rendered, the city manager's decision shall be supported by written findings that establish the basis for the decision, but such written findings are not otherwise required.

(Ord. of 3-26-07)

Sec. 16A-33. - Encroachment agreement.

Nothing in this chapter precludes the city from requiring an encroachment agreement with the applicant, in addition to requirements set forth herein.

(Ord. of 3-26-07)

Sec. 16A-34. - Severability.

If any portion of this chapter is for any reason held invalid or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or enforceability of the remaining portions thereof.

(Ord. of 3-26-07)

Sec. 16A-35. - Anti-competitive practices.

No registrant issued permits pursuant to the provisions of this chapter shall be deemed to expressly or impliedly authorize the permittee to use its facilities to provide any service in such manner as to unlawfully damage any business competitor or other third party or violate any statutes or regulations of the United States or the State of North Carolina. Nor shall any permittee, by act or omission, engage in any anti-competitive practice in violation of any statutes or regulations of the United States or the State of North Carolina. The provisions of this section shall be enforceable in courts of competent jurisdiction against a permittee by any party that alleges injury as a result of an alleged violation of this chapter.

(Ord. of 3-26-07)

Sec. 16A-36. - No recourse against the city.

Nothing herein imposes any affirmative duty on the city to grant or deny permits hereunder, or to investigate the work history or record or credentials of any applicant, registrant, or permittor, or to inspect any work hereunder, or to remedy any conditions or problems discovered, or to take any enforcement action hereunder.

The registrant and no third party shall have any recourse whatsoever against the city or its officials, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirements of this chapter or because of the legal enforcement or nonenforcement hereof, or any other acts or omissions, by the city or its officials, employees or agents.

(Ord. of 3-26-07)

City Council Action Form

Office of City Manager
P. O. Box 1434
Henderson, NC 27536
252.430.5701



Agenda Item: _____

Council Meeting: 24 Sept 12 Work Session

10 September 2012

TO: The Honorable Mayor James D. O'Geary and Members of City Council
FR: A. Ray Griffin, Jr., City Manager
RE: **CAF: 12-119**
Consideration of Approval of Resolution 12-82, Amendments to City Administrative Policy 4.13, The Pay Plan and 10.01, Types of Separation.

Ladies and Gentlemen:

Council Goals Addressed By This Item:

- KSO 6: Develop and Maintain a Qualified Municipal Workforce – To provide a supportive and competitive workforce climate that facilitates and maintains a strong workforce capability and capacity and adequate staffing levels.

Recommendation:

- Approval of Resolution 12—82, Amendments to City Administrative Policy 4.13, The Pay Plan and 10.01 Types of Separation.

Executive Summary:

The City is committed to promoting an efficient and effective work environment for all employees. The current City administrative policies do not state any consequences for resignation tendered with notice of less than two-weeks, or no-notice. This creates a difficult situation for supervisors and co-workers because an employee's sudden departure does not allow an opportunity to transfer knowledge or adjust schedules.

The proposed changes to *The Pay Plan* and *Types of Separation* policies will help standardize the process for employees separating from the City. Employees, who wish to leave in good standing with the City and receive the eligible annual leave earned for their service years, must submit and work a two-week notice or otherwise forfeit the payout. Supervisors will have time to plan training and work schedules in preparation of the employees' separation. At the discretion of the Supervisor, the two week notice may be reduced or waived.

Enclosures:

1. Resolution 12—82

RESOLUTION 12—82

A RESOLUTION APPROVING AMENDMENTS TO PERSONNEL POLICY 4.13 RELATIVE TO THE PAY PLAN & 10.01 TYPES OF SEPARATION

WHEREAS, the Henderson City Council (Council) conducted its Annual Planning Retreat in January 2012, and during said Retreat identified eight Key Strategic Objectives (KSO) and Goals; *and*

WHEREAS, this Resolution addresses one of these Key Strategic Objectives as follows: KSO 6: Develop and Maintain a Qualified Municipal Workforce – *To provide a supportive and competitive workforce climate that facilitates and maintains a strong workforce capability and capacity and adequate staffing levels; and*

WHEREAS, the Henderson City Council provides personnel policies that provide for the proper administration of Human Resources; *and*

WHEREAS, it is appropriate to amend the policies from time to time; *and*

WHEREAS, Administrative Policies No.13 *The Pay Plan* and 10.01 *Types of Separation* are amended to promote an effective and efficient productive work environment for all employees.

NOW, THEREFORE BE IT RESOLVED BY THE HENDERSON CITY COUNCIL THAT IT DOES HEREBY APPROVE the amendments to Administrative Policy 4.13, *The Pay Plan* and Policy 10.01, *Types of Separation* being more fully articulated in **Attachment A** to this Resolution.

BE IT FURTHER RESOLVED BY THE HENDERSON CITY COUNCIL that the afore referenced Administrative Policies shall be effective on the adoption date of this Resolution.

The foregoing Resolution 12-82, upon motion of Council Member ** and second by Council Member **, and having been submitted to a roll call vote received the following votes and was ***** on this the *** day of ***** 2010: YES: . NO: . ABSTAIN: . ABSENT: .

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk
Approved to Legal Form:

John H. Zollicoffer, Jr., City Attorney
*Reference: Minute Book 41, pp. **.*

13 THE PAY PLAN - ~~TERMINAL~~ SEPARATION PAY:

An employee who is separated shall be paid for annual leave accumulated to the date of separation ~~with the following exceptions~~ not to exceed the maximum allowed provided he/she has completed six (6) or more months of continuous service and provided he/she has submitted and worked a two-week notice. Department heads shall submit a written resignation and work a minimum four-week notice. An employee who is involuntarily separated without fault or delinquency on his/her part shall be paid for annual leave accumulated to the date of separation not to exceed the allowable maximum for accumulation purposes. Compensation for accumulated annual leave shall not be paid to an employee dismissed for cause or delinquency or who does not submit the required notice or does not surrender any and all City issued or provided equipment, and any office or City related materials and document.

- (a) Final pay will be made after all documented indebtedness to the City has been paid in full, (in accordance with N.C.G.S. §95-25.8) and all supplies formerly in the possession of said employee have been accounted for in proper condition.
- (b) ~~Terminal~~ Separation pay will include the maximum amount of leave that is allowable for accumulation purposes as defined in Section 9.05 of this manual.

10.01 TYPES OF SEPARATION:

All separations ~~of employees from positions in the service of the City~~ shall be designated in the employee's records as one of the following types and shall be accomplished in the manner indicated: resignation, left-job, dismissal, lay-off, retirement, disability and death.

- (a) Resignation. An employee may resign by submitting his or her resignation, including the effective date, in writing to his or her department head as far in advance as possible, but a minimum of two (2) weeks notice for the general population (unless otherwise agreed to by the department head) and four (4) weeks for department head is required to resign in good standing. Failure to comply with this requirement may be cause for denying future employment with the City. ~~Other actions deemed to be an employee's resignation are set forth elsewhere in this article.~~ Also, the employee forfeits the payout of accumulated annual leave as set forth in Section 4:13.
- (b) Left-job. Either unauthorized absence or unapproved annual (or other) leave or unreported (or unverified) sick leave from his or her job for three (3) consecutive work days or willful failure to properly perform the duties of his or her employment during three (3) consecutive work days shall be considered as an employee's resignation, and thereby he or she shall be terminated from the payroll, provided that this shall not prevent disciplinary action, including dismissal, for any such actions over a lesser period of time. The employee forfeits the payout of accumulated annual leave as set forth in Section 4:13.
- (c) Dismissal is a disciplinary action taken by the City whereby the offending employee is relieved of all duties and responsibilities and is discharged from the employment of the City. See Disciplinary Actions, Section 10.02 of this policy and Section 4:13 The Pay Plan- separation pay.

City Council Action Form

Office of City Manager
P. O. Box 1434
Henderson, NC 27536
252.430.5701



Agenda Item: _____

Council Meeting: 24 Sept 12 Work Session

13 September 2012

TO: The Honorable Mayor James D. O'Geary and Members of City Council

FR: A. Ray Griffin, Jr., City Manager

RE: CAF: 12-124

Consideration of Approval of Resolution 12-84, Supporting the Completion of the Widening of SR 1228 (Chavasse Avenue) from US 1 Business (Raleigh Road) to SR 1143 (S. William Street).

Ladies and Gentlemen:

Council Retreat Goals Addressed By This Item:

- KSO 5: *Provide Reliable, Dependable and Environmentally Compliant Infrastructure Systems.*

Recommendation:

- Approval of Resolution 12-84, Supporting the Completion of the Widening of SR 1228 (Chavasse Avenue) from US 1 Business (Raleigh Road) to SR 1143 (S. William Street).

Executive Summary:

Resolutions seeking funding were approved by the City Council on 6 November 2006 and funding was approved in 2007 by the North Carolina Department of Transportation (NCDOT) for the Chavasse Avenue widening project (from Raleigh Road to S. William Street), including the installation of curb and gutter and a sidewalk. It was required that right-of-ways be obtained by the City prior to the funds being approved.

The easements were obtained and after the appropriation of funds, the engineering design was completed by NCDOT. Upon completion of the plans, the utility relocation was performed as well as the relocation of existing fences. Shortly after this was done, the City received notice that planning had begun for the High Speed Rail project, of which Henderson was being considered for a Passenger Rail Stop. Work was then suspended on the Chavasse Avenue project pending outcome of the closing of the Chavasse Avenue crossing or an

underpass/overpass if the High Speed Rail project proceeds. After many public hearings and review of the crossings in the Henderson area, it appears that ultimately the High Speed Rail project would require the Chavasse Avenue crossing to be closed, as an underpass/overpass in this area would not be feasible, and would require the disturbance of historical structures. In light of these determinations, a decision needs to be made whether or not to complete the Chavasse Avenue widening project. In the event the High Speed Rail project proceeds Chavasse Avenue would become a “T” intersection at Young Avenue. The new sidewalk would connect to Young Avenue and eventually tie in to the new pedestrian crossing to the east of Chavasse Avenue that would be built as a result of the High Speed Rail project.

NCDOT has requested a Resolution of the City’s desire to complete the Chavasse Avenue Widening Project and funding is still available.

Enclosure:

1. Resolution 12-84

RESOLUTION 12-84

A RESOLUTION SUPPORTING COMPLETION OF THE WIDENING OF SR 1228 (CHAVASSE AVENUE) FROM US 1 BUSINESS (RALEIGH ROAD) TO SR 1143(S. WILLIAM STREET)

WHEREAS, the Henderson City Council (Council) conducted its Annual Planning Retreat in January 2012, and during said Retreat identified eight Key Strategic Objectives (KSO) and Goals; *and*

WHEREAS, this Resolution addresses one of these Key Strategic Objectives as follows: KSO 5: To Provide Reliable, Dependable and Environmentally Compliant Infrastructure Systems.

WHEREAS, the City Council resolved on 6 November 2006 to request release of funding in the total amount of \$700,000 to complete the widening of Chavasse Avenue; *and*

WHEREAS, the NCDOT prepared the design for the project and utility relocation was performed; *and*

WHEREAS, the design prepared by the NCDOT includes the installation of curb and gutter, sidewalk on the north side and widening to a width of 36'-0 (back to back of curb); *and*

WHEREAS, the City Council does understand that the Chavasse Avenue crossing would be closed as if the High Speed Rail project proceeds; *and*

WHEREAS, the remaining portion of Chavasse Avenue would still be used by nearby businesses and homes, as well as connecting future sidewalks to a new pedestrian crossing which would be built as a result of the High Speed Rail project.

NOW, THEREFORE BE IT RESOLVED BY THE HENDERSON CITY COUNCIL THAT IT DOES HEREBY APPROVE supporting the completion of the Chavasse Avenue widening project (SR 1228) by the NCDOT as indicated by **Attachment A** to this Resolution, and is appreciative of the NCDOT in retaining these funds to complete said project.

The foregoing Resolution 12-84, upon motion of Council Member ** and second by Council Member **, and having been submitted to a roll call vote received the following votes and was ***** on this the *** day of **** 2012: YES: . NO: . ABSTAIN: . ABSENT: .

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk
Approved to Legal Form:

John H. Zollicoffer, Jr., City Attorney
Reference: Minute Book 41, pp. **, CAF 12-124

CAF 12-124: 24 September 12 Work Session
Page 4 of 4

City Council Action Form

Office of City Manager
P. O. Box 1434
Henderson, NC 27536
252.430.5701



Agenda Item:

Council Meeting: 24 Sept. 12 Work Session

17 September 2012

TO: The Honorable Mayor James D. O'Geary and Members of City Council

FR: A. Ray Griffin, Jr., City Manager

RE: **CAF: 12—126**

Consideration of Approval of 1) Ordinance 12-71, FY 12-13 Budget Amendment #13, Amending Fund 73: Economic Development Capital Reserve Fund; and 2) Resolution 12-A-16, Authorizing an Amendment to the Capital Reserves Economic Development Fund in Regards to the North Carolina Rural Center and Golden Leaf Foundation Grants' Applications for Water Line for Economic Development Prospect 12-2; and Authorizing an Inter-Local Agreement with Vance County for Eligibility for Said Mentioned Grants.

Ladies and Gentlemen:

Council Goals Addressed By This Item:

- KSO 3: To create new jobs and investment, expand the tax base and increase the per capita income.

Recommendation:

- Approval of **1) Ordinance 12-71, FY 12-13 Budget Amendment #13, Amending Fund 73: Economic Development Capital Reserve Fund; and 2) Resolution 12-A-16, Authorizing an Amendment to the Capital Reserves Economic Development Fund in Regards to the North Carolina Rural Center and Golden Leaf Foundation Grants' Applications for Water Line for Economic Development Prospect 12-2; And Authorizing an Inter-Local-Agreement with Vance County for Eligibility for Said Mentioned Grants.**

Executive Summary

On February 12, 2012, a proposal was presented to Council to extend a waterline to the new Temperature Control Solutions (Thermo King) business. The proposal involved applying for grant funds from the NC Rural Center and the Golden Leaf Foundation in order for the project to

be completed. At that time, via Resolution 12-16, Council approved a contribution to the required match in an amount not to exceed \$954.

Additional requirements for the project, primarily from NCDOT, have made it necessary for an increase to the original estimate. The County staff has successfully worked with the granting agencies to increase their original grant awards to correspond with the increase in the cost estimate. In order for the NC Rural Center to increase its 50% share of the project cost, the local governments must increase their match portion. The county has increased its match portion from \$3,209 to \$4,836 and is asking the City to increase their portion from \$954 to \$1,209.

NC Rural Center requires that the County and City enter into an inter-local agreement in order to receive funding for this project, due to the fact that the City owns the water lines, but the County is the applicant for the grant. The City and County attorneys have worked jointly to prepare the attached agreement for your review and/or approval.

Enclosures:

1. Ordinance 12-71
2. Resolution 12-A-16
3. Resolution 12-16
4. Vance County Request

O R D I N A N C E 12—71

AN AMENDMENT TO THE FY 2012 – 2013 BUDGET BUDGET AMENDMENT #13 AMENDING FUND 73: ECONOMIC DEVELOPMENT CAPITAL RESERVE FUND

WHEREAS, the City Council of the City of Henderson (Council), on 14 June 2012, adopted the FY 12-13 Operating Budget; *and*

WHEREAS, it is necessary to amend the various revenue and expense accounts of the annual operating budget from time-to-time, and the reason for FY 12-13 Budget Amendment #13 is more fully articulated in **Attachment A** to this Ordinance.

NOW THEREFORE BE IT ORDAINED by the City Council of The City of Henderson, that the following Budget Ordinance Amendment be approved and said Ordinance shall be effective immediately upon approval of the City Council:

FUND: 73: Economic Development Capital Reserve Fund			Ordinance 12-71 FY 12-13 Budget Amendment #13			
REVENUES			Approved 1-Jul-12	Current Budget	Amendment	Revised
Department	Line Item	Code				
	Trans Fr: 10 General Fund	73-980-461010	\$ -	\$ 10,000	\$ -	\$ 10,000
	Fund Balance Appropriation	73-990-491000	\$ -	\$ 8,400	\$ -	\$ 8,400
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
		Total	\$ -	\$ 18,400	\$ -	\$ 18,400
						\$ 18,400
EXPENDITURES			Approved 1-Jul-12	Current Budget	Amendment	Revised
Department	Line Item	Code				
Non-Departmental	Capital Reserve	73-660-509850	\$ -	\$ 13,100	\$ (300)	\$ 12,800
	EDP 12-2 Thermo King	73-660-509851	\$ -	\$ 1,000	\$ 300	\$ 1,300
	EDP 12-1 Appliance Store	73-660-509852	\$ -	\$ 800	\$ -	\$ 800
	EDP 12-3 Henderson Hospitality	73-660-509853	\$ -	\$ 3,500	\$ -	\$ 3,500
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
			\$ -	\$ -	\$ -	\$ -
		Total	\$ -	\$ 18,400	\$ -	\$ 18,400
						\$ 18,400
		Variance			\$ -	
Reference:			Notes:			
CAF: 12-A-45; Ord 12-49; BA #3			The purpose of this Budget Amendment is to bring forward previous year's balances and appropriate to lines approved during FY 12 but not yet expended. Additionally, the Amendment provides for a new appropriation for the Henderson Hospitality LLC Rural Center Grant local match which the City is sharing with Vance County.			
CAF: 12-126; Ord 12-71; BA #13			This ordinance serves to amend the Economic Development Capital Reserve Fund to increase the City's match for the grant shared with Vance County for the purpose of supplying water to Thermo King.			

The foregoing Ordinance 12-71 upon motion of Council Member ** and second by Council Member ***, and having been submitted to a roll call vote and received the following votes and was *** on this the 24 day of September 2012: YES: ***. NO: **. ABSTAIN: **. ABSENT: **.

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk

*Reference: Minute Book 42 p. ***; CAF 12-126*

**STATE OF NORTH CAROLINA
CITY OF HENDERSON**

I, Esther J. McCrackin, the duly appointed, qualified City Clerk of the City of Henderson, do hereby certify the attached is a true and exact copy of Ordinance 12—71 adopted by the Henderson, City Council in Regular Session on 24 September 2012 (*Minute Book 42 p.***). This Ordinance is recorded in *Ordinance Book 8*, p. ***.

Witness my hand and corporate seal of the City, this *** day of September 2012.

Esther J. McCrackin
City Clerk
City of Henderson, North Carolina

R E S O L U T I O N 12-A-16

AUTHORIZING AN AMENDMENT TO THE CAPITAL RESERVES ECONOMIC DEVELOPMENT FUND IN REGARDS TO THE NORTH CAROLINA RURAL CENTER AND GOLDEN LEAF FOUNDATION GRANTS' APPLICATIONS FOR WATER LINE FOR ECONOMIC DEVELOPMENT PROSPECT 12-2;

and

AUTHORIZING AN INTER-LOCAL AGREEMENT WITH VANCE COUNTY FOR ELIGIBILITY FOR SAID MENTIONED GRANTS

WHEREAS, the Henderson City Council (Council) conducted its Annual Planning Retreat in January 2012, and during said Retreat identified eight Key Strategic Objectives (KSO) and Goals; *and*

WHEREAS, this Resolution addresses KSO 3, Enhanced Economic Development, *and*

WHEREAS, Economic Development Prospect 12-2 plans to locate in the City's extraterritorial jurisdiction along I-85 and is in need of public potable water supply, and said extension of water line would be part of the City's water distribution system; *and*

WHEREAS, the NC Rural Center and Golden Leaf Foundation have indicated their willingness to provide funding of said project, due to the economic development prospect's job creation, said funding to represent 95% of said project costs; *and*

WHEREAS, Vance County would provide 75%, (\$3,204), of the local funding match and the City would provide 25% (\$954) of the local funding match; *and*

WHEREAS, following design of the project, it has been determined that additional requirements, primarily from NCDOT, would increase the original cost estimates; *and*

WHEREAS, Vance County intends to increase its share of the project from \$3,204 to \$4,836 to meet the NC Rural Center regulations; *and*

WHEREAS, Vance County has requested that the City increase its share as well, from \$954 to \$1,209.

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

it does hereby approve the amended funding match for the installation of a water line for Economic Development Prospect 12-2 from \$954 to \$1,209.

BE IT FURTHER RESOLVED THAT THE CITY COUNCIL DOES HEREBY: authorize the execution of an inter-local agreement with Vance County, being more fully articulated in **Attachment A** to this Resolution and the Mayor to sign all documents to effect said agreement.

The foregoing Resolution 12-A-16, upon motion of Council Member ** and second by Council Member **, and having been submitted to a roll call vote received the following votes and was ***** on this the *** day of ***** 2012: YES: . NO: . ABSTAIN: . ABSENT: .

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk

Approved to Legal Form:

John H. Zollicoffer, Jr., City Attorney
*Reference: Minute Book 41, pp. **, CAF 12-126*

STATE OF NORTH CAROLINA

COUNTY OF VANCE

THIS AGREEMENT, made and entered into this the _____ day of _____, 2012 by and between the County of Vance (hereinafter referred to as "County") and the City of Henderson (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, the City operates a water system which extends from the City down the Satterwhite Point Road;

WHEREAS, Thermo King is opening a plant on the southwest quadrant of the interchange between I-85 and Satterwhite Point Road;

WHEREAS, there is presently no water available to said Thermo King site, but there is a City water main located on the eastern side of the Satterwhite Point Road at said location; and

WHEREAS, Thermo King needs water to operate its plant; and

WHEREAS, the County has applied for grants for installing a water line from the existing City line to the Thermo King site pursuant to an Economic Development Project; and

WHEREAS, the Grant provisions provide that the County is to initially own said newly constructed water line during the one year post-construction warranty period, but the same can thereafter be dedicated to the City.

NOW, THEREFORE, for and in consideration of the mutual promises herein set forth (and the reliance to be placed by each party on the performance by the other), the parties hereto agree as follows:

- (1) The County agrees to utilize its grant funds towards the construction of 460 lineal feet of 8 inch ductile iron pipe together with 150 feet of 12 inch ductile iron pipe (which latter includes boring under Satterwhite Point Road for 60 linear feet), installing a fire hydrant assembly and installing a tap sleeve and valve so as to provide water from the existing City water main to the Thermo King site – all in accordance with plans and specifications which have heretofore been approved by the City.
- (2) The County shall own said newly constructed water line during the period of its construction and for a period of one year thereafter. The City shall have the right to have said lines inspected by personnel of the City's choosing at any time during said construction and one year post-construction periods.

- (3) Upon the full completion of the construction of said water lines in accordance with the approved plans and specifications, the County hereby leases said line to the City for the sum of One Dollar (\$1.00) for a period of 365 days during which period the City agrees to be responsible for all maintenance of the same to the extent the same is not covered by the contractor's warranties. During said rental period, the City shall control all taps and have the sole authority to sell the water from said lines at rates and conditions established solely by the City.
- (4) 365 days following the full completion of the construction of said water line in accordance with said approved plans and specifications, said water lines shall be automatically dedicated by the County to the City (without the necessity of further documentation) and the City agrees to accept said dedicated water lines and agrees to continue to be responsible for the maintenance thereof following said dedication.

IN WITNESS WHEREOF, THE CITY OF HENDERSON AND THE COUNTY OF VANCE have each caused this Agreement to be executed, all pursuant to authorities given by their respective governing bodies, this the day and year first above written.

COUNTY OF VANCE

BY: _____ (SEAL)
Chairman of the Vance County
Board of Commissioners

Approved as to legal form:

Jonathan Care
County Attorney
Vance County

CITY OF HENDERSON
BY: _____ (SEAL)
James D. O'Geary, Mayor

Approved as to legal form:

John H. Zollicoffer, Jr.
City Attorney
City of Henderson

R E S O L U T I O N 12-16

AN AUTHORIZING RESOLUTION BY THE HENDERSON CITY COUNCIL IN SUPPORT OF A NORTH CAROLINA RURAL CENTER AND GOLDEN LEAF FOUNDATION GRANTS' APPLICATIONS FOR WATER LINE FOR ECONOMIC DEVELOPMENT PROSPECT 12-2

WHEREAS, the Henderson City Council (Council) conducted its Annual Planning Retreat in January 2012, and during said Retreat identified eight Key Strategic Objectives (KSO) and Goals; *and*

WHEREAS, this Resolution addresses KSO 3, Enhanced Economic Development, *and*

WHEREAS, Economic Development Prospect 12-2 plans to locate in the City's extraterritorial jurisdiction along I-85 and is in need of public potable water supply, and said extension of water line would be part of the City's water distribution system; *and*

WHEREAS, the NC Rural Center and Golden Leaf Foundation have indicated their willingness to provide funding of said project, due to the economic development prospect's job creation, said funding to represent 95% of said project costs; *and*

WHEREAS, Vance County would provide 75%, \$3,204, of the local funding match and the City would provide 25% of the local funding match, \$954, *and*

WHEREAS, Vance County intends to request grant assistance from both the NC Rural Center and Golden Leaf Foundation for such funding provided the City agrees to fund its share of the local match..

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

- 1.** The City of Henderson will provide its share of 5% of the total requested grant amount provided; however, said amount noted will not exceed \$954; *and*
- 2.** That Vance County will provide for the efficient administration, implementation and operation/maintenance of the project, including development of an agreement with the economic development prospect providing for reimbursement to the County and City for their shares of local funding and/or repayment of any grant funds to the NC Rural Center and/or the Golden Leaf Foundation should it not meet grant performance requirements; *and*
- 3.** That James D O'Geary, Mayor of the City of Henderson, and successors so titled, is hereby authorized to execute and file an application, as appropriate, with Vance County to both the NC Rural Center and Golden Leaf Foundation.

The foregoing Resolution 12-16, upon consensus of Council and having been submitted to a roll call vote received the following votes and was APPROVED on this the 13th day of February 2012: YES: Daye, Kearney, Coffey, Inscoe, Rainey, Peace-Jenkins and Daeke. NO: None. ABSTAIN: None. ABSENT: Davis.

James D. O'Geary, Mayor

ATTEST:

Esther J. McCrackin, City Clerk

Approved to Legal Form:

John H. Zollicoffer, Jr., City Attorney



Vance COUNTY

NORTH CAROLINA

Planning and Development Department

www.vancecounty.org

TO: City of Henderson City Council
FROM: Vance County Planning and Development Department
SUBJECT: Satterwhite Point Road (Thermo King) Waterline Extension
DATE: September 10, 2012

156 Church Street, Suite 3
Henderson, NC 27536

Ph: (252) 738-2091
Fax: (252) 738-2089

Grant Matching Funds

During the Council's regular meeting on February 12, 2012, Mr. Bill Edwards and Mr. Sam Watkins (chairman of the EDC Board) presented a proposal for extending a waterline to the new Temperature Control Solutions (Thermo King) business. The proposal involved applying for grant funds from the NC Rural Center and the GoldenLEAF Foundation in order for the project to be completed. At that time the Council approved a contribution to the required match in an amount not to exceed \$954.

Following design of the project as well as approval from the City's Engineering Department it was determined that additional requirements (primarily from NCDOT) would increase the original cost estimates. The county staff has successfully worked with the granting agencies to increase their original grant awards to correspond with the increase in the cost estimate. In order for the NC Rural Center to increase its 50% share of the project cost, the local governments must increase their match portion. The county has increased its match portion and is asking that the City do so as well.

As presented below, the request is to increase the City match portion in the amount of \$255 (from \$954 to \$1,209). The required matches will ensure the completion of the project contributing to an extension of the City's water system. See the proposed revised budget below.

	Original Budget	Revised Budget
Costs	Original Total	64,076.00
	Plans/Specs (add)	4,300.00
	Engineering (add)	2,600.00
	Total Costs	70,976.00
Revenue	Rural Center (50%)	32,038.00
	Golden Leaf	28,834.00
	City of Henderson	954.00
	Vance County	3,000.00
	Savings from Redesign	0.00
	Total Revenue	64,826.00

Request #1: Increase the City's match portion from \$954 to \$1,209 to secure additional grant funding and to allow the project to proceed.

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Inter-local agreement

Once completed the waterline will be a part of the City of Henderson's water system. Because the ultimate owner of the line (City of Henderson) is different from the grant applicant, the NC Rural Center requires that the County and City enter in to an inter-local agreement. The inter-local agreement defines the ownership and maintenance of the proposed waterline. (See attached inter-local agreement as prepared and reviewed by the City and County attorneys).

***Request #2:** Approval of the inter-local agreement with Vance County defining ownership and maintenance of the proposed waterline extension as required by the NC Rural Center.*

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11 September 2012

TO: Mayor O'Geary and Members of City Council

FR: Ray Griffin, City Manager

RE: CM: 12-13

Re: Consideration of Meal Tax Authority via Local Act of General Assembly

Ladies and Gentlemen:

There was discussion during the FY12-13 Budget sessions relative to the efficacy of seeking a Local Act from the NC General Assembly providing for a meals tax on prepared foods as a means to generate new revenues. This concept was also mentioned by several citizens during the budget process.

There is no general authority for a locality to levy a prepared foods, or meals, tax. Such authority is obtained via a Local Act by the General Assembly. A limited number of localities have this authority. Generally speaking, proceeds must be spent on tourism and/or cultural amenities and not "general" activities. Consequently, it would appear the levying of meals tax would not provide relief to the general fund for existing programs; however, it would enable the City to consider augmenting the tourism function, currently operated by the County and a Tourism Board, or expand cultural amenities that otherwise would not have a realistic opportunity for funding given the state of the local economy.

A search of the Web regarding meals taxes revealed the NC Restaurant and Lodging Association would oppose any local bill seeking to establish a meals tax.

The purpose of this memo is to solicit discussion among the members of Council in order to determine if it is appropriate to seek a Local Act during the 2013 Session of the General Assembly.

Enclosure:

1. Prepared Meals and Beverage Tax in North Carolina

APPENDIX 1: JURISDICTIONS WITH LEGISLATIVE AUTHORITY TO IMPOSE THE PREPARED MEALS AND BEVERAGE TAX

The Prepared Meals and Beverage Tax in North Carolina					
Jurisdiction	Population (Certified 2008)	Legislative Citation	Year Tax Imposed	Purpose	Average Meals Tax Revenue from 2004 – 2008
COUNTIES					
<i>Cumberland</i>	316,914	S.L. 93-413	1994	Arena	4,148,094
<i>Dare</i>	33,955	S.L. 91-177	1992	Tourism Board	1,780,899
<i>Durham</i>	260,420	S.L. 08-116	n/a	Cultural Amenities	Not Imposed
<i>Mecklenburg</i>	877,007	S.L. 89-821	n/a	Designated to Charlotte and surrounding cities for tourism	See Mecklenburg Cities
<i>Wake</i>	864,429	S.L. 91-954	1992	Cultural Amenities	14,407,627
MUNICIPALITIES					
<i>Charlotte</i>	674,752	S.L. 89-821	1992	Tourism—through Mecklenburg County	17,364,000
<i>Cornelius</i>	22,946	S.L. 01-402	2003	Tourism—through Mecklenburg County	268,176
<i>Davidson</i>	9,751	S.L. 01-403	2003	Tourism—through Mecklenburg County	71,225
<i>Hillsborough</i>	6,584	S.L. 93-449	1994	Tourism Board	1,006,410
<i>Huntersville</i>	39,191	S.L. 01-405	2003	Tourism—through Mecklenburg County	411,316
<i>Matthews</i>	28,072	S.L. 01-406	2003	Tourism—through Mecklenburg County	419,398
<i>Mint Hill</i>	20,748	S.L. 01-407	2003	Tourism—through Mecklenburg County	Not Available
<i>Monroe</i>	37,280	S.L. 05-261	n/a	Civic Center	Not Imposed
<i>Pineville</i>	7,368	S.L. 01-409	2003	Tourism—through Mecklenburg County	372,895

Note: Bolded jurisdictions have legislative authority to levy the Meals Tax. The non-bolded jurisdictions are cities of Mecklenburg that receive proceed from the Meals Tax