

## Town of Waynesville, NC

### Town Council Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786

Date: September 10<sup>th</sup>, 2024 Time: 6:00 p.m.

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(828) 452-2491 [cpoolton@waynesvillenc.gov](mailto:cpoolton@waynesvillenc.gov)

#### **A. CALL TO ORDER - Mayor Gary Caldwell**

##### 1. Welcome/Calendar/Announcements

#### **B. PUBLIC COMMENT**

#### **C. ADDITIONS OR DELETIONS TO THE AGENDA**

#### **D. CONSENT AGENDA**

*All items below are routine by the Town Council and will be enacted by one motion. There will be no separate discussion on these items unless a Councilmember so requests. In which event, the item will be removed from the Consent Agenda and considered with other items listed in the Regular Agenda.*

2.
  - a. August 13, 2024 Regular Scheduled Meeting Minutes
  - b. Approval of date change for Employee Appreciation Bonus.
  - c. Establish capital project funds for the CDBG Grant South Waynesville Water and Sewer Improvements Phase 2. CDBG-I Grant #4153 and #4154
  - d. Appointment of Price Berryhill to the Waynesville Environmental Sustainability Board
  - e. Establish capital project funds for the Comprehensive Stormwater Master Plan Project Local Assistants for Stormwater Infrastructure Investment Program (LASII). Grant number SRP-SW-ARP-0060.
  - f. Resolution accepting the \$29,243,000 State Revolving Loan Offer
  - g. Call for a Public Hearing for September 24, 2024 to consider text amendments related to accessory structures and manufactured housing.

**Motion: To approve the consent agenda as presented.**

**E. PROCLAMATION**

3. Constitution Week
  - Mayor Gary Caldwell

**F. OLD BUSINESS**

4. Request for Resolutions of Support for grant application to the US EPA for the Haywood County Community Change Grant.
  - Elizabeth Teague, Director of Development Services

***Motion: To adopt the attached of support for the US EPA Grant.***

5. Approval of Engineering and Project Administration contracts for CDBG Grants
  - Rob Hites, Town Manager

***Motion: Approve the contracts for engineering and project administration for CDBG-I grants CDBG 23-I-4153 and CDBG 25-I-4154.***

**G. COMMUNICATION FROM STAFF**

6. Manager's Report
  - Town Manager, Rob Hites
7. Town Attorney Report
  - Town Attorney, Martha Bradley

**H. COMMUNICATIONS FROM THE MAYOR AND COUNCIL**

**I. ADJOURN**



# TOWN OF WAYNESVILLE

PO Box 100  
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 Waynesville, NC 28786  
 Phone (828) 452-2491 • Fax (828) 456-2000  
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## CALENDAR

September 2024

ALL COUNCIL MEETINGS TO START AT 6:00 PM IN THE BOARD ROOM LOCATED AT 9 SOUTH MAIN STREET UNLESS OTHERWISE NOTED

2024	
Tues. September 24	Town Council Meeting – Regular Session
Fri. October 4 <sup>th</sup>	Art After Dark 6-9pm
Tues. October 8	Town Council Meeting – Regular Session
Sat. October 12	Church Street Art and Craft Show 10am-5pm
Sat. October 19	Apple Harvest Festival 10am-5pm
Tues. October 22	Town Council Meeting – Regular Session
Thurs. October 31 <sup>st</sup>	Treats on the Street 5-7pm
Mon November 11	Town Offices Closed-Veteran’s Day
Tues. November 12	Town Council Meeting – Regular Session
Thurs. & Fri. November 28 & 29	Town Offices Closed-Thanksgiving
Sat. November 30 <sup>th</sup>	Christmas Tree Lighting 6-7pm
Mon. December 2 <sup>nd</sup>	Waynesville Christmas Parade 4-6pm
Tues. December 10	Town Council Meeting – Regular Session
Sat. December 14	A Smoky Mountain Christmas 6-9pm
Tues, Wed, Thurs December 24, 25, and 26	Town Offices Closed-Christmas

## Board and Commission Meetings – September 2024

ABC Board	ABC Office – 52 Dayco Drive	<b>September 17th</b> 3 <sup>rd</sup> Tuesday 10:00 AM
Board of Adjustment	Town Hall – 9 S. Main Street	<b>CANCELLED</b> 1 <sup>st</sup> Tuesday 5:30 PM
Cemetery Commission	Public Services Building	<b>January, March, July, and October</b> 3 <sup>rd</sup> Tuesday 2:00 PM
Downtown Waynesville Commission	Municipal Building – 16 South Main Street	<b>September 17th</b> 3 <sup>rd</sup> Tuesday 8:30 AM
Environmental Sustainability Board	Municipal Building-16 South Main Street	<b>CANCELLED</b> 1 <sup>st</sup> and 3 <sup>rd</sup> Thursdays 4:30pm
Firefighters Relief Fund Board	Fire Station 1 – 1022 N. Main Street	<b>Meets as needed;</b> <i>No meeting currently scheduled</i>
Historic Preservation Commission	Town Hall – 9 S. Main Street	<b>September 4th</b> 1 <sup>st</sup> Wednesday 2:00 PM
Planning Board	Town Hall – 9 S. Main Street	<b>September 15th</b> 3 <sup>rd</sup> Mondays 5:30 PM
Public Art Commission	Town Hall – 9 S. Main Street	<b>September 12th</b> 2 <sup>nd</sup> Thursdays 4:00 PM
Recreation & Parks Advisory Commission	Rec Center Office – 550 Vance Street	<b>September 15th</b> 3 <sup>rd</sup> Monday 5:30 PM
Waynesville Housing Authority	Main Office-48 Chestnut Park Drive	<b>September 18th</b> 3 <sup>rd</sup> Wednesday 9:00 AM

**MINUTES OF THE TOWN OF WAYNESVILLE TOWN COUNCIL**  
**Regular Meeting**  
**August 13, 2024**

**THE WAYNESVILLE TOWN COUNCIL** held a regular meeting on Tuesday, August 13, 2024, at 6:00pm in the Town Hall Board Room located at 9 South Main Street Waynesville, NC.

**A. CALL TO ORDER**

Mayor Gary Caldwell called the meeting to order at 6:01 pm with the following members present:

Mayor Gary Caldwell  
Mayor Pro Tem Chuck Dickson  
Councilmember Jon Feichter  
Councilmember Anthony Sutton  
Councilmember Julia Freeman

The following staff members were present:

Rob Hites, Town Manager  
Jesse Fowler, Assistant Town Manager  
Candace Poolton, Town Clerk  
Town Attorney Martha Bradley  
Elizabeth Teague, Director of Development  
David Kelley, Building Inspector  
Alex Mumby, Land Use Administrator  
Joey Webb, Fire Chief  
Jeff Stines, Public Services Director  
Wesley Woodbery, Aquatics Supervisor  
Luke Kinsland, Recreation Director

Members of the Media:

Paul Nielson, The Mountaineer

1. Welcome/Calendar/Announcements

Mayor Gary Caldwell welcomed everyone and announced that the Cemetery Master Plan Public Input Meeting will be on August 22<sup>nd</sup>, and the next Town Council meeting will be held on September 10<sup>th</sup>.

**B. PUBLIC COMMENT**

Robert Earnest-Mr. Earnest thanked Council for cleaning up the Sutton property. Mr. Earnest said that he lives on Country Club Drive and people drive dangerously fast on that road. He requested that the Town install narrow speed humps that would allow emergency vehicles to still safely drive over them.

Councilmember Sutton said they could do another speed study and, in the meantime, place a flashing speed sign. Councilmember Feichter requested that Chief Webb look into the logistics of emergency services using that road. Mayor Caldwell requested that Mr. Hites look back at the original speed study and see what can be done.

### C. ADDITIONS OR DELETIONS TO THE AGENDA

***A motion was made by Councilmember Sutton, seconded by Councilmember Dickson, to approve the agenda as presented. The motion passed unanimously.***

### D. CONSENT AGENDA

*All items below are routine by the Town Council and will be enacted by one motion. There will be no separate discussion on these items unless a Councilmember so requests. In which event, the item will be removed from the Consent Agenda and considered with other items listed in the Regular Agenda.*

2.
  - a. Approval of July 9, 2024 Regular Scheduled Meeting Minutes
  - b. Motion to appoint Dave Barone as Chairman to the Downtown Waynesville Commission
  - c. Motion to appoint Leisa Denti to the Waynesville Historic Preservation Commission
  - d. Motion to appoint Mark James to the Waynesville Public Art Commission
  - e. Motion to approve the lease agreement by and between the Town of Waynesville and the Waynesville Police Officers Association.
  - f. Approval of Greenhill Cemetery Tour Special Event Permit
  - g. Approval of Main Street Mile Special Event Permit

***A motion was made by Councilmember Sutton, seconded by Councilmember Dickson, to approve the consent agenda as presented. The motion passed unanimously.***

### E. PRESENTATION

3. Report on Environmental Sustainability Committee Activity
  - Mayor Pro Tem Chuck Dickson

Councilmember Dickson reported that the Environmental Sustainability Committee has been very active in its first year and a half. He said the goal was to help the Town reach its renewable energy goals by 2050. He said they have three working groups that are working on Urban Ecology, Energy, and Electric Transportation

initiatives. Councilmember Dickson reported that the ESB has successfully applied for and received a “Local Energy Action Program Grant (LEAP)”, a grant that provides technical assistance that aims to direct Waynesville toward its goal of carbon neutrality by 2030. He said there is potential for working on renewable energy projects, possibly a resilience hub at the rec center, and possibly a solar array at the landfill property. Councilmember Dickson reported that the USDA determined the Town is eligible for rural funding and low interest, long term loans. He added that the ESB has also recently applied for a Forest Service grant to aid the Town in trimming and maintaining its urban canopy.

## F. PUBLIC HEARING

4. Public hearing to consider a Zoning Map Amendment for 225 Church Street, PIN 8615-27-0218, from Main Street Neighborhood Residential (MS-NR) to Main Street Residential Mixed Use Overlay (MS-NRMXO, per section 15.14 of the Land Development Standards.
  - Elizabeth Teague, Director of Development Services

***A motion was made by Councilmember Dickson, seconded by Councilmember Freeman, to open the public hearing at 6:20pm. The motion passed unanimously.***

Development Services Director Elizabeth Teague reported that this hearing is for a request for a zoning overlay on 225 Church Street. Ms. Teague said the area is already zoned to allow child and adult daycares, studios, and cultural community centers. She added that professional services are allowed on corner lots such as the applicant’s, and schools are allowed with a special use permit. Ms. Teague said the applicant’s request is to create artist spaces, a small restaurant, and a community gathering space. She said most of the uses are already allowed, but the applicant would like to create a retail component so artists can sell their wares and food can be served at a small cafe. She noted that the building was previously a school and has been a traffic generator since the 1930s. She said some members of the public have expressed concerns about parking issues generated by St. John’s church located across the street. She said the church uses the 225 Church Street parking lot, but the parking lot is now owned by the applicant, Shereen Malek. Ms. Teague reminded Council that there is a significant artist community, and this project would make use of a vacant building and provide a place for those artists to create and sell their wares, which is directly in line with the Comprehensive Plan. Ms. Teague reported that the Planning Board unanimously voted to recommend that the application was consistent with the Comprehensive Plan and should be approved to allow restaurant use and retail on this lot.

Councilmember Dickson said if the application was approved then the entire space could be used as a retail space or a restaurant.

Councilmember Freeman said it would be a great way to revitalize a vacant building.

Councilmember Sutton asked for Ms. Teague to list the uses that would be allowed if Council did not limit the additional uses to retail and restaurant. Ms. Teague said ATMs, banks, business support services, personal services, dry cleaning, and laundry services would be allowed.

Councilmember Feichter said this is a wonderful opportunity to preserve a building that's been in the community since 1930.

Shereen Malek (applicant)- Ms. Malek said that small businesses are the heart of the Waynesville community, fueling economic growth and thriving with government support. She said that Church Street Studios include a coffee shop which would not require any structural changes to the building and retail space for artists to sell their wares. She said she recently met with neighbors about noise, parking, hours of operation, and trees. She said she is working on a parking layout and plans to preserve the trees and landscaping, and they will comply with town ordinances. She said she will reference projects like Folkmoot for guidance.

Councilmember Freeman asked what they would do with the tennis courts. Ms. Malek said she'd like to do outdoor markets or events during nice weather.

Angie Schwab (192 Church Street)- Ms. Schwab said she lives across the street from the parking lot or Church Street Studio. She expressed support for the mixed-use zoning overlay. She requested that Council considers traffic and parking solutions. She suggested marking parking spaces, visual buffers around the parking lot, outdoor music regulations, acoustic buffers, and to enforce current noise ordinances. She also thanked Jeff Stines for his work on their street and said his crew does an excellent job.

Rebecca Cronk (173 Church Street)- Ms. Cronk said she lives next door to the parking lot and is in favor of the plans. She said she has concerns about increased traffic and on street parking. She requested an evergreen buffer between the property and the adjacent properties and that no large lights be installed that could shine onto surrounding properties.

Jane Allen Shope (59 Meadow Street)- Ms. Shope said she is excited about the project but concerned about the noise level. She also requested a vegetative buffer around the property.

Jackie Cure- Ms. Cure said she is a builder and developer in Waynesville, and she is building houses above playground area of 225 Church Street. She is also concerned about noise levels. Ms. Cure said she is concerned that if this business fails, that a restaurant or brewery could move into the space.

Tonya Harwood, Executive Director of Haywood Arts Council- Ms. Harwood said she and Haywood Arts Council fully supports the proposed studio. She said they have been looking for space for artists and a space to have classes.

Councilmember Sutton asked since the building has been sitting empty for a year, would they have to update parking? Ms. Teague said no, since they are not changing the building footprint. She said for a restaurant, there would need to be one parking space for every eight seats. Ms. Teague said there are no restrictions on live outdoor music, but music volume would fall under the noise ordinance. Councilmember Sutton also asked if uplighting is allowed. Ms. Teague said no- the town is a "dark sky" community.

***A motion was made by Councilmember Freeman, seconded by Councilmember Dickson, to close the public hearing at 6:58pm. The motion passed unanimously.***



Mr. Hites said staff could look into the parking situation and make changes as needed.

Council came to the consensus that they would like to include the other uses allowed in the proposed zoning overlay to limit the complexity of zoning ordinance.

***A motion was made by Councilmember Sutton, seconded by Councilmember Freeman, to find that the request is Consistent with the Town of Waynesville 2035 Comprehensive Plan in that it continues to promote smart growth principles in land use planning and zoning by encouraging infill, mixed-use, and context-sensitive development and that it protects and promotes Waynesville’s cultural resources by investing in preservation, restoration and promotion of Waynesville’s history and encourages collaboration among local cultural and heritage organizations and artists to enrich our community with events and education. The motion passed unanimously.***

***A motion was made by Councilmember Sutton, seconded by Councilmember Freeman, to approve the attached ordinance to establish an overlay district at 225 Church Street in that it creates opportunities for a sustainable economy, encourages creatively designed, mixed-use, walkable centers and commercial districts that appeal to residents and visitors, and promotes the growth of existing local businesses and Waynesville “maker economy.” The motion passed unanimously.***

## **G. NEW BUSINESS**

5. Request of Town Staff for Council direction on a grant application to the Great Trails State Program Grant to extend the Town’s Greenway System towards Lake Junaluska.
  - Elizabeth Teague, Director of Development Services

Development Services Director Elizabeth Teague reported that they learned of a grant opportunity this spring that the Great Trails State Program provides funding for new trail development and extension of existing trails in North Carolina. She said this includes paved trails or greenways, natural surface trails, biking trails, and any other type of trail recognized by the Department of Natural and Cultural Resources. Ms. Teague said this is a one-time grant funding opportunity that would provide \$25 million in non-recurring funds across the state to assist local communities to construct planned trails, with the town being able to receive up to \$500,000.

Ms. Teague outlined the eligible activities for this grant-design and engineering, property and easement acquisition, development of construction documents, construction costs, and trail amenities. She said the working groups of The Haywood County Greenways Council, the Tourism Development Authority, and Haywood County, want to connect the greenway from Lake Junaluska to Waynesville. She said the trail would connect the new greenway to Asheville Highway and the trail head at the end of Industrial Park Drive. Ms. Teague reported that the TDA has committed \$50,000 in cash match for the application, and the greenway trail constructed as part of the Groves at Water’s Edge can be used as in-kind match with a value of \$46,000. Because the grant deadline is September 3, 2024, Ms. Teague said staff can develop a grant budget and application but needs Council approval to proceed. She added that staff would like the Town to match the TDA commitment of \$50,000.

Ms. Teague reported that the maintenance agreement for the greenway has not been upheld by the County. She said the Haywood County Greenway Council will be meeting soon to discuss joint maintenance between county and town staff.

***A motion was made by Councilmember Freeman, seconded by Councilmember Dickson, to direct staff to complete an application to the Great Trails State coalition and to work with community partners to develop a plan and budget to extend to connect to Lake Junaluska. The motion passed unanimously.***

6. Request from Building Inspections to approve the Resolution Authorizing Demolition of 1727 South Main Street and for bid to contract to demolish the building
- Elizabeth Teague, Director of Development Services & David Kelley, Building Inspector

Development Services Director Elizabeth Teague congratulated David Kelley for receiving the Outstanding Building Inspector Award for the Western region.

Building Inspector David Kelley reported that the building located at 1727 South Main Street has been collapsing, and after repeatedly contacting the owners, no repairs or demolition have been done. He said they are holding a hearing on August 16<sup>th</sup> to allow the owners to present evidence for why they have not been making any repairs or demolishing the structure. He said given the imminent danger to the public, he would like Council's approval to demo the structure at 1727 S. Main.

Mr. Hites said that the building is a separate issue from the vehicles on the lot. Mayor Caldwell expressed concern that kids could get into the vehicles and accidentally get trapped.

***A motion was made by Councilmember Dickson, seconded by Councilmember Freeman, to adopt the Resolution Authorizing Demolition of 1727 South Main Street. The motion passed unanimously.***

***A motion was made by Councilmember Sutton, seconded by Councilmember Dickson, to approve the contract to demolish the building at 1727 South Main Street up to \$15,000. The motion passed unanimously.***

7. Recommend award of contract to Carolina Specialty Fitness in the amount of \$49,518.88 (\$46,459.23 before tax) for cardio equipment replacement at the recreation center.
- Luke Kinsland, Recreation Director

Recreation Director Luke Kinsland reported that Town Council granted \$50,000 in FY24-25 budget to be allocated in capital outlay for the replacement of a portion of the cardio equipment at the recreation center. Mr. Kinsland said an attempt for three or more bids was conducted through Sourcewell-Carolina Specialty Fitness, Wellness Solutions, and Technogym submitted proposals although recently an attempt to obtain a more recent bid through Technogym was attempted to no avail. Mr. Kinsland said that Carolina Specialty Fitness came in at the low bid with the desirable equipment needed. He said that elliptical machines, recumbent bikes, and upright bikes will be replaced.

***A motion was made by Councilmember Sutton, seconded by Councilmember Freeman, to award the contract for cardio equipment replacement to Carolina Specialty Fitness in the amount of \$49,518.88 (\$46,459.23 before tax). The motion passed unanimously.***

Mr. Kinsland said the East Street basketball court work is supposed to start this week, and the paving will be touched up on the new greenway area.

8. Wastewater Treatment Plant: Mounting Platform for Floating Aerator, Safety Switches for Belt Press
- Jeff Stines, Public Services Director

Public Services Director Jeff Stines reported that shortly after the sewer plant was sent to bid, the digester began to fail. He said this is Phase II and PCMI would install the digester and would allow the floating aerator to be converting from aerobic to an anaerobic process, which dries sludge at a better rate and then it can be landfilled. Mr. Stines said the belt press has been renovated as part of the plant improvements, however staff discovered that several “safety switches” need to be replaced as protection for the operators. He said the cost of the switches and their installation amounts to \$22,250.

***A motion was made by Councilmember Sutton, seconded by Councilmember Feichter, to approve the bids of A.C.M.I. to fabricate the platform for the aerators and purchase and installation of safety switches for the belt press. The motion passed unanimously.***

***A motion was made by Councilmember Sutton, seconded by Councilmember Freeman, to approve the Budget Amendment as presented (\$150,500). The motion passed unanimously.***

9. TextMyGov Service Contract
- Jesse Fowler, Assistant Town Manager

Assistant Town Manager Jesse Fowler reported that TextMyGov is a program that allows residents and customers to receive immediate answers to most of their general questions, as well as allowing another means for residents and customers to report issues to the Town of Waynesville. He said the program provides a mobile-friendly widget to the Town’s website where residents and customers can ask questions regarding the general day-to-day operations of the Town, special events, and utility outages. He said that TextMyGov allows town staff to distribute communications to our residents and customers with the added benefit of receiving communications from them as well. Mr. Fowler said the goal of implementing this program is to improve our resident and customer experience by providing speedy answers to many of their day-to-day questions, while alleviating the staff time required to take and redirect public inquiries to the appropriate person.

Mr. Fowler said the program would originally cost \$9,750 for start up fees, but then would cost \$6,500 a year. The funding would come from all fund sources since it benefits each department.

Councilmember Feichter requested that staff look into the “Enhanced Media and Care Package”, which could help get the word out to residents about the new program.

***A motion was made by Councilmember Feichter, seconded by Councilmember Sutton, to approve the TextMyGov service contract and include the “Enhanced Media and Care Package”. The motion passed unanimously.***

**H. COMMUNICATION FROM STAFF**

10. Manager’s Report

- Town Manager, Rob Hites

Nothing to report.

11. Town Attorney Report

- Town Attorney, Martha Bradley

Nothing to report.

**I. COMMUNICATIONS FROM THE MAYOR AND COUNCIL**

Councilmember Freeman congratulated Fire Chief Joey Webb on his appointment as the President of the North Carolina Association of Fire Chiefs Board.

Elizabeth Teague introduced Alex Mumby, the new Land Use Administrator.

Mayor Caldwell said his presentation at the Kiwanis meeting went well.

**J. CLOSED SESSION**

12. Closed Session

- Town Attorney Martha Bradley

***A motion was made by Councilmember Sutton, seconded by Councilmember Freeman, to go into closed session pursuant to N.C.G.S. § 143-318.11 to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. The motion passed unanimously.***

***A motion was made by Councilmember Sutton, seconded by Councilmember Dickson, to return to public session at 8:20 pm. The motion passed unanimously.***

**K. ADJOURN**

***A motion was made by Councilmember Sutton, seconded by Councilmember Dickson, to adjourn at 8:21pm. The motion passed unanimously.***

ATTEST:

\_\_\_\_\_  
Gary Caldwell, Mayor

\_\_\_\_\_  
Robert W. Hites, Jr. Town Manager

\_\_\_\_\_  
Candace Poolton, Town Clerk

DRAFT

**TOWN OF WAYNESVILLE TOWN COUNCIL  
REQUEST FOR COUNCIL ACTION  
Meeting Date 09/10/2024**

**SUBJECT:** Approval of date change for Employee Appreciation Bonus.

**AGENDA INFORMATION:**

**Agenda Location:** Consent Agenda  
**Item Number:**  
**Department:** Human Resources/Administration  
**Contact:** Page McCurry  
**Presenter:** Page McCurry

**BRIEF SUMMARY:** During stay interviews conducted recently by the Human Resources Department staff suggested that it would be helpful and meaningful to staff if the Employee Appreciation Bonus they typically receive in December from Town Council was available in November. Many staff members use this bonus for holiday shopping and having access to this income for use during the post-Thanksgiving sales would be very helpful and appreciated by employees.

**MOTION FOR CONSIDERATION:** Approve the date of the Employee Appreciation Bonus issuance to staff from December 13, 2024, to November 26, 2024.

**FUNDING SOURCE/IMPACT:** All Funds/Salary

**ATTACHMENTS:**

**MANAGER'S COMMENTS:**

**TOWN OF WAYNESVILLE TOWN COUNCIL**  
**REQUEST FOR COUNCIL ACTION**  
Meeting Date: September 10, 2024

**SUBJECT:** Establish capital project funds for the CDBG Grant South Waynesville Water and Sewer Improvements- Phase 2. CDBG-I Grant #4153 #4154

**AGENDA INFORMATION:**

**Agenda Location:** Consent  
**Item Number:**  
**Department:** Finance  
**Contact:** Rob Hites, Town Manager  
**Presenter:** Rob Hites, Town Manager

**BRIEF SUMMARY:**


We request that capital project funds be established for the CDBG Grant South Waynesville Water and Sewer Improvements- Phase 2. These improvements will occur over several years and must be accounted for in separate funds for accounting purposes. A capital project fund is easier to manage for a multi-year project because it does not close out at the end of the fiscal year. The budget is based on McGill and Associates' preliminary opinion of the probable cost provided to the town of Waynesville.

**MOTION FOR CONSIDERATION:**

1. Approval of the attached capital project ordinance as presented.

**FUNDING SOURCE/IMPACT:**

CDBG-awarded funds will be used for this project.



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Ian Barrett, Finance Director

09.03.24

Date

Ordinance No. O-44-24

CDBG Grant South Waynesville Phase II Sanitary Public Water System Improvement  
Capital Project Ordinance

WHEREAS, the Town Council of the Town of Waynesville wishes to establish a capital project fund to account for the Phase II South Waynesville Public Water System Improvement funded by the CDBG-I Grant #23-I-4153.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Waynesville that the following project ordinance is hereby adopted:

Section 1. The following sources of resources are anticipated to be available to complete this project:

**Revenues**

CDBG Grant Funds	<u>613,500</u>
Total Revenues	\$ 613,500

Section 2. The following amounts are appropriated for expenditures of this project:

**Expenditures**

Engineering Services	\$ 73,600
Legal/Admin/Easements	3,000
Grant Administration	105,600
Construction	392,100
Contingency	<u>39,200</u>
Total Appropriations	\$ 613,500

Section 3. Funds may be advanced from the General Fund for the purpose of making payments due. Reimbursement requests should be made to the grant agency in an orderly and timely manner.

Section 4. The budget officer may approve transfers of appropriations, including transfers from the contingency, without prior approval of the Town Council. Any transfers of appropriation will be reported by the budget officer to the Town Council at their next regular meeting.

Section 5. This Fund will be abolished when all obligations to contractors and vendors are completed. Any resources remaining will be transferred to the Water and/or Sewer Fund.

Adopted this 10th day of September 2024.



Town of Waynesville

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Gary Caldwell  
Mayor

Attest:

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Candace Poolton  
Town Clerk

Approved As To Form:

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Martha Sharpe Bradley  
Town Attorney

Ordinance No. O-45-24

CDBG Grant South Waynesville Phase II Sanitary Sewer System Improvement  
Capital Project Ordinance

WHEREAS, the Town Council of the Town of Waynesville wishes to establish a capital project fund to account for the Phase II South Waynesville Sanitary Sewer System Improvement funded by the CDBG-I Grant #23-I-4154.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Waynesville that the following project ordinance is hereby adopted:

Section 1. The following sources of resources are anticipated to be available to complete this project:

**Revenues**

CDBG Grant Funds	<u>1,376,957</u>
Total Revenues	\$ 1,376,957

Section 2. The following amounts are appropriated for expenditures of this project:

**Expenditures**

Engineering Services	\$ 217,000
Legal/Admin/Easements	10,000
Grant Administration	104,390
Construction	950,515
Contingency	<u>95,052</u>
Total Appropriations	\$ 1,376,957

Section 3. Funds may be advanced from the General Fund for the purpose of making payments due. Reimbursement requests should be made to the grant agency in an orderly and timely manner.

Section 4. The budget officer may approve transfers of appropriations, including transfers from the contingency, without prior approval of the Town Council. Any transfers of appropriation will be reported by the budget officer to the Town Council at their next regular meeting.

Section 5. This Fund will be abolished when all obligations to contractors and vendors are completed. Any resources remaining will be transferred to the Water and/or Sewer Fund.

Adopted this 10th day of September 2024.

Town of Waynesville

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Gary Caldwell  
Mayor

Attest:

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Candace Poolton  
Town Clerk

Approved As To Form:

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Martha Sharpe Bradley  
Town Attorney

**TOWN OF WAYNESVILLE TOWN COUNCIL  
REQUEST FOR COUNCIL ACTION  
Meeting Date: September 10, 2024**

**SUBJECT:** Appointment of Price Berryhill to the Waynesville Environmental Sustainability Board

**AGENDA INFORMATION**

**Agenda Location:** Consent Agenda  
**Item Number:**  
**Department:** Administration  
**Contact:** Chuck Dickson, William Hite-ESB Chairman  
**Presenter:** Jesse Fowler, Assistant Town Manager

**BRIEF SUMMARY**

The Waynesville Environmental Sustainability Board has two vacancies. If appointed, Mr. Price Berryhill's term would end June 30<sup>th</sup>, 2026. The ESB bylaws do not require applicants to live within town limits.

**MOTIONS FOR CONSIDERATION**

Motion to appoint Price Berryhill to the Waynesville Environmental Sustainability Board

**ATTACHMENTS:**

**MANAGER'S COMMENTS AND RECCOMENDATIONS**

**TOWN OF WAYNESVILLE TOWN COUNCIL**  
**REQUEST FOR COUNCIL ACTION**  
Meeting Date: September 10, 2024

**SUBJECT:** Establish capital project funds for the Comprehensive Stormwater Master Plan Project Local Assistance for Stormwater Infrastructure Investment Program (LASII). Grant number SRP-SW-ARP-0060.

**AGENDA INFORMATION:**

**Agenda Location:** Consent  
**Item Number:**  
**Department:** Finance  
**Contact:** Rob Hites, Town Manager  
**Presenter:** Rob Hites, Town Manager

**BRIEF SUMMARY:**

We request that capital project funds be established for the LASII Project. These improvements will occur over several years and must be accounted for in a separate fund for accounting purposes. A capital project fund is easier to manage for a multi-year project because it does not close out at the end of the fiscal year. The budget is based on the total grant amount of 400,000, with a transfer from the general fund of \$40,000. For a total of \$440,000.

**MOTION FOR CONSIDERATION:**

1. Approval of the attached capital project ordinance as presented.

**FUNDING SOURCE/IMPACT:**

ARP-awarded funds will be used for this project, with a \$40,000 local match.



---

Ian Barrett, Finance Director

09.03.24

Date

Ordinance No. O-46-24  
**TOWN OF WAYNESVILLE**  
**LASII PLANNING – COMPREHENSIVE STORMWATER MASTER PLAN PROJECT**  
**LOCAL ASSISTANCE FOR STORMWATER INFRASTRUCTURE INVESTMENT**  
**PROGRAM (LASII)**  
**FY22 AMERICAN RESCUE PLAN ACT GRANT (ARPA)**  
**PROJECT # SRP-SW-ARP-0060**

**GRANT PROJECT ORDINANCE**

Be it **ORDAINED** by the Town Council of Waynesville, North Carolina, that pursuant to section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following Grant Project Ordinance is hereby adopted.

**Section 1:** The Project authorized is the LASII Planning- Comprehensive Stormwater Master Plan Project (grant project number SRP-SW-ARP-0060) to be financed by the federal American Rescue Plan Act (ARPA) grant funds awarded to the Town of Waynesville by the North Carolina Department of Environmental Quality (DEQ) Division of Water Infrastructure (DWI).

**Section 2:** The officers of this unit are hereby directed to proceed with the grant project within the terms of the board resolution, grant documents, the rules and regulations of the Division of Water Infrastructure (DWI), and the budget contained herein.

**Section 3:** The following amounts are appropriated for the project revenues:

ARPA Grant Proceeds	\$400,000
Transfer from General Fund	<u>40,000</u>
<b>Total</b>	<b>\$440,000</b>

**Section 4:** The following amounts are appropriated for the project expenses:

Engineering and Administration Services	<u>\$440,000</u>
<b>Total</b>	<b>\$440,000</b>

**Section 5:** The finance officer is hereby directed to maintain within the ARPA Grant Fund sufficient specific detailed accounting records to satisfy the requirements of the grantor agency, the grant agreements, and federal regulations.

**Section 6:** Funds may be advanced from the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the State grantor agency in an orderly and timely manner. Compliance with all federal and state procurement regulations is required.

**Section 7:** The finance officer is directed to report, on a quarterly basis, on the financial status or each project element in section 4 and on the total grant revenues received or claimed.

**Section 8:** The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this capital project in every budget submission made to this board.

**Section 9:** Copies of this grant project ordinance shall be furnished to the Town Clerk, the Budget Officer, and the Finance Officer for direction in carrying out this project.

**ADOPTED** this 10<sup>th</sup> day of September 2024.

AT **TOWN OF WAYNESVILLE**, NORTH CAROLINA

---

J. Gary Caldwell, Mayor

ATTEST:

---

Candace Poolton, Town Clerk

APPROVED AS TO FORM:

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Martha Bradley, Town Attorney

**TOWN OF WAYNESVILLE TOWN COUNCIL  
REQUEST FOR COUNCIL ACTION  
Meeting Date: 9/10/24**

**SUBJECT** Resolution accepting the \$29,243,000 State Revolving Loan Offer

**AGENDA INFORMATION:**

**Agenda Location:** Consent

**Item Number:**

**Department:** Sewer Fund

**Contact:** Rob Hites

**Presenter:** Rob Hites

**BRIEF SUMMARY:** The Town has been offered several increases in its State Revolving Loan. The last offer of \$4,877,100, increased the loan to \$29,243,000. The terms of the offer are a 26-year amortization, "0" percent interest and a \$500,000 principal forgiveness. The loan carries a 2% loan processing fee of \$588,460

**MOTION FOR CONSIDERATION:** Accept the increase in the SRF loan amount of \$4,877,100 and the total loan of \$29,243,000 according to the stated conditions.

**FUNDING SOURCE/IMPACT:** Sewer

**ATTACHMENTS:** Conditional Offer

**MANAGER'S COMMENTS:** The offer was made several months ago but the resolution was not adopted.



**RESOLUTION No. R-19-24**

**Resolution Accepting State Revolving Loan Offer  
CS370930-01**

**WHEREAS,** the North Carolina Clean Water Revolving Loan and Grant Act of 1987 has authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection systems, and water supply systems, water conservation projects, and

**WHEREAS,** the North Carolina Department of Environmental Quality has offered a (State Revolving Loan, State Grant, or State Bond Loan) in the amount of \$29,243,000 for the construction of (project description), and

**WHEREAS,** the Town of Waynesville intends to construct said project in accordance with the approved plans and specifications,

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE TOWN OF WAYNESVILLE:**

That the Town of Waynesville does hereby accept the (State Revolving Loan, Grant, or State Bond Loan) offer of \$29,243,000.

That the Town of Waynesville does hereby give assurance to the North Carolina Department of Environmental Quality that all items specified in the (loan or grant) offer, Section II - Assurances will be adhered to.

That Robert W. Hites Jr, Town Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That Waynesville has substantially complied or will substantially comply with all Federal, State and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 13<sup>th</sup> day of September 2024 at Waynesville, North Carolina.

Attest: \_\_\_\_\_  
Candace Poolton  
Town Clerk

\_\_\_\_\_  
Gary Caldwell, Mayor

**STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF WATER INFRASTRUCTURE**

**Funding Offer and Acceptance**

**Legal Name and Address of Award Recipient**

Town of Waynesville  
P.O. Box 100  
Waynesville, NC 28786

**Project Number: CS370930-01**

**Assistance Listing Number: 66.458**

**Unique Entity ID Number: LTFMMKCSKK99**

**Funding Program**

	<input type="checkbox"/>	<b>Additional Amount for Funding Increases</b>	<b>Previous Total</b>	<b>Total Offered</b>
<b>Drinking Water</b>	<input type="checkbox"/>			
<b>Stormwater</b>	<input type="checkbox"/>			
<b>Wastewater</b>	<input checked="" type="checkbox"/>			
State Revolving Fund-Repayable Loan	<input checked="" type="checkbox"/>	\$4,877,100	\$24,045,900	\$28,923,000
State Revolving Fund-Principal Forgiveness	<input checked="" type="checkbox"/>		\$ 500,000	\$ 500,000
State Reserve Loan	<input type="checkbox"/>			
State Reserve Grant	<input type="checkbox"/>			
State Reserve Earmark (S.L. 2023-134)	<input type="checkbox"/>			
American Rescue Plan Act - <i>Choose an item.</i>	<input type="checkbox"/>			

**Project Description:**

Wastewater Treatment Plant Improvements Project

<b>Total Financial Assistance Offer:</b>	<b>\$29,423,000</b>
<b>Total Project Cost:</b>	\$29,423,000
<b>Estimated Closing Fee*:</b>	\$ 588,460
<i>For Loans</i>	
<b>Interest Rate:</b>	0% Per Annum
<b>Maximum Loan Term:</b>	26 Years

*\*Estimated closing fee calculated based on grant and loan amount.*

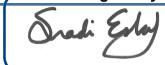
Pursuant to North Carolina General Statute 159G:

- The applicant is eligible under Federal and State law,
- The project is eligible under Federal and State law, and
- The project has been approved by the Department of Environmental Quality as having sufficient priority to receive financial assistance.

The Department of Environmental Quality, acting on behalf of the State of North Carolina, hereby offers the financial assistance described in this document.

For The State of North Carolina:

**Shadi Eskaf, Director, Division of Water Infrastructure  
North Carolina Department of Environmental Quality**

DocuSigned by:  Signature	2/9/2024 Date
--	------------------

On Behalf of: Town of Waynesville  
Name of Representative in Resolution: \_\_\_\_\_  
Title (Type or Print): \_\_\_\_\_

I, the undersigned, being duly authorized to take such action, as evidenced by the attached CERTIFIED COPY OF AUTHORIZATION BY THE APPLICANT'S GOVERNING BODY, do hereby accept this Financial Award Offer and will comply with the attached Assurances and the Standard Conditions.

Signature	Date
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**TOWN OF WAYNESVILLE COUNCIL  
REQUEST FOR COUNCIL ACTION  
Meeting Date: September 10, 2024**

**SUBJECT:** Call for a Public Hearing for September 24, 2024 to consider text amendments related to accessory structures and manufactured housing.

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:**  
**Department:** Development Services  
**Contact:** Olga Grooman  
**Presenter:** Olga Grooman

**BRIEF SUMMARY:**

The proposed text amendments introduce more flexibility in number, type, and placement of accessory dwelling units on single-family lots. The Development Services Department has encountered situations where zoning regulations prevented families from utilizing manufactured housing as accessory dwellings, even though such units did not increase density, violate setbacks, or change permitted housing types for the district. Recognizing the need for attainable housing, particularly for families on existing lots, this staff initiated text amendment seeks to promote affordable, smaller housing options. The proposed amendment promotes flexibility in the number, type, and placement of accessory dwellings on a single lot, without compromising the district's density, setbacks, minimum pervious surface, or other LDS requirements.

Another proposed change are to the definition of a manufactured home park. Currently, two (2) or more homes on a single parcel constitute a manufactured home park, which is only allowed in the Allen's Creek District with a Special Use Permit. However, there are instances where homes on separate lots were deeded as a park, and where two or more homes are already in existence on a piece of property, causing confusion in applying the LDS standards related to manufactured housing design guidelines for stand-alone homes, and applying the requirements for manufactured home parks.

**MOTIONS FOR CONSIDERATION:**

1. Motion to call for a Public Hearing for September 24, 2024 to consider text amendments related to accessory structures and manufactured housing.

**FUNDING SOURCE/IMPACT:**

N/A

**ATTACHMENTS:**

- Draft Ordinances (2 versions)
- Planning Board Report

**MANAGER'S COMMENTS AND RECOMMENDATIONS:**

This is a call for public hearing only.

*DRAFT FOR COUNCIL'S CONSIDERATION*

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE TEXT OF THE  
TOWN OF WAYNESVILLE LAND DEVELOPMENT STANDARDS**

**WHEREAS**, the Town of Waynesville has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend said regulations from time to time in the interest of the public health, safety, and welfare; and

**WHEREAS**, the Town of Waynesville Planning Board has reviewed the proposed text amendments to the Land Development Standards (LDS) and recommends that they are consistent with the 2035 Comprehensive Plan and that they are reasonable and in the public interest because they are consistent with the Comp Plan goals:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Encourage infill, mixed-use and context-sensitive development.

Goal 2: Create a range of housing opportunities and choices.

- Encourage new housing inside Waynesville's city limits and Extraterritorial Jurisdiction (ETJ)
- Promote a diverse housing stock including market rate, workforce housing and affordable options that appeal to a variety of households

**WHEREAS**, the Planning Board has reviewed and recommends the proposed text amendments for enactment by the Town Council; and

**WHEREAS**, the Town Council find this Ordinance is consistent with the Town's 2035 Comprehensive Plan and that it is reasonable and in the public interest to "make decisions about resources and land use in accordance with North Carolina General Statutes." and

**WHEREAS**, after notice duly given, a public hearing was held on **August 19, 2024** at the regularly scheduled meeting of the Waynesville Planning Board, and on \_\_\_\_\_, 2024 at the regularly scheduled meeting of the Waynesville Town Council;

**NOW, THEREFORE, BE IT ORDAINED BY THE WAYNESVILLE TOWN COUNCIL, MEETING IN REGULAR SESSION ON \_\_\_\_\_ AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:**

That the Land Development Standards be amended as follows:

1. Amend Section 3.2.1 Dwelling- Accessory as follows:

**3.2.1 Dwelling—Accessory.**

- A. **Number:** ~~Only one accessory dwelling is permitted per lot.~~ Accessory dwellings may only be located on a lot with an existing single-family dwelling. The number of accessory dwellings per lot shall be as specified in Table 4.5.2. Accessory dwellings count toward, and may not exceed, the density of the underlying zoning district.
- B. **Other Applicable Laws:** Accessory dwellings must comply with all applicable local, state and federal laws, and building codes.
- C. **Placement on the Lot:** ~~A detached accessory dwelling shall be sited to the rear of the principal building. If the lot exceeds two (2) acres in size the accessory dwelling may be sited to the side of the principal building.~~ The placement of detached accessory dwellings on a lot shall be in accordance with Table 4.5.2.
- D. **Yard Requirements:** The accessory dwelling shall meet all yard setback requirements as established for principal uses within the land development district in which it is located.
- E. **Compatibility.**
  - 1. The accessory dwelling shall meet all applicable design standards for the land development district in which it is located in accordance with Chapter 5.
  - 2. The accessory dwelling shall be clearly subordinate (size, etc.) to the main structure.
  - 3. The exterior of the accessory dwelling shall be compatible with the principal residence in terms of color, siding, and roofing appearance.
- F. **Manufactured Housing, Campers, Park Models, Tiny Homes on Wheels, Recreational Vehicles, Etc. Prohibited For Use:** ~~Manufactured housing, campers,~~ Campers, park models, tiny homes on wheels, travel trailers and recreational vehicles are not permitted for use as an accessory dwelling. ~~Manufactured housing is allowed as an accessory dwelling only if it is permitted as a use in the underlying zoning district, and is subject to supplemental standards and design guidelines in Chapters 3 and 5. Manufactured housing is not allowed as an accessory dwelling in Mixed-Use Overlay Districts.~~

2. Amend Section 3.2.6 Manufactured Homes and Manufactured Home Parks as follows:

**B. General Manufactured Home Park Requirements.**

- 1. No manufactured home park shall be approved for a site less than three (3) contiguous acres under single ownership or control, unless the park is divided into separate lots by deed.

3. Amend Section 4.5 Accessory Uses and Structures as follows:

**4.5 Accessory Uses and Structures.**

The purpose of this section is to establish standards for accessory uses and structures in the Town of Waynesville's land use jurisdiction. Except as provided elsewhere in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move or replace any accessory use or structure without first obtaining a certificate of land development standards compliance from the Administrator.

**4.5.1 General.**

- A. Accessory uses and structures may only be used for purposes permitted in the district in which they are located.
- B. Not for Dwelling Purposes: Accessory structures shall not be used for dwelling purposes except as approved Accessory Dwelling Units (see Section 3.2.1).
- C. Building Permits May Be Required: Depending on the size of the structure and the incorporation of various improvements (e.g., electrical, plumbing) a building permit may also be required.

**4.5.2 Table of Standards for Accessory Structures and Accessory Dwelling Units<sup>1</sup>:**

Standards	Single-Family/Two Family Lots Less than 0.5 Acre	Single-Family/Two Family Lots 0.5 Acre- 1 Acre	Single-Family/Two Family Lots Greater than 1 Acre-3 Acres	Single-Family/Two Family Lots Greater than 3 Acres- 5 Acres	All Other Lots
<b>Permitted Location</b>	Side or Rear Yard Only	Side or Rear Yard Only	Side or Rear Yard Only	Permitted In All Yards	Permitted In All Yards
<b>Height</b>	Not Greater Than Principal Structure	Not Greater Than Principal Structure	Subject to District Height Standards	Subject to District Height Standards	Subject to District Height Standards
<b>Maximum Number Permitted</b>	2 Accessory Structures + 1 Accessory Dwelling	2 Accessory Structures + 2 Accessory Dwellings	3 Accessory Structures + 3 Accessory Dwellings	No Maximum for Accessory Structures. 3 Accessory Dwellings or as Subject to Chapter 15 Subdivision/Site Plan Standards.	No Maximum for Accessory Structures. 3 Accessory Dwellings or as Subject to Chapter 15 Subdivision/Site Plan Standards.
<b>Maximum Area (excluding accessory dwellings)</b>	1,000 Square Feet in Aggregate Footprint	1,500 Square Feet in Aggregate Footprint	1,500 Square Feet Per Structure 2,500 Square Feet in Aggregate Footprint	2,000 Square Feet Per Structure 4,000 Square Feet in Aggregate Footprint	No Maximum

<sup>1</sup> Accessory dwellings may only be located on a lot with an existing single-family dwelling.

4. Amend Section 17.3 Definitions, Use Type as follows:

**Dwelling—Accessory.** A smaller, secondary dwelling unit either detached or attached, such as a garage apartment or cottage, designed for occupancy ~~by one or two persons~~ and located on a lot with an existing single-family dwelling. ~~Said units shall not exceed one per lot.~~

**Manufactured Home Parks.** The location of ~~two~~ **four (4)** or more manufactured or mobiles homes on a parcel of land, **or as a deeded manufactured home park,** shall constitute a mobile home park.

ADOPTED this \_\_\_\_\_ Day of \_\_\_\_\_, 2024.

TOWN OF WAYNESVILLE

\_\_\_\_\_  
J. Gary Caldwell, Mayor

ATTEST:

\_\_\_\_\_  
Candace Poolton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Martha Bradley, Town Attorney

*DRAFT FOR COUNCIL'S CONSIDERATION*

**ORDINANCE NO. \_\_\_\_\_**

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**WHEREAS**, the Town of Waynesville Planning Board has reviewed the proposed text amendments to the Land Development Standards (LDS) and recommends that they are consistent with the 2035 Comprehensive Plan and that they are reasonable and in the public interest because they are consistent with the Comp Plan goals:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Encourage infill, mixed-use and context-sensitive development.

Goal 2: Create a range of housing opportunities and choices.

- Encourage new housing inside Waynesville's city limits and Extraterritorial Jurisdiction (ETJ)
- Promote a diverse housing stock including market rate, workforce housing and affordable options that appeal to a variety of households

**WHEREAS**, the Planning Board has reviewed and recommends the proposed text amendments for enactment by the Town Council; and

**WHEREAS**, the Town Council find this Ordinance is consistent with the Town's 2035 Comprehensive Plan and that it is reasonable and in the public interest to "make decisions about resources and land use in accordance with North Carolina General Statutes." and

**WHEREAS**, after notice duly given, a public hearing was held on **August 19, 2024** at the regularly scheduled meeting of the Waynesville Planning Board, and on \_\_\_\_\_, 2024 at the regularly scheduled meeting of the Waynesville Town Council;

**NOW, THEREFORE, BE IT ORDAINED BY THE WAYNESVILLE TOWN COUNCIL, MEETING IN REGULAR SESSION ON \_\_\_\_\_ AND WITH A MAJORITY OF THE BOARD MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:**

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- B. **Other Applicable Laws:** Accessory dwellings must comply with all applicable local, state and federal laws, and building codes.
- C. **Placement on the Lot:** ~~A detached accessory dwelling shall be sited to the rear of the principal building. If the lot exceeds two (2) acres in size the accessory dwelling may be sited to the side of the principal building.~~ The placement of detached accessory dwellings on a lot shall be in accordance with Table 4.5.2.
- D. **Yard Requirements:** The accessory dwelling shall meet all yard/setback requirements as established for principal uses within the land development district in which it is located.
- E. **Compatibility.**
  - 1. The accessory dwelling shall meet all applicable design standards for the land development district in which it is located in accordance with Chapter 5.
  - 2. The accessory dwelling shall be clearly subordinate (size, etc.) to the main structure.
  - 3. The exterior of the accessory dwelling shall be compatible with the principal residence in terms of color, siding, and roofing appearance.
- F. ~~Manufactured Housing, Campers, Park Models, Tiny Homes on Wheels, Recreational Vehicles, Etc. Prohibited For Use:~~ ~~Manufactured housing, campers, Campers, park models, tiny homes on wheels,~~ travel trailers and recreational vehicles are not permitted for use as an accessory dwelling. ~~Manufactured housing is allowed as an accessory dwelling only if it is permitted as a use in the underlying zoning district, subject to additional standards and design guidelines in Chapters 3 and 5. Manufactured housing is not allowed as an accessory dwelling in Mixed-Use Overlay Districts.~~
  - 2. Amend Section 3.2.6 Manufactured Homes and Manufactured Home Parks as follows:

**B. General Manufactured Home Park Requirements.**

- 1. No manufactured home park shall be approved for a site less than three (3) contiguous acres under single ownership or control, unless the park is divided into separate lots by deed.
- 3. Amend Section 4.5 Accessory Uses and Structures as follows:

**4.5 Accessory Uses and Structures.**

The purpose of this section is to establish standards for accessory uses and structures in the Town of Waynesville's land use jurisdiction. Except as provided elsewhere in this chapter, it shall be unlawful for

any person to erect, construct, enlarge, move or replace any accessory use or structure without first obtaining a certificate of land development standards compliance from the Administrator.

**4.5.1 General.**

- A. Accessory uses and structures may only be used for purposes permitted in the district in which they are located.
- B. Not for Dwelling Purposes: Accessory structures shall not be used for dwelling purposes except as approved Accessory Dwelling Units (see Section 3.2.1).
- C. Building Permits May Be Required: Depending on the size of the structure and the incorporation of various improvements (e.g., electrical, plumbing) a building permit may also be required.

**4.5.2 Table of Standards for Accessory Structures and Dwellings<sup>1</sup>:**

Standards	Single-Family/Two Family Lots Less than <del>0.5</del> <b>0.2 Acre</b>	Single-Family/Two Family Lots <del>0.5 Acre-1 Acre</del> <b>0.2 Acre- 0.6 Acre</b>	Single-Family/Two Family Lots <del>Greater than 1 Acre-3 Acres</del> <b>Greater than 0.6 Acre- 1.2 Acres</b>	Single-Family/Two Family Lots <del>Greater than 3 Acres- 5 Acres</del> <b>Greater than 1.2 Acres- 3 Acres</b>	<b>Single-Family/Two Family Lots Greater than 3 Acres</b>	All Other Lots
<b>Permitted Location</b>	Side or Rear Yard Only	Side or Rear Yard Only	Side or Rear Yard Only	Permitted In All Yards	<b>Permitted In All Yards</b>	Permitted In All Yards
<b>Height</b>	Not Greater Than Principal Structure	Not Greater Than Principal Structure	Subject to District Height Standards	Subject to District Height Standards	<b>Subject to District Height Standards</b>	Subject to District Height Standards
<b>Maximum Number Permitted</b>	<del>2</del> <b>2 Accessory Structures. No Accessory Dwelling Units.</b>	<del>2</del> <b>3 Accessory Structures Total, 1 of Which Can Be an Accessory Dwelling Unit.</b>	<del>3</del> <b>4 Accessory Structures Total, 2 of Which Can Be Accessory Dwelling Units.</b>	<del>No Maximum</del> <b>5 Accessory Structures Total, 2 of Which Can Be Accessory Dwelling Units.</b>	<b>No Maximum for Accessory Structures. 3 Accessory Dwellings or as Subject to Chapter 15 Subdivision/Site Plan Standards.</b>	No Maximum for Accessory Structures.
<b>Maximum Area (excluding accessory dwellings)</b>	1,000 Square Feet in Aggregate Footprint	1,500 Square Feet in Aggregate Footprint	<del>1,500</del> <b>1,800</b> Square Feet Per Structure <del>2,500</del> Square Feet in Aggregate Footprint	<del>2,000</del> <b>3,000</b> Square Feet Per Structure <del>4,000</del> Square Feet in Aggregate Footprint	<b>No Maximum</b>	No Maximum

<sup>1</sup> Accessory dwellings may only be located on a lot with an existing single-family dwelling.

4. Amend Section 17.3 Definitions, Use Type as follows:

**Dwelling—Accessory.** A smaller, secondary dwelling unit either detached or attached, such as a garage apartment or cottage, designed for occupancy ~~by one or two persons~~ and located on a lot with an existing single-family dwelling. ~~Said units shall not exceed one per lot.~~

**Manufactured Home Parks.** The location of ~~two~~ **four (4)** or more manufactured or mobiles homes on a parcel of land, **or as a deeded manufactured home park,** shall constitute a mobile home park.

**ADOPTED** this \_\_\_\_\_ Day of \_\_\_\_\_, 2024.

TOWN OF WAYNESVILLE

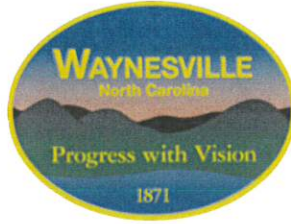
\_\_\_\_\_  
J. Gary Caldwell, Mayor

ATTEST:

\_\_\_\_\_  
Candace Poolton, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Martha Bradley, Town Attorney



## Planning Board Report

To: Waynesville Town Council  
Meeting Date: September 24, 2024  
From: Planning Board  
Elizabeth Teague, Development Services Director  
Olga Grooman, Assistant Development Services Director  
Description: Text amendments related to accessory dwellings and manufactured housing  
Ordinance Section: Land Development Standards (LDS) sections 3.2.1, 3.2.6, 4.5, and 17.3.

At the regular meeting held on August 19, 2024, the Planning Board held a public hearing on the text amendments related to accessory dwelling units (ADUs) and manufactured housing. The board recommends to the Town Council the following statement(s):

1. Planning Board member Travis Collins made a motion seconded by Vice Chair Ginger Hain to find the text amendment as being consistent with the 2035 Comp. Plan and reasonable and in the public interest and to recommend the staff's version of the text amendment to the Town Council. The motion failed, with **2 members voting for and 3 members voting against the text amendment as presented.**

The originally presented text amendment aligned the standards for accessory dwellings with the existing table of standards for accessory structures. Staff proposed to gradually increase the number of ADUs within the existing acre-based tiers of the table while keeping the number of accessory structures currently permitted and their square footages the same.

2. Planning Board member John Baus made a motion seconded by board member Jan Grossman to recommend an amended version of the text amendment to the Town Council. **The motion carried with a vote 4 to 1, with 4 board members voting for and 1 board member voting against and modified text amendment.**

The board found that **the modified text amendment** as approved is reasonable and in the public interest and consistent with the 2035 Comprehensive Plan's Goals 1 and 2:

Goal 1: Continue to promote smart growth principles in land use planning and zoning.

- Encourage infill, mixed-use and context-sensitive development.



Goal 2: Create a range of housing opportunities and choices.

- Encourage new housing inside Waynesville's city limits and Extraterritorial Jurisdiction (ETJ)
- Promote a diverse housing stock including market rate, workforce housing and affordable options that appeal to a variety of households

**In a dissenting opinion** the Planning Board Acting Chair Ginger Hain expressed concerns that the modified text amendment creates an overly complicated table and cumbersome enforcement mechanism. The Planning Board Acting Chair also raised concern that the new table may limit housing options for people and take away some property rights. Specifically:

- Lots under .2 acre will lose the ability to have ADUs.
- 9 districts that have no base density will lose the ability to have ADUs, thereby reducing the underlying density in these districts.
- Lots between >1 acre and 1.2 acres will have reduced square footage for accessory structures from 2,500 sf to 1,800 sf in aggregate.

Based on the above stated points, staff submits that these amendments to the original draft no longer meet the 2035 Comp. Plan Goals because it will take away some existing property rights and housing opportunities. Staff's opinion is that the text amendment **as originally presented** is reasonable and in the public interest and consistent with the 2035 Comprehensive Plan's Goals 1 and 2.

	<u>8/22/24</u>		<u>8/22/24</u>
Ginger Hain, Planning Board Vice Chair	Date	Elizabeth Teague, Development Services Director	Date

**TOWN OF WAYNESVILLE COUNCIL MEMBERS  
REQUEST FOR COUNCIL ACTION  
Meeting Date: September 10, 2024**

**SUBJECT:** Constitution Week

**AGENDA INFORMATION:**

**Agenda Location:** Proclamation  
**Item Number:**  
**Department:** Administration  
**Contact:** Carol Litchfield, Hugh Rogers Chapter, Constitution Week Committee Chair  
**Presenter:** Mayor Gary Caldwell

**BRIEF SUMMARY:** September 17<sup>th</sup>-23<sup>rd</sup>, is Constitution Week, with September 17<sup>th</sup> marking the two hundredth thirty-seventh anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention.

**MOTION FOR CONSIDERATION:**

**FUNDING SOURCE/IMPACT:** N/A

**ATTACHMENTS:**

- Constitution Week Proclamation

**MANAGER'S COMMENTS AND RECOMMENDATIONS:**

**Proclamation  
Constitution Week  
September 17-23, 2024**

WHEREAS, September 17, 2024 marks the two hundred thirty-seventh anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is fitting and proper to accord official recognition to this enduring document on this anniversary, and to the patriotic celebrations which will commemorate the occasion, and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

NOW, THEREFORE, I, Gary Caldwell, by virtue of the authority vested in me as Mayor of the Town of Waynesville, North Carolina do hereby proclaim the week of September 17 through 23 as

**Constitution Week**

and ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedom guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Town to be affixed this 10<sup>th</sup> day of September, of the year of our Lord two thousand twenty-four.

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN  
REQUEST FOR BOARD ACTION  
Meeting Date: September 10, 2024**

**SUBJECT:** Request for Resolutions of Support for grant application to the US EPA for the Haywood County Community Change Grant.

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:**  
**Department:** Development Services  
**Contact:** Elizabeth Teague, Planning Director  
**Presenter:** Elizabeth Teague, Planning Director

**BRIEF SUMMARY:** At the last meeting, Development Services asked for Council’s approval to explore new trail development and extension of existing trails within the Town’s Extra-Territorial Jurisdiction as part of the North Carolina Great Trails State Initiative (<https://greattrailsonc.com/the-great-trails-state/>, and the <https://greattrailsstatecoalition.org/>). Since that time, staff has communicated with NCDOT, the French Broad River MPO, and met with a project team working with the Southern Appalachians Highland Conservancy on another potential grant initiated by the US EPA (<https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-community-change-grants-program>).

Staff recommends that trail segments in the area between Waynesville and Lake Junaluska are better targeted to the US EPA grant application for Haywood County. This would allow the Town to target the in-town segment from Hickory Hollow Apartments to Boyd Avenue for funding through the Great Trails State Grant program, which has extended its application deadline to November. Staff request adoption of the Resolution of Support for the US EPA Grant and will return to Council for approval for a revised scope for the Great Trails State Grant next month. The US EPA Grant Application does not require local match.

**MOTION FOR CONSIDERATION:**

1. To adopt the attached of support for the US EPA Grant.

**FUNDING SOURCE/IMPACT:** If funded, implementation of the grant will require staff coordination and county-wide cooperation. However, the grant itself provides 100% of the project costs as determined in the application.

**ATTACHMENTS:**

1. Grant Information sheet from the Southern Appalachians Highlands Conservancy
2. Draft Resolution

**MANAGER’S COMMENTS AND RECOMMENDATIONS:**



September 3rd, 2024

Agenda Item	Request for Supporting Resolutions for 2024 Community Change Grant Application benefitting Haywood County	
From	<a href="#">Hanni Muerdter</a>	Conservation Director, SAHC
Contact	<a href="mailto:hanni@appalachian.org">hanni@appalachian.org</a> , 828-342-3044 (cell)	
Item Type	Resolution of Support for Community Change Grant benefitting Haywood County	

## SUMMARY

[Click here](#) for Community Change Full Grant Notice.

### **Background**

There is a unique opportunity out of the EPA, described below, to provide transformative financial support to communities, through its **Community Change Grants** (rolling applications, aiming for Oct. 1), under the Environmental and Climate Justice Program (ECJP) created in the Inflation Reduction Act.

### **Community Change Grants Summary for Haywood County Coalition**

ECJP is releasing \$2 billion in the form of \$10-20 million grants to community coalitions in [Disadvantaged Communities \(DACs\)](#). They're looking for 3-year projects to build resilience against disproportionate climate and pollution burdens. There are multiple census block groups in [Haywood County that qualify as DACs](#).

Because Haywood County and the Town of Waynesville have relatively well-explored **Greenway Plans**, **in-progress River Access Plan** and **Flood Mitigation Plans**, diverse board members from several town/county/regional organizations have assessed the grant's potential for advancing regional environmental goals related to:

- parkland/river access
- public health
- cleaner air
- farmland/floodplain protections/flood mitigation
- economic revitalization in the outdoor recreation sector

### **What the Grantor Wants:**

- Community-driven projects (completed within 3 years) addressing detrimental health, pollution, and environmental impacts
- Outputs and outcomes that are measurable (related to climate resilience, pollution reduction, park access, health and economic benefits)
- Cross-sectorial, multi-faceted collaborations from the community

**What the Grantor Requires for Projects** (Track I-Community-Driven Investments for Change):

- Partnership agreement between a non-profit CBO + local government / another CBO
- Description of Climate Action Strategy (Green Infrastructure + Nature-based Solutions)
- Description of Pollution Reduction Strategy (Outdoor Air Quality + Community Health Improvements)
- Community Engagement + Collaborative Governance Plan
- Community Strength Plan (maximizing benefits, minimizing risks)
- Readiness Approach (must start w/in 120 days, and be completed within 3 years)
- Compliance Plan (legal and statutory requirements)

**Projects currently contemplated for the grant application:**

1. Implement priority shovel-ready projects within existing greenway plans and in-progress Pigeon River Access Plan to increase public parkland access, community health near population centers and benefit local economy:

Canton:

- Champion Drive
- Park Street Promenade
- Park Street Pigeon River Access

Clyde:

- Spruce Street River Access & Greenway sections

Waynesville/Haywood County:

- Richland Creek Greenway sections
- Raccoon Creek Greenway sections

2. Reduce flood risk and improve water quality:

- a. Working with interested landowners, permanently protect flood-prone properties via conservation easements or acquisitions (Haywood Soil & Water, Southern Appalachian Highlands Conservancy).
- b. Increase septic repair program in Disadvantaged Communities (Haywood Waterways Association)
- c. River monitoring and emergency equipment upgrades (Haywood EMS, Haywood Waterways Association)
- d. Incorporate river-friendly resilient design features in above riverside greenway projects and river access projects

**Individuals/organizations who consulted on grant application process:**

[Southern Appalachian Highlands Conservancy](#) (SAHC) was asked to be the lead non-profit applicant on the grant by community stakeholders. In April-August 2024, SAHC met with the following stakeholder representatives to understand community and capacity needs and assess a Community Change Grant application. A working group was assembled and priority projects were selected as identified in these conversations and that best fit the grant requirements.

Individuals/organizations consulted:

Town of Waynesville: Elizabeth Teague and Sustainability Advisory Committee Members Paul Carlson and Aparna Keshaviah;  
Town of Canton: Byron Hickox;  
Town of Clyde: Joy Garland;  
Town of Maggie Valley: Sam Cullen;  
Haywood County EMS: Cody Parton and Cody Grasty;  
Haywood County Chamber of Commerce, Haywood Advancement Foundation, Haywood County: David Francis;  
Haywood County TDA: Corrina Ruffieux;  
Haywood Soil & Water Conservation District: Duane Vanhook and Bill Yarborough;  
Haywood Waterways: Preston Jacobsen;  
Land of Sky and French Broad River MPO: Tristan Winkler;  
Haywood County Recreation Advisory Committee: Kevin FitzGerald;  
Haywood Regional Medical Center: Chris Brown, CEO;  
Haywood County Greenway Advisory Committee: Steve Law (and Elizabeth Teague);  
NCDOT: Wanda Payne, Steve Williams;  
Conversations with additional leaders in Haywood County are ongoing.

**RESOLUTION OF SUPPORT FOR THE HAYWOOD COUNTY COMMUNITY CHANGE GRANT**

**WHEREAS,** the Environmental and Climate Justice Community Change Grants Program is a granting component of the U.S. Environmental Protection Agency, Office of Environmental Justice and External Civil Rights (OEJECR). The Community Change Grants will fund community-driven projects that address climate challenges and reduce pollution while strengthening communities through thoughtful implementation.

**WHEREAS,** the Haywood County experienced significant recent environmental, community health and economic impacts with two 500-year level floods and the loss of the area's largest employer.

**WHEREAS,** town, county, and regional organization collaborative partners within Haywood County have identified the Community Change grant's potential to address significant identified needs in our area related to improving public health and environmental impacts.

**WHEREAS,** partners plan to submit a Community Change grant application, with Southern Appalachian Highlands Conservancy as the lead grant applicant, advancing regional environmental goals related to:

- parkland/river access
- public health
- floodplain protections/flood mitigation and pollution reduction
- economic revitalization in the outdoor recreation sector
- connectivity for non-motorized modes of transportation

**WHEREAS,** the Town of Waynesville supports efforts around pollution reduction and prevention, increasing resiliency and mitigating current and future climate risks, expansion of high-quality jobs and economic opportunities and prioritizing opportunities for local, community-based investment for current and future generations.

**NOW, THEREFORE, BE IT RESOLVED,** the Town of Waynesville supports the grant application made to OEJECR for the Environmental and Climate Justice Community Change Grants Program, being submitted by Southern Appalachian Highlands Conservancy on behalf of the Town of Waynesville and partners within Haywood County.

Adopted this day, September 10, 2024.

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(Signature of Mayor)

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Date

ATTEST:

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Candace Poolton, Clerk to the Board

APPROVED AS TO FORM:

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Martha Bradley, Town Attorney

**TOWN OF WAYNESVILLE TOWN COUNCIL  
REQUEST FOR COUNCIL ACTION  
Meeting Date: 9/10/2024**

**SUBJECT** Approval of Engineering and Project Administration contracts for CDBG Grants

**AGENDA INFORMATION:**

**Agenda Location:** Old Business

**Item Number:**

**Department Administration**

**Contact:** Rob Hites

**Presenter:** Rob Hites

**BRIEF SUMMARY :** The Town has been awarded \$3,054,000 in Federal Community Development Block Grants over the past two years. The grants require that the Town follow the NC Purchasing statutes for acquiring the services of an engineer. The CDBG guidelines also require that the Town follow the same statute for acquiring project administration services. The Town was awarded a water and sewer rehabilitation grant as separate projects. The State permitted the Town to secure the services of the engineer and project administrator in one process. The State provided a “scoring sheet” for determining the most qualified firms. Several months ago, the staff presented their recommendation for engineering and project administration for the two CDBG grants that were awarded in February. The Council chose McGill Associates to provide both engineering and project administration. The NC Statutes require that once a firm has been chosen for their technical expertise, the Town will negotiate compensation for the services. In the case of the CDBG-I grants, DEQ has mandated a fee schedule for both services (Project budgets are included as the last page of the water and sewer contracts (attachments). The Department of Environmental Quality (DEQ) is requiring the Town to separate all services in the two grants, so you have four contracts before you.

**MOTION FOR CONSIDERATION:** Approve the contracts for engineering and project administration for CDBG-I grants CDBG 23-I-4153 and CDBG 25-I-4154.

**FUNDING SOURCE/IMPACT:** Water and Sewer

**ATTACHMENTS:** Contracts for engineering, project engineering and project budgets (end of contracts)

**MANAGER’S COMMENTS:** See above

## **AGREEMENT FOR ENGINEERING SERVICES**

This Agreement made and entered into this the 22<sup>nd</sup> day of August 2024 by and between the Town of Waynesville (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **South Waynesville Water Improvements (CDBG # 23-I-4153)** and

WHEREAS, the ENGINEER desires to provide professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

### **SECTION 1 - GENERAL SERVICES**

**The ENGINEER shall:**

- 1.1** The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in appropriate phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
  
- 1.2** The ENGINEER shall provide appropriate personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All appropriate services rendered hereunder shall be performed by the ENGINEER or under his/her supervision and the personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.
  
- 1.3** The ENGINEER shall assist the OWNER in pursuing approvals and permits from appropriate governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.

- 1.4** The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.
- 1.5** The ENGINEER shall comply with appropriate existing federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include appropriate requirements hereunder in any subcontract written by him/her in association with this Agreement.
- 1.6** The Engineer shall comply with the CDBG Contract Provisions included in the attached Exhibit "B".



## SECTION 2 - BASIC SERVICES

### **2.1 ENGINEERING DESIGN/PERMITTING/SURVEYING:**

- 2.1.1 **PROJECT DESCRIPTION:** The project includes:
- Installation of approximately 1,470 linear feet of new 6" and 2" water distribution lines along Sawyer Street and Explorer Drive, approximately 36 service connections, and all other associated appurtenances and surface restoration.
- 2.1.2 Consult with the OWNER to determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.
- 2.1.3 Coordinate and conduct an initial design coordination meeting with any other applicable parties as needed for the purpose of defining the project schedule, coordinate various plans and improvements and discuss pertinent matters related to the project and the location of the proposed project components.
- 2.1.4 Prepare the complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including design functions, surveying, and coordination for construction sequencing of the project as determined in an initial scoping meeting.
- 2.1.5 Review the design documents as described above with the OWNER for comments and approval throughout the design process.
- 2.1.6 Assist the OWNER in pursuing approval of the final design documents from such governmental agencies as have jurisdiction over the project or any portion thereof. These include the North Carolina Department of Environmental Quality Division of Water Resources and Division of Water Infrastructure and a possible railway encroachment modification with the appropriate rail carrier.
- 2.1.7 Provide plans and specifications to assist the OWNER in pursuing encroachment agreements from public bodies necessary for satisfactory construction of the project.
- 2.1.8 Coordinate the provision of any subsurface or structural investigations or other types of testing and analysis needed for proper design within the initial scope of the project. Actual cost of investigations performed are to be paid separately by the Owner or shall be considered additional services.

- 2.1.9 Advise the OWNER of any adjustment of the project cost caused by changes in scope, design requirements or construction costs and furnish a revised cost estimate based on the final design documents.
- 2.1.10 Furnish copies of the final design documents as required to accomplish the design phase.

## **2.2 BIDDING AND AWARD**

Note: This Agreement is based on all work being included in one (1) single construction contract and one (1) bid period and bid opening. If multiple bid openings are required, the ENGINEER will be compensated as described in Section 3, Additional Services.

- 2.2.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.
- 2.2.2 Coordinate public bid advertisement issuance. Actual publication costs to be paid separately by the OWNER.
- 2.2.3 Coordinate the distribution of bid documents to prospective bidders.
- 2.2.4 Attend a pre-bid conference and prepare meeting minutes.
- 2.2.5 Respond to bidder questions and prepare and coordinate issuance of Addenda as required.
- 2.2.6 Consult with and advise the OWNER as to the acceptability of Contractors who submit bids and make recommendations as to the lowest responsive and responsible bidder.
- 2.2.7 Assist the OWNER in the preparation of the Notice of Award to the selected Contractor.
- 2.2.8 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.
- 2.2.9 Schedule a preconstruction conference with the OWNER, Contractor, ENGINEER and other applicable parties.

## **2.3 CONSTRUCTION OBSERVATION AND ADMINISTRATION:**

- 2.3.1 Provide periodic project observation to monitor the progress and quality of the executed work and to determine, in general, if the work is proceeding

in accordance with the Contract Documents, and during such visits and on the basis of on-site observations by an experienced and qualified professional, keep the OWNER informed of the progress of the work, endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor(s) and disapprove or reject any work failing to conform to the Contract Documents. This Agreement is based on an assumed construction time of 180 calendar days and further assumes that site visits will be made approximately three (3) days per week on average for the construction period. A total of six progress meetings are included based on the assumed construction period.

- 2.3.2 Coordinating construction materials testing, as required. Any materials testing fees will be paid directly by the Owner.
- 2.3.3 Prepare change orders as required and require special inspection or testing of the work if necessary.
- 2.3.4 Review for approval shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which any Contractor is required to submit, and receive and review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.
- 2.3.5 Based on on-site observations by an experienced and qualified professional and on review of the Contractor applications for payment and supporting data, determine the amount owing to the Contractor(s) and approve to the OWNER payment to the Contractor(s) in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of his knowledge, information and belief the quality of the work is in accordance with the Contract Documents.
- 2.3.6 Conduct a final site visit with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled his obligations as appropriate thereunder so that the ENGINEER may recommend for approval to the OWNER final payment to each Contractor.
- 2.3.7 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished to the ENGINEER.
- 2.3.8 Prepare the Engineer's certification for completion of the project and submit the certification on behalf of the OWNER to the appropriate agencies.

2.3.9 Provide or make available to the OWNER appropriate project files and information to effect project closeout.

### **SECTION 3 - ADDITIONAL SERVICES**

If Authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, change orders, or character of construction.
- 3.2 Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3 Preparing or assisting with additional funding applications besides that described in this Agreement.
- 3.4 Preparing additional engineering reports besides that described in this Agreement.
- 3.5 Providing bidding services related to multiple bidding periods and bid openings.
- 3.6 Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work.
- 3.7 Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.8 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.9 Payment of bid advertisement publication fees, permit application fees, or any other fees.
- 3.10 Design revisions needed to accommodate changes requested by the OWNER during easement acquisitions, or after design alignments have been previously agreed upon by the OWNER.
- 3.11 Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for

in this Agreement.

- 3.12** Preparation of environmental assessment, environmental impact statements, archaeological or biological surveys, US Fish and Wildlife Service formal consultation, or any other environmental surveys or investigations not specifically described in the Basic Services.
- 3.13** Assisting the OWNER in pursuit of compliance with the construction work warranty period.
- 3.14** Geotechnical or subsurface investigations costs.
- 3.15** Sewer line closed circuit television video inspections and sewer line cleaning.
- 3.16** Assisting the OWNER with the OWNER Responsibilities described in Section 4 of this Agreement.
- 3.17** Material testing fees.

## **SECTION 4 - OWNERS RESPONSIBILITIES**

**The OWNER shall:**

- 4.1** Provide full information as to his requirements for the Project.
- 4.2** Assist the ENGINEER by placing at his/her disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3** Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his/her services under this Agreement.
- 4.4** Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his/her services under this Agreement.
- 4.5** Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6** Pay for all costs incident to obtaining bids or proposals from Contractors, including bid advertisement publication costs.
- 4.7** Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him/her under the construction contract.
- 4.8** Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9** Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.

- 4.10** Bear costs associated with permit application fees, and furnish approvals and permits from appropriate governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.
- 4.12** Geotechnical or subsurface investigations costs; material testing fees.
- 4.13** Costs associated with sewer line closed circuit television video inspections and sewer line cleaning.
- 4.14** Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.15** Bear all costs incident to compliance with the requirements of this Section 4.



## **SECTION 5 - PERIOD OF SERVICES**

- 5.1** Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized if requested.
- 5.2** If the design or construction of the Project is delayed significantly for reasons, including costs of construction, beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation. It is expressly understood by all parties to the Agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

## SECTION 6 - PAYMENT TO THE ENGINEER

### **6.1 PAYMENT FOR BASIC SERVICES**

6.1.1 The OWNER will pay the ENGINEER for Basic Services as outlined in Section 2 shown below. All fees are lump sum unless otherwise noted.

Engineering Design/Permitting/Surveying (Section 2.1)	\$66,700
Bidding and Award Phase (Section 2.2):	\$ 6,900
Construction Observation and Administration (Sections 2.3):	\$44,300

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the ENGINEER'S most recent Basic Fee Schedule, should any of these services be requested by the OWNER.

### **6.3 TIMES OF PAYMENT**

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly detailed statements for all services rendered under this Agreement. Payments are due within thirty (30) days of receipt of invoice.

### **6.4 GENERAL**

6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty (60) days after receipt of the ENGINEER's invoice therefor, the ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and

for any unpaid reimbursable expenses.

- 6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three (3) months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.
  
- 6.4.4 The ENGINEER shall be entitled to adjust annually the Basic Fee Schedule utilized for ENGINEER's services.

## **SECTION 7 - GENERAL CONDITIONS**

### **7.1 TERMINATION**

- 7.1.1 In the event the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing ten (10) business days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) business days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### **7.2 OWNERSHIP OF DOCUMENTS**

- 7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements hereto and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

### **7.3 DISPUTE RESOLUTION**

- 7.3.1 OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of paragraph 7.3.2 or other provisions of this Agreement or exercising their rights of law. If the parties fail to resolve a dispute through negotiation, then either or both may invoke the procedures of paragraph 7.3.2 of this Agreement.

- 7.3.2 Mediation: OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or breach thereof to mediation by a party mutually agreed to be both the OWNER and the ENGINEER. OWNER and ENGINEER agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within calendar 120 days. If such mediation is unsuccessful in resolving a dispute, then (1) the parties may mutually agree to a dispute resolution procedure of their choice, or (2) either party may seek to have the dispute resolved by a court of competent jurisdiction.

#### **7.4 ESTIMATES**

- 7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his/her estimates for cost for the Project provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her best judgement as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from cost estimates prepared by him/her.
- 7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the project within a reasonable time, or (3) direct the ENGINEER to modify the drawings and specifications as necessary to bring the Project construction cost within the cost limit. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his/her services in accordance with this Agreement.

#### **7.5 INSURANCE AND CLAIMS**

7.5.1 The ENGINEER will secure and maintain such insurance as will protect him/her from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness, or disease, or death of any of his employees or of any person other than his/her employees, and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. Said insurance policy or policies shall be written by a company or companies and in a form and substance approved by the OWNER prior to the policies being put into

effect and shall be in an amount not less than one million dollars (\$1,000,000).

**7.6 SUCCESSORS AND ASSIGNS**

The OWNER and the ENGINEER each binds himself/herself and his/her partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his/her interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

**7.7 SEVERABILITY AND WAIVER**

If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative.

**7.8 GOVERNING LAW**


The law of the State of North Carolina shall govern this Agreement and the legal relations of the parties.

7.9 **ENTIRE AGREEMENT**

7.9.1 This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

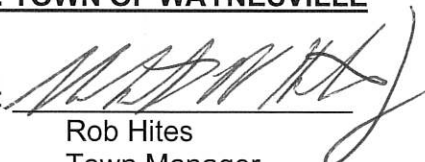
**ENGINEER: MCGILL ASSOCIATES, P.A.**

By:   
Mark Cathey, PE  
Vice President, Regional Manager,  
Principal



**OWNER: TOWN OF WAYNESVILLE**

(SEAL)

By:   
Rob Hites  
Town Manager

ATTEST: \_\_\_\_\_

**PRE-AUDIT CERTIFICATION:**

**THIS INSTRUMENT** has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: \_\_\_\_\_  
Finance Officer

**APPROVED AS TO LEGAL FORM:**

By: \_\_\_\_\_  
Town Attorney

**EXHIBIT "A"**

**BASIC FEE SCHEDULE**

**July 2024**

<b>PROFESSIONAL FEES</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
Senior Principal	\$300			
Principal – Regional Manager – Director	\$245	\$255	\$280	\$290
Practice Area Lead	\$220	\$240	\$270	\$280
Senior Project Manager	\$220	\$235	\$260	\$270
Senior Engineer	\$220	\$235	\$260	\$270
Project Manager	\$190	\$205	\$210	\$215
Senior Project Engineer	\$190	\$205	\$210	\$215
Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$135	\$140	\$145	\$150
Planner- Consultant – Designer	\$140	\$150	\$175	\$190
Engineering Technician	\$120	\$135	\$140	\$150
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$155	\$165	\$180	\$200
Construction Administrator	\$130	\$145	\$155	\$165
Financial Services Manager	\$140	\$150	\$160	\$170
Grant Administrator	\$125	\$140	\$150	\$160
Construction Field Representative	\$105	\$115	\$125	\$140
Environmental Specialist	\$105	\$115	\$120	\$125
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

**EXPENSES**

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. Robotics/GPS Equipment: \$30/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

**ASSOCIATED SERVICES**

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.



## EXHIBIT "B"

### CDBG CONTRACT PROVISIONS

#### Conflict of Interest (2 CFR Part §200.318 General procurement standards)

Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

#### Nondiscrimination Clause - Section 109, Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.

#### Age Discrimination Act of 1975, as amended - Nondiscrimination on the Basis of Age

No qualified person shall on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

#### Section 504 of the Rehabilitation Act of 1973, as amended - Nondiscrimination on the Basis of Disability

No qualified disabled person shall on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

#### Access to Records and Record Retainage Clause

In general, all official project records and documents must be maintained during the operation of this project and for a period of three years following closeout in compliance with 24 CFR §570.490.

The North Carolina Department of the Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and the NC Department of

Environmental Quality, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

## Lobbying Clauses

### Required by Section 1352, Title 31, U.S. Code

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

## Legal Remedies Provision and Termination Provision

Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts under Federal Awards Contracts. *other than small purchases shall contain provisions or conditions which will apply for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.*

- 1) Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts under Federal Awards. *All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.*

## Section 3 Clause

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implements section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or

knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and

implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)--A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

## **AGREEMENT FOR CONSULTING SERVICES**

This AGREEMENT, made and entered into this the \_\_\_\_\_ day of August 2024, by and between **Town of Waynesville** (OWNER) and **McGill Associates, P.A.** (CONSULTANT).

WHEREAS, the OWNER. proposes to do certain work toward the accomplishment of the Project entitled **Town of Waynesville CDBG-Infrastructure-South Waynesville Public Water System Improvements (CDBG # 23-I-4153)**, which has been. assigned as generally described in Attachment "A", and

WHEREAS, the CONSULTANT desires to provide grant administration services in accordance with this Agreement, which is being funded by a Community Development Block Grant, and therefore the conditions included in Attachment "C" applies, and

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

### **SECTION 1 - GENERAL SERVICES**

#### **The CONSULTANT shall:**

- 1.1 The CONSULTANT shall, as directed by the OWNER, provide professional consulting services for the OWNER in all phases of the Project; serve as OWNER's professional consulting representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder. The CONSULTANT shall designate a representative to be the central point of contact with the OWNER during the work included herein.
- 1.2 The CONSULTANT shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER All services rendered hereunder shall be performed by the CONSULTANT or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER
- 1.3 The CONSULTANT shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided..
- 1.4 The CONSULTANT shall comply with all existing federal, state and local laws and regulations regarding equal employment opportunity. The CONSULTANT is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

## SECTION 2 - BASIC SERVICES

<b>ITEM</b>	<b>SCHEDULE</b>
1. Assist in the completion of: An Environmental Report in accordance with NC Department of Commerce guidelines and notices and request for release of funds.	TBD at Grant Startup
2. Attend all program Workshops and Training.	
3. Assist the Town in developing and/or revising Compliance Documents.	TBD at Grant Startup
<ul style="list-style-type: none"><li>a) Citizen Participation Plan, with virtual meeting language,</li><li>b) Code of Conduct Resolution,</li><li>c) Draft Project Ordinance,</li><li>d) Compliance Procedures,</li><li>e) Financial Management Plan</li><li>f) Equal Opportunity and Procurement Plan,</li><li>g) Section 3 Local Economic Benefit Plan,</li><li>h) Section 504 Self-evaluation Survey and Transition Plan,</li><li>i) Section 504 ADA Grievance, and Transition Plan,</li><li>j) Residential Anti-displacement and Relocation Plan,</li><li>k) Fair Housing Activities Plan,</li><li>l) Fair Housing Complaint Procedure,</li><li>m) Fair Housing Assessment and Analysis of Impediments for populations greater than 10,000,</li><li>n) Language Access Plan,</li><li>o) Language Access Plan - Four Factor Analysis,</li><li>p) Procurement Policy,</li><li>q) Floodplain Documentation,</li><li>r) Optional Coverage Relocation Benefit Policy,</li><li>s) Conflict of Interest and Ethics Statement, and</li><li>t) Complaint, Grievance, and Compliance Statement.</li></ul>	
4. Setup all official Grant records and project management files.	On-going
5. Coordinate with Town for the solicitation of contractor for construction	On-going
6. Report on Quarterly Fair Housing Activities.	On-going
7. Complete Solicitation and reporting on use of minority, female and local contractors and workers	On-going
8. Reporting on benefits, construction activities, and financial transactions.	On-going



- |  |          |
|--|----------|
| 9. Reporting on benefits, construction activities, and financial transactions. On-going  | On-going |
| 10. Document and Report Section 3 Solicitation and Participation   | On-going |
| 10. In coordination with the Town's Project Manager, complete pre-construction conferences and complete meeting minutes.                                       | On-going |
| 11. In coordination with the Town's Project Manager, complete site monitoring, review and approval of all change orders, and process all requests for payments | On-going |
| 12. Complete all Davis Bacon Requirements including:   |          |
| a. Secure Wage rates,  |          |
| b. Complete Employee Interviews, and   | On-going |
| c. Review all Payroll Reports.   |          |
| 13. Assist in resolving and responding to citizens' complaints, concerns and questions.  | On-going |
| 14. Assist Town Staff in meeting NC Commerce CDBG-NR Staff in:   |          |
| a. Contact for questions/procedures,   |          |
| b. Interpretation of regulations and bulletins,  |          |
| c. Preparation for monitoring visits and responding to findings,   |          |
| d. Preparation of required reports, financial requisitions, and reports in conjunction with Town's financial staff, including annual report.                   | On-going |
| 15. Prepare all required reports for Town review and submission:   |          |
| a. Quarterly Performance Reports,  |          |
| b. Semi-annual Labor Standards Reports,  |          |
| c. Annual Debarment Report,  | On-going |
| d. Semi-annual Compliance Report, and  |          |
| e. Annual Performance Report (APR).  |          |
| 16. Attend and prepare all files and documents for each Monitoring Visit.  | On-going |
| 17. Prepare grant closeout documents and closeout procedure for the Town review and submission.  | On-going |

### **SECTION 3 - ADDITIONAL SERVICES**

If authorized by the OWNER, the CONSULTANT will furnish or obtain from others additional services of the following types, which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The CONSULTANT and OWNER agree that time is of the essence in order to meet funding deadlines. As such, the OWNER may initiate minor changes in the project scope to be incorporated by the CONSULTANT, subsequent to the permit submittals, as not to impede progress toward the funding application deadlines. No work on any such changes shall occur by the CONSULTANT unless preapproved by the OWNER.
- 3.2 Additional or extended services during construction made necessary by prolongation of the construction contract, award of multiple contracts, or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.3 Providing engineering services for reports, preparation of design/bid documents, bidding, and construction administration necessary for completion of the project.
- 3.4 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.

## **SECTION 4 - OWNERS RESPONSIBILITIES**

**The OWNER shall:**

- 4.1 Resolving and responding to citizens' complaints, concerns, and questions.
- 4.2 Review and execute requisition reports for NC Department of Commerce (CDBG-I).
- 4.3 Provide full information as to the requirements for the Project. Assist the CONSULTANT by placing at his disposal in a timely manner all available information pertinent to the Project including previous documents and any other data relative to the evaluation, design, and construction of the Project.
- 4.4 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions pertinent to the services in this Agreement.
- 4.5 Guarantee access to and make all provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform his services under this Agreement.
- 4.6 Managing financial requisition, reporting and audit requirements. Arranging for annual audit and final audit for the project. Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor will or has used the monies paid to him under the construction contract.
- 4.7 Furnish, or direct the CONSULTANT to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.8 Bear all costs incident to compliance with the requirements of this Section 4, except where Contractor will assume responsibility for the same by agreement of the parties in advance of incurring any such costs.

## **SECTION 5 - PERIOD OF SERVICES**

- 5.1 It is understood that work under this Agreement will commence upon execution and is expected to end upon completion of project closeout or the end of the funding contract, currently set to June 30, 2027, or as may be amended from time to time ("TERM").
- 5.2 Unless this Agreement has been terminated as provided in paragraph 7.1, the CONSULTANT will be obligated to render services hereunder during the TERM. The CONSULTANT may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the CONSULTANT shall provide the OWNER with a written schedule of completion for the services so authorized.
- 5.3 If the Project is delayed significantly for reasons beyond the CONSULTANT's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

## **SECTION 6 - PAYMENT TO THE CONSULTANT**

### **6.1 PAYMENT FOR BASIC SERVICES**

- 6.1.1 The OWNER agrees to pay the CONSULTANT for Basic Services as outlined in Section 2 the following lump sum fees, inclusive of all reimbursable expenditures.  
**South Waynesville Public Water System Improvements  
Grant Administration – \$45,000, Environmental Report - \$8,150, and  
Engineering Report - \$8,150, Total \$61,300.00**

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

- 6.1.2 The OWNER will pay the CONSULTANT for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the CONSULTANT assigned to the Project in accordance with the attached CONSULTANT's standard rate and fee schedule Attachment "8", which is subject to update on an annual basis.

### **6.2 TIMES OF PAYMENT**

- 6.2.1 The OWNER will make prompt monthly payments in response to the CONSULTANT's monthly statements for services rendered under this Agreement.

### **6.3 GENERAL**

- 6.3.1 If the OWNER fails to make any payment due the CONSULTANT on account of his services and expenses within sixty days after receipt of the CONSULTANT's bill therefor, the CONSULTANT may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.
- 6.3.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the CONSULTANT on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the CONSULTANT shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the CONSULTANT will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.
- 6.3.3 If, prior to termination of this Agreement, any work designed or specified by the CONSULTANT, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the CONSULTANT shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

## **SECTION 7 - GENERAL CONDITIONS**

### **7.1 TERMINATION**

- 7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the CONSULTANT becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing ten (10) days written notice to the CONSULTANT of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the CONSULTANT shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the CONSULTANT shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### **7.2 INSURANCE AND CLAIMS**

- 7.2.1 The CONSULTANT shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Such insurance shall be provided by Insurer(s) satisfactory to the OWNER, and evidence of such insurance in the form of an industry-standard ACORD Certificate of Insurance satisfactory to the OWNER shall be delivered to the OWNER on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall require that the OWNER be given written notice at least thirty (30) days in advance of any modification or termination of any insurance coverage.
- 7.2.2 AUTOMOBILE LIABILITY - Bodily injury and property damage liability insurance shall be carried covering all owned, non-owned, and hired automobiles for a limit of not less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence.
- 7.2.3 COMMERCIAL GENERAL LIABILITY - Bodily injury and property damage liability shall be carried to protect the CONSULTANT performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this agreement, whether such operations are performed by CONSULTANT or anyone directly or indirectly working for or on CONSULTANT'S behalf. The amounts of such insurance shall not be less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$2,000,000. This insurance shall include coverage for product / completed operations liability, personal and advertising injury liability, and contractual liability.

- 7.2.4 WORKERS' COMPENSATION - Workers' Compensation Insurance coverage shall be carried meeting the statutory requirements of the State of North Carolina, even if the CONSULTANT is not required by law to maintain such insurance. Said Workers' Compensation Insurance coverage shall have at least the following limits of Employer's Liability coverage - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.
- 7.2.5 EXCESS / UMBRELLA LIABILITY - Excess or Umbrella Liability coverage shall be carried providing coverage above the above stated limits of Automobile Liability, Commercial General Liability, and Workers' Compensation (Employer's Liability) in an amount of not less than \$3,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$3,000,000.

**7.3 SUCCESSORS AND ASSIGNS**

The OWNER and the CONSULTANT each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the CONSULTANT will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the CONSULTANT.

**7.4 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the OWNER and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

**7.5 SEPARABLE PROVISION**

Should any provision of this Agreement be held to be judicially unenforceable for any reason, the remaining provisions shall have full force and effect.

**7.6 NOTICES**

- a. All notices to the Town shall be sent to:  
Rob Hites  
Town Manager Town of Waynesville  
16 South Main Street, PO Box 100  
Waynesville, NC 28786  
828-452-2491  
[rhites@waynesvillenc.gov](mailto:rhites@waynesvillenc.gov)  
:



All notices to CONSULTANT shall be sent to

RJ Mozeley, PE  
Senior Project Manager  
McGill Associates  
1240 19<sup>th</sup> Lane, NW  
Hickory, NC 28601  
828-328-2024  
rj.mozeley@mcgillassociates.com

## 7.7 **DESIGNATED AGENTS**

- a. The designated agent for contact and all matters related to this Agreement for the Town:  
Charam Miller  
Grant Administrator  
Town of Waynesville  
280 Georgia Avenue  
828-456-3515  
[cmiller@waynesvillenc.gov](mailto:cmiller@waynesvillenc.gov)
  
- b. The designated agent for contact and all matters related to this Agreement for McGill Associates:  
Karen Kiehna  
Grant Administrator  
McGill Associates  
55 Broad St.  
Asheville, NC 28801  
828-252-0575  
[karen.kiehna@mcgillassociates.com](mailto:karen.kiehna@mcgillassociates.com)

## 7.8 **SAFETY**

The parties hereby acknowledge that safety issues are of key importance to the Town and therefore CONSULTANT agrees to comply with all applicable safety policies and procedures of CONSULTANT, as well as those that are standard in the industry or service that is the subject of this Agreement, and CONSULTANT hereby agrees to fully indemnify Town and hold it harmless for any claims, liabilities, debts, or causes of action arising from CONSULTANT'S actions or inactions that are outside of the scope of this limited authority.

## 7.9 **E-VERIFY PROVISION**

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the CONSULTANT named below, and the CONSULTANT'S sub-Consultants, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. E-Verify System:



**7.10 INDEMNIFICATION**

- a. To the extent allowed by law, the CONSULTANT agrees to indemnify, hold harmless and defend the Town as well as its directors, officers, employees, and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the CONSULTANT or its employees or agents in performing or failing to perform any of its obligations under this Agreement.
  
- b. To the extent allowed by law, the Town agrees to indemnify, hold harmless and defend the CONSULTANT as well as its directors, officers, employees, and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the Town or its employees or agents in performing or failing to perform any of its obligations under this Agreement.

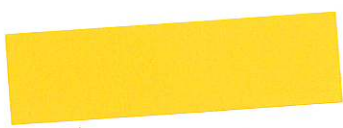
**McGILL ASSOCIATES, P.A.**

By: Mark Cathey  
Mark Cathey  
VP/Principal/Regional Manager

(SEAL)

**TOWN OF WAYNESVILLE**

By: Rob Hites  
Rob Hites  
Town Manager



ATTEST: \_\_\_\_\_

**PRE-AUDIT CERTIFICATION:**

**THIS INSTRUMENT** has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: \_\_\_\_\_  
Finance Officer

**APPROVED AS TO LEGAL FORM:**

By: \_\_\_\_\_  
Town Attorney

**ATTACHMENT "A"**  
**PROJECT UNDERSTANDING**  
**Town of Waynesville – South Waynesville Water System**  
**Improvements**

**Project Description**

The project involves the upgrade and replacement of a portion of the existing public water system in South Waynesville starts at the intersection of Hendrix Street and Sawyer Street and follows Sawyer Street south to the dead end of Sawyer Street. The project area is in the former Town of Hazelwood, which was annexed into the Town of Waynesville in 1995. The existing Sawyer Street Public Water System ends at the third residential housing unit, (before the Sawyer Street Mobile Home Park).

The project will include the extension of the Waynesville Public Water System from the current end to the most southern end of Sawyer Street and the length of Explorer Street. The project will install 1,255 LF of 6" DIP Water Main of new extension along Sawyer Street and Explorer Street and 2" PVC Water Main. Connection of 25 LMI residential water service lines and 4 new fire hydrants. LMI benefits include 24 new LMI (100%) eligible water service connections, reconnection of 4 existing water service reconections. All water line replacement and new sewer extension activities will be along Sawyer Street in addition to new sewer line extension along Explorer Street.

The project will serve 4 existing water sewer served residences and 34 new residences, That were previously served by a 2-inch private water line that served the mobile home park, which are all located along Sawyer Street and Explorer Street. All new connections are within the Sawyer Street mobile home park.

All 34 of the new sewer service lines connecting to new 6" water line and are within the Sawyer Street mobile home park, and 24 of those new service connections will serve existing LMI households. The project area has 70.02 percent of low- and moderate-income persons.

This project is being funded by a Community Development Block Grant from NC Department of Environmental Quality Division of Water Infrastructure, CDBG I Unit in the Amount of **\$613,500 and Town of Waynesville \$54,000.**

## Findings Confidential

Any reports, information, data, etc., given to or prepared or assembled by the Consultant under this contract which the Town requests to be kept confidential shall not be made available to any individual or organization other than the Town, unless the Consultant is required by law to make said item or items available.

Further, the parties acknowledge and agree that the very nature of an independent contracting relationship exposes the Town to an even greater risk of improper disclosure of confidential information. Therefore, Consultant agrees not only not to disclose any of this information, but to take all measures necessary to ensure that an inadvertent disclosure of such information is not possible.

### **8. Section 3 Clause**

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not

subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**10. Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- a. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- b. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- c. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with

Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- d. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- f. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- g. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act. as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- i. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- j. See §200.322 Procurement of recovered materials.

# ATTACHMENT "B"

## BASIC FEE SCHEDULE

July 2024

<b>PROFESSIONAL FEES</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
Senior Principal	\$300			
Principal – Regional Manager – Director	\$245	\$255	\$280	\$290
Practice Area Lead	\$220	\$240	\$270	\$280
Senior Project Manager	\$220	\$235	\$260	\$270
Senior Engineer	\$220	\$235	\$260	\$270
Project Manager	\$190	\$205	\$210	\$215
Senior Project Engineer	\$190	\$205	\$210	\$215
Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$135	\$140	\$145	\$150
Planner- Consultant – Designer	\$140	\$150	\$175	\$190
Engineering Technician	\$120	\$135	\$140	\$150
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$155	\$165	\$180	\$200
Construction Administrator	\$130	\$145	\$155	\$165
Financial Services Manager	\$140	\$150	\$160	\$170
Grant Administrator	\$125	\$140	\$150	\$160
Construction Field Representative	\$105	\$115	\$125	\$140
Environmental Specialist	\$105	\$115	\$120	\$125
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

### EXPENSES

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. Robotics/GPS Equipment: \$30/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

### ASSOCIATED SERVICES

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.



**ATTACHMENT "C"**  
**REQUIRED SUPPLEMENTARY CLAUSES, TERMS AND CONDITIONS**

**1. Conflict of Interest (2 CFR Part §200.318 General procurement standards)**

Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

**2. Nondiscrimination Clause = Section 109, Housing and Community Development Act of 1974**

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.

**3. Age Discrimination Act of 1975, as amended - Nondiscrimination on the Basis of Age**

No qualified person shall on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

**4. Section 504 of the Rehabilitation Act of 1973, as amended - Nondiscrimination on the Basis of Disability**

No qualified disabled person shall on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

**5. Access to Records and Record Retainage Clause**

- a. In general, all official project records and documents must be maintained during the operation of this project and for a period of five (5) years following closeout in compliance with 24 CFR §570.490.
- b. The North Carolina Department of the Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and the .NC Department of Environmental Quality, or any of their

duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

## **6. Lobbying Clauses**

### **Required by Section 1352, Title 31, U.S. Code**


- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

## **7. Legal Remedies Provision and Termination Provision**

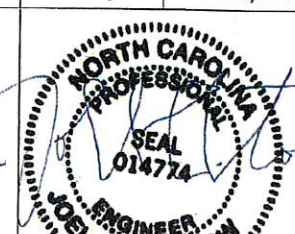
- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Contract, the Local Government shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, the Contractor shall be entitled to receive just and equitable compensation for all satisfactorily completed work. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner and Local Government for damages sustained by the Owner and Local Government by virtue of any breach of the Contract by the Contractor, and the Local Government may withhold any payments to the Contractor for the purpose of set-off until such time as the amount of damages due the Local Government from the Contractor is determined.

## ATTACHMENT "D" PROJECT BUDGET

**8a. Project Budget for All Construction Projects and for Emerging Contaminants Evaluation/Assessment Studies** Do not use for other planning studies.

Indicate construction costs by line item (e.g., linear feet of different-sized lines, each type of stormwater control measure, each stream restoration reach). Include a more detailed construction cost budget if needed.	Division Funding Requested	Other Secured Funding Source(s)	Total Cost Amount
<b><u>Construction Costs</u></b>			
Mobilization	\$13,900		\$13,900
6" DIP Water Main	\$150,600		\$150,600
2" PVC Water Main	\$8,600		\$8,600
Water Meter Assembly (37 units)	\$44,400	\$54,000	\$166,500
LMI Water Service Connections (24 LMI Housing Units)	\$120,000		\$120,000
Fire Hydrant	\$31,600		\$31,600
6" Compact DI Fittings	\$9,000		\$9,000
6" Gate Valve	\$14,000		\$14,000
<i>Contingency (10% of construction costs):</i>	\$39,200		\$39,200
<b><i>Construction Subtotal:</i></b>	<b><i>431,300</i></b>	<b><i>54,000</i></b>	<b><i>485,300</i></b>
<b><u>Engineering Costs</u></b>			
Engineering Design and Permitting	\$58,700		\$58,700
Bid and Award	\$6,900		\$6,900
Land Surveying Costs	\$8,000		\$8,000
Construction Observation and Administration	\$44,300		\$44,300
Other: Legal	\$3,000		\$3,000
<b><i>Engineering Subtotal:</i></b>	<b><i>120,900</i></b>		<b><i>120,900</i></b>
<b><u>Administration Costs</u></b>			
Engineering Report Preparation	\$8,150		\$8,150
Environmental Documentation Preparation (if applicable)	\$8,150		\$8,150
Project Funding Administration (if applicable)	\$45,000		\$45,000
<b><i>Administration Subtotal:</i></b>	<b><i>\$61,300</i></b>		<b><i>\$61,300</i></b>
<b>TOTAL FUNDING REQUESTED AND PROJECT COST:</b>	<b>\$613,500</b>	<b>\$54,000</b>	<b>\$667,500</b>
<p>A Professional Engineer seal, signature, and date for the estimate <i>must be provided</i> in the space to the right for the application to be considered complete.            (Note: If not using DocuSign to seal and sign the budget, put the seal/signature on the Word document or use a wet seal/signature with a scan of the wet seal/signature.)</p>			

## ATTACHMENT "D" PROJECT BUDGET

8a. Project Budget for All Construction Projects and for Emerging Contaminants Evaluation/Assessment Studies <i>Do not use for other planning studies.</i>			
Indicate construction costs by line item (e.g., linear feet of different-sized lines, each type of stormwater control measure, each stream restoration reach). Include a more detailed construction cost budget if needed.	Division Funding Requested	Other Secured Funding Source(s)	Total Cost Amount
<b>Construction Costs</b>			
Mobilization	\$13,900		\$13,900
6" DIP Water Main	\$150,600		\$150,600
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Water Meter Assembly (37 units)	\$44,400	\$54,000	\$166,500
LMI Water Service Connections (24 LMI Housing Units)	\$120,000		\$120,000
Fire Hydrant	\$31,600		\$31,600
6" Compact DI Fittings	\$9,000		\$9,000
6" Gate Valve	\$14,000		\$14,000
<i>Contingency (10% of construction costs):</i>	\$39,200		\$39,200
<b>Construction Subtotal:</b>	<b>431,300</b>	<b>54,000</b>	<b>\$485,300</b>
<b>Engineering Costs</b>			
Engineering Design and Permitting	\$58,700		\$58,700
Bid and Award	\$6,900		\$6,900
Land Surveying Costs	\$8,000		\$8,000
Construction Observation and Administration	\$44,300		\$44,300
Other: Legal	\$3,000		\$3,000
<b>Engineering Subtotal:</b>	<b>120,900</b>		<b>120,900</b>
<b>Administration Costs</b>			
Engineering Report Preparation	\$8,150		\$8,150
Environmental Documentation Preparation (if applicable)	\$8,150		\$8,150
Project Funding Administration (if applicable)	\$45,000		\$45,000
<b>Administration Subtotal:</b>	<b>\$61,300</b>		<b>\$61,300</b>
<b>TOTAL FUNDING REQUESTED AND PROJECT COST:</b>	<b>\$613,500</b>	<b>\$54,000</b>	<b>\$667,500</b>
<p>A Professional Engineer seal, signature, and date for the estimate <i>must be provided</i> in the space to the right for the application to be considered complete.                      (Note: If not using DocuSign to seal and sign the budget, put the seal/signature on the Word document or use a wet seal/signature with a scan of the wet seal/signature.)</p>			

23-I-4153

3-11-24

## **AGREEMENT FOR ENGINEERING SERVICES**

This Agreement made and entered into this the 1<sup>st</sup> day of August 2024 by and between the Town of Waynesville (OWNER) and McGill Associates, P.A. (ENGINEER).

WHEREAS, the OWNER proposes to do certain work toward the accomplishment of the Project entitled **South Waynesville Phase II Sewer Improvements (CDBG # 25-I-4154)** and

WHEREAS, the ENGINEER desires to provide professional services in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

### **SECTION 1 - GENERAL SERVICES**

**The ENGINEER shall:**

- 1.1** The ENGINEER shall, as directed by the OWNER, provide professional engineering services for the OWNER in appropriate phases of the PROJECT; serve as OWNER's professional engineering representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder.
  
- 1.2** The ENGINEER shall provide appropriate personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER. All appropriate services rendered hereunder shall be performed by the ENGINEER or under his/her supervision and the personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER.
  
- 1.3** The ENGINEER shall assist the OWNER in pursuing approvals and permits from appropriate governmental authorities having jurisdiction over the Project, unless otherwise agreed to herein.

- 1.4** The ENGINEER shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided.
- 1.5** The ENGINEER shall comply with appropriate existing federal, state and local laws and regulations regarding equal employment opportunity. The ENGINEER is further obligated to include appropriate requirements hereunder in any subcontract written by him/her in association with this Agreement.
- 1.6** The Engineer shall comply with the CDBG Contract Provisions included in the attached Exhibit "B".



## SECTION 2 - BASIC SERVICES

### **2.1 ENGINEERING DESIGN/PERMITTING/SURVEYING:**

#### **2.1.1 PROJECT DESCRIPTION:** The project includes:

- Installation of approximately 2,500 linear feet of 8-inch sanitary sewer collection line and associated manholes along Hendrix, Franklin, and Muse Streets, 42 sanitary sewer service connections, and all other associated appurtenances and surface restoration.

2.1.2 Consult with the OWNER to determine the OWNER's requirements for the project and to discuss the possible phasing, coordination, approvals and other preliminary matters.

2.1.3 Coordinate and conduct an initial design coordination meeting with any other applicable parties as needed for the purpose of defining the project schedule, coordinate various plans and improvements and discuss pertinent matters related to the project and the location of the proposed project components.

2.1.4 Prepare the complete bid documents, contract documents, technical specifications and construction drawings to detail the character and scope of the work including design functions, surveying, and coordination for construction sequencing of the project as determined in an initial scoping meeting.

2.1.5 Review the design documents as described above with the OWNER for comments and approval throughout the design process.

2.1.6 Assist the OWNER in pursuing approval of the final design documents from such governmental agencies as have jurisdiction over the project or any portion thereof. These include the North Carolina Department of Environmental Quality Division of Water Resources and Division of Water Infrastructure and a possible railway encroachment modification with the appropriate rail carrier.

2.1.7 Provide plans and specifications to assist the OWNER in pursuing encroachment agreements from public bodies necessary for satisfactory construction of the project.

2.1.8 Coordinate the provision of any subsurface or structural investigations or other types of testing and analysis needed for proper design within the initial scope of the project. Actual cost of investigations performed are to be paid separately by the Owner or shall be considered additional services.

- 2.1.9 Advise the OWNER of any adjustment of the project cost caused by changes in scope, design requirements or construction costs and furnish a revised cost estimate based on the final design documents.
- 2.1.10 Furnish copies of the final design documents as required to accomplish the design phase.

## **2.2 BIDDING AND AWARD**

Note: This Agreement is based on all work being included in one (1) single construction contract and one (1) bid period and bid opening. If multiple bid openings are required, the ENGINEER will be compensated as described in Section 3, Additional Services.

- 2.2.1 Assist the OWNER in advertising, receiving, opening and evaluating bids.
- 2.2.2 Coordinate public bid advertisement issuance. Actual publication costs to be paid separately by the OWNER.
- 2.2.3 Coordinate the distribution of bid documents to prospective bidders.
- 2.2.4 Attend a pre-bid conference and prepare meeting minutes.
- 2.2.5 Respond to bidder questions and prepare and coordinate issuance of Addenda as required.
- 2.2.6 Consult with and advise the OWNER as to the acceptability of Contractors who submit bids and make recommendations as to the lowest responsive and responsible bidder.
- 2.2.7 Assist the OWNER in the preparation of the Notice of Award to the selected Contractor.
- 2.2.8 Assist the OWNER in the final preparation and execution of construction contracts and in checking Performance and Payment Bonds and Insurance Certificates for compliance.
- 2.2.9 Schedule a preconstruction conference with the OWNER, Contractor, ENGINEER and other applicable parties.

## **2.3 CONSTRUCTION OBSERVATION AND ADMINISTRATION:**

- 2.3.1 Provide periodic project observation to monitor the progress and quality of the executed work and to determine, in general, if the work is proceeding



in accordance with the Contract Documents, and during such visits and on the basis of on-site observations by an experienced and qualified professional, keep the OWNER informed of the progress of the work, endeavor to guard the OWNER against defects and deficiencies in the work of the Contractor(s) and disapprove or reject any work failing to conform to the Contract Documents. This Agreement is based on an assumed construction time of 180 calendar days and further assumes that site visits will be made approximately three (3) days per week on average for the construction period. A total of six progress meetings are included based on the assumed construction period.

- 2.3.2 Coordinating construction materials testing, as required. Any materials testing fees will be paid directly by the Owner.
- 2.3.3 Prepare change orders as required and require special inspection or testing of the work if necessary.
- 2.3.4 Review for approval shop drawings, diagrams, illustrations, brochures, catalog data, schedules and samples, the results of tests and inspections and other data which any Contractor is required to submit, and receive and review schedules, guarantees, bonds and certificates of inspection which are to be assembled by the Contractor(s) in accordance with the Contract Documents.
- 2.3.5 Based on on-site observations by an experienced and qualified professional and on review of the Contractor applications for payment and supporting data, determine the amount owing to the Contractor(s) and approve to the OWNER payment to the Contractor(s) in such amounts; based on such observations and review, that the work has progressed to the point indicated and that to the best of his knowledge, information and belief the quality of the work is in accordance with the Contract Documents.
- 2.3.6 Conduct a final site visit with applicable parties to determine if the project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled his obligations as appropriate thereunder so that the ENGINEER may recommend for approval to the OWNER final payment to each Contractor.
- 2.3.7 Prepare for the OWNER a set of reproducible record prints of drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished to the ENGINEER.
- 2.3.8 Prepare the Engineer's certification for completion of the project and submit the certification on behalf of the OWNER to the appropriate agencies.

2.3.9 Provide or make available to the OWNER appropriate project files and information to effect project closeout.

### **SECTION 3 - ADDITIONAL SERVICES**

If Authorized by the OWNER, the ENGINEER will furnish or obtain from others additional services of the following types which are not considered Basic Services under this Agreement.

- 3.1** Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, change orders, or character of construction.
- 3.2** Revising previously approved studies, reports, design documents, drawings or specifications, when such revisions are due to causes beyond the control of the ENGINEER.
- 3.3** Preparing or assisting with additional funding applications besides that described in this Agreement.
- 3.4** Preparing additional engineering reports besides that described in this Agreement.
- 3.5** Providing bidding services related to multiple bidding periods and bid openings.
- 3.6** Preparing documents for alternate bids requested by the OWNER for work which is not executed or documents for out-of-sequence work.
- 3.7** Additional or extended services during construction made necessary by prolongation of the construction contract or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.8** Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.
- 3.9** Payment of bid advertisement publication fees, permit application fees, or any other fees.
- 3.10** Design revisions needed to accommodate changes requested by the OWNER during easement acquisitions, or after design alignments have been previously agreed upon by the OWNER.
- 3.11** Additional services in connection with the Project, including services normally furnished by the OWNER and services not otherwise provided for

in this Agreement.

- 3.12** Preparation of environmental assessment, environmental impact statements, archaeological or biological surveys, US Fish and Wildlife Service formal consultation, or any other environmental surveys or investigations not specifically described in the Basic Services.
- 3.13** Assisting the OWNER in pursuit of compliance with the construction work warranty period.
- 3.14** Geotechnical or subsurface investigations costs.
- 3.15** Sewer line closed circuit television video inspections and sewer line cleaning.
- 3.16** Assisting the OWNER with the OWNER Responsibilities described in Section 4 of this Agreement.
- 3.17** Material testing fees.

## **SECTION 4 - OWNERS RESPONSIBILITIES**

**The OWNER shall:**

- 4.1** Provide full information as to his requirements for the Project.
- 4.2** Assist the ENGINEER by placing at his/her disposal all available information pertinent to the Project including previous documents and any other data relative to evaluation, design and construction of the Project.
- 4.3** Furnish the ENGINEER any existing data and information for property boundary, easement, right-of-way, topographic and utility surveys; zoning and deed restriction; all of which the ENGINEER may rely upon in performing his/her services under this Agreement.
- 4.4** Guarantee access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform his/her services under this Agreement.
- 4.5** Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by the ENGINEER and render decisions and comments pertaining thereto within a reasonable time so as not to delay the services of the ENGINEER.
- 4.6** Pay for all costs incident to obtaining bids or proposals from Contractors, including bid advertisement publication costs.
- 4.7** Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor has used the monies paid to him/her under the construction contract.
- 4.8** Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.
- 4.9** Give prompt notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project.

- 4.10** Bear costs associated with permit application fees, and furnish approvals and permits from appropriate governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project, subject to the obligations of the ENGINEER outlined in Section 1.3 of this Agreement.
- 4.12** Geotechnical or subsurface investigations costs; material testing fees.
- 4.13** Costs associated with sewer line closed circuit television video inspections and sewer line cleaning.
- 4.14** Furnish, or direct the ENGINEER to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.15** Bear all costs incident to compliance with the requirements of this Section 4.

## **SECTION 5 - PERIOD OF SERVICES**

- 5.1** Unless this Agreement has been terminated as provided in paragraph 7.1, the ENGINEER will be obligated to render services hereunder for a period which may reasonably be required for the services described herein. The ENGINEER may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the ENGINEER shall provide the OWNER with a written schedule of completion for the services so authorized if requested.
- 5.2** If the design or construction of the Project is delayed significantly for reasons, including costs of construction, beyond the ENGINEER's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation. It is expressly understood by all parties to the Agreement that a delay of several months may occur between completion of design and commencement of construction. This shall not be considered significant.

## SECTION 6 - PAYMENT TO THE ENGINEER

### **6.1 PAYMENT FOR BASIC SERVICES**

6.1.1 The OWNER will pay the ENGINEER for Basic Services as outlined in Section 2 shown below. All fees are lump sum unless otherwise noted.

Engineering Design/Permitting/Surveying (Section 2.1)	\$128,000
Bidding and Award Phase (Section 2.2):	\$ 12,000
Construction Observation and Administration (Sections 2.3):	\$ 77,000

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

6.2.1 The OWNER will pay the ENGINEER for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the ENGINEER assigned to the Project in accordance with the ENGINEER'S most recent Basic Fee Schedule, should any of these services be requested by the OWNER.

### **6.3 TIMES OF PAYMENT**

6.3.1 The OWNER will make prompt monthly payments in response to the ENGINEER's monthly detailed statements for all services rendered under this Agreement. Payments are due within thirty (30) days of receipt of invoice.

### **6.4 GENERAL**

6.4.1 If the OWNER fails to make any payment due the ENGINEER on account of his services and expenses within sixty (60) days after receipt of the ENGINEER's invoice therefor, the ENGINEER may, after giving seven (7) days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.

6.4.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the ENGINEER on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the ENGINEER shall be paid for services rendered on the basis of his reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the ENGINEER will be paid for all his reasonable expenses resulting from such termination, and



for any unpaid reimbursable expenses.

- 6.4.3 If, prior to termination of this Agreement, any work designed or specified by the ENGINEER, under Section 2, is suspended in whole or in part for more than three (3) months or is abandoned, after written notice from the OWNER, the ENGINEER shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.
- 6.4.4 The ENGINEER shall be entitled to adjust annually the Basic Fee Schedule utilized for ENGINEER's services.

## **SECTION 7 - GENERAL CONDITIONS**

### **7.1 TERMINATION**

7.1.1 In the event the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the ENGINEER shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the ENGINEER shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the ENGINEER becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing ten (10) business days written notice to the ENGINEER of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) business days the ENGINEER shall have the opportunity to remedy such failures or violations to avoid such termination.

7.1.2 In the event of termination, as provided herein, the ENGINEER shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### **7.2 OWNERSHIP OF DOCUMENTS**

7.2.1 All documents, including original drawings, estimates, specifications, field notes and data are and remain the property of the ENGINEER as instruments of service. The OWNER shall be provided a set of reproducible record prints of drawings, and copies of other documents, in consideration of which the OWNER will use them solely in connection with the Project, and not for the purpose of making subsequent extensions or enlargements hereto and not for resale. Re-use for extension of the Project, or for new projects shall require written permission of the ENGINEER and shall entitle him to further compensation at a rate to be agreed upon by OWNER and ENGINEER at the time of such re-use.

### **7.3 DISPUTE RESOLUTION**

7.3.1 OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of paragraph 7.3.2 or other provisions of this Agreement or exercising their rights of law. If the parties fail to resolve a dispute through negotiation, then either or both may invoke the procedures of paragraph 7.3.2 of this Agreement.

- 7.3.2 Mediation: OWNER and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or breach thereof to mediation by a party mutually agreed to be both the OWNER and the ENGINEER. OWNER and ENGINEER agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within calendar 120 days. If such mediation is unsuccessful in resolving a dispute, then (1) the parties may mutually agree to a dispute resolution procedure of their choice, or (2) either party may seek to have the dispute resolved by a court of competent jurisdiction.

#### **7.4 ESTIMATES**

- 7.4.1 Since the ENGINEER has no control over the cost of labor, materials, or equipment, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his/her estimates for cost for the Project provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her best judgement as a design professional familiar with the construction industry, but the ENGINEER cannot and does not guarantee that proposals, bids or the Project construction cost will not vary from cost estimates prepared by him/her.
- 7.4.2 If the lowest bona fide proposal or bid exceeds the established Project construction cost limit, the OWNER will (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the project within a reasonable time, or (3) direct the ENGINEER to modify the drawings and specifications as necessary to bring the Project construction cost within the cost limit. The providing of such service shall be the limit of the ENGINEER's responsibility in this regard and having done so, the ENGINEER shall be entitled to payment for his/her services in accordance with this Agreement.

#### **7.5 INSURANCE AND CLAIMS**

7.5.1 The ENGINEER will secure and maintain such insurance as will protect him/her from claims under workmen's compensation acts, claims for damages because of bodily injury including personal injury, sickness, or disease, or death of any of his employees or of any person other than his/her employees, and from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom. Said insurance policy or policies shall be written by a company or companies and in a form and substance approved by the OWNER prior to the policies being put into

effect and shall be in an amount not less than one million dollars (\$1,000,000).

**7.6 SUCCESSORS AND ASSIGNS**

The OWNER and the ENGINEER each binds himself/herself and his/her partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the ENGINEER will assign, sublet or transfer his/her interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the ENGINEER.

**7.7 SEVERABILITY AND WAIVER**

If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative.

**7.8 GOVERNING LAW**

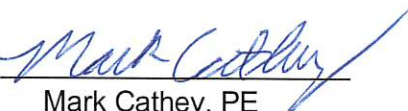
The law of the State of North Carolina shall govern this Agreement and the legal relations of the parties.

7.9 **ENTIRE AGREEMENT**

7.9.1 This Agreement constitutes the entire agreement between the OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, or modified by a duly executed written instrument.

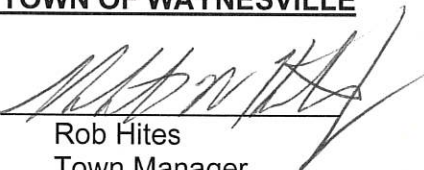
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

**ENGINEER: MCGILL ASSOCIATES, P.A.**

By:   
Mark Cathey, PE  
Vice President, Regional Manager,  
Principal

**OWNER: TOWN OF WAYNESVILLE**

(SEAL)

By:   
Rob Hites  
Town Manager



ATTEST: \_\_\_\_\_

**PRE-AUDIT CERTIFICATION:**

**THIS INSTRUMENT** has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: \_\_\_\_\_  
Finance Officer

**APPROVED AS TO LEGAL FORM:**

By: \_\_\_\_\_  
Town Attorney

**EXHIBIT "A"**

**BASIC FEE SCHEDULE**

**July 2024**

<b>PROFESSIONAL FEES</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
Senior Principal	\$300			
Principal – Regional Manager – Director	\$245	\$255	\$280	\$290
Practice Area Lead	\$220	\$240	\$270	\$280
Senior Project Manager	\$220	\$235	\$260	\$270
Senior Engineer	\$220	\$235	\$260	\$270
Project Manager	\$190	\$205	\$210	\$215
Senior Project Engineer	\$190	\$205	\$210	\$215
Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$135	\$140	\$145	\$150
Planner- Consultant – Designer	\$140	\$150	\$175	\$190
Engineering Technician	\$120	\$135	\$140	\$150
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$155	\$165	\$180	\$200
Construction Administrator	\$130	\$145	\$155	\$165
Financial Services Manager	\$140	\$150	\$160	\$170
Grant Administrator	\$125	\$140	\$150	\$160
Construction Field Representative	\$105	\$115	\$125	\$140
Environmental Specialist	\$105	\$115	\$120	\$125
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

**EXPENSES**

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. Robotics/GPS Equipment: \$30/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

**ASSOCIATED SERVICES**

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

## EXHIBIT "B"

### CDBG CONTRACT PROVISIONS

#### Conflict of Interest (2 CFR Part §200.318 General procurement standards)

Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.

#### Nondiscrimination Clause - Section 109, Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.

#### Age Discrimination Act of 1975, as amended - Nondiscrimination on the Basis of Age

No qualified person shall on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

#### Section 504 of the Rehabilitation Act of 1973, as amended - Nondiscrimination on the Basis of Disability

No qualified disabled person shall on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

#### Access to Records and Record Retainage Clause

In general, all official project records and documents must be maintained during the operation of this project and for a period of three years following closeout in compliance with 24 CFR §570.490.

The North Carolina Department of the Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and the NC Department of

Environmental Quality, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

## Lobbying Clauses

### Required by Section 1352, Title 31, U.S. Code

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.



## Legal Remedies Provision and Termination Provision

Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts under Federal Awards Contracts. *other than small purchases shall contain provisions or conditions which will apply for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate.*

- 1) Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts under Federal Awards. *All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.*

### Section 3 Clause

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implements section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or

knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and

implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)--A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

## **AGREEMENT FOR CONSULTING SERVICES**

This AGREEMENT, made and entered into this the \_\_\_\_\_ day of August 2024, by and between **Town of Waynesville** (OWNER) and **McGill Associates, P.A.** (CONSULTANT).

WHEREAS, the OWNER. proposes to do certain work toward the accomplishment of the Project entitled **Town of Waynesville CDBG-Infrastructure- South Waynesville Phase II Sanitary Sewer Improvements (CDBG # 23-I-4154)**, which has been. assigned as generally described in Attachment "A", and

WHEREAS, the CONSULTANT desires to provide grant administration services in accordance with this Agreement, which is being funded by a Community Development Block Grant, and therefore the conditions included in Attachment "C" applies, and

NOW, THEREFORE, in consideration of the mutual covenants and benefits contained herein, it is hereby mutually understood and agreed as follows:

### **SECTION 1 - GENERAL SERVICES**

#### **The CONSULTANT shall:**

- 1.1 The CONSULTANT shall, as directed by the OWNER, provide professional consulting services for the OWNER in all phases of the Project; serve as OWNER's professional consulting representative for the Project; and shall give professional consultation and advice to OWNER during the performance of the services hereunder. The CONSULTANT shall designate a representative to be the central point of contact with the OWNER during the work included herein.
- 1.2 The CONSULTANT shall provide all personnel required in performing the Project unless otherwise provided herein. Such personnel shall not be employees of or have any contractual relationship with the OWNER All services rendered hereunder shall be performed by the CONSULTANT or under his supervision and all personnel engaged in the Project shall be fully qualified under North Carolina law to perform such services. None of the services covered by this Agreement shall be subcontracted without the prior approval of the OWNER
- 1.3 The CONSULTANT shall seek and obtain authorization from the OWNER or the OWNER's assignee before proceeding with the Project, or before performing any Additional Services as described in Section 3, or before performing any other services which would not be included in the fee for Basic Services set forth in Section 6 hereof, subject to OWNER's right to terminate as herein provided..
- 1.4 The CONSULTANT shall comply with all existing federal, state and local laws and regulations regarding equal employment opportunity. The CONSULTANT is further obligated to include all requirements hereunder in any subcontract written by him in association with this Agreement.

## **SECTION 2 - BASIC SERVICES**

<b>ITEM</b>	<b>SCHEDULE</b>
1. Assist in the completion of: An Environmental Report in accordance with NC Department of Commerce guidelines and notices and request for release of funds.	TBD at Grant Startup
2. Attend all program Workshops and Training.	
3. Assist the Town in developing and/or revising Compliance Documents.	TBD at Grant Startup
<ul style="list-style-type: none"><li>a) Citizen Participation Plan, with virtual meeting language,</li><li>b) Code of Conduct Resolution,</li><li>c) Draft Project Ordinance,</li><li>d) Compliance Procedures,</li><li>e) Financial Management Plan</li><li>f) Equal Opportunity and Procurement Plan,</li><li>g) Section 3 Local Economic Benefit Plan,</li><li>h) Section 504 Self-evaluation Survey and Transition Plan,</li><li>i) Section 504 ADA Grievance, and Transition Plan,</li><li>j) Residential Anti-displacement and Relocation Plan,</li><li>k) Fair Housing Activities Plan,</li><li>l) Fair Housing Complaint Procedure,</li><li>m) Fair Housing Assessment and Analysis of Impediments for populations greater than 10,000,</li><li>n) Language Access Plan,</li><li>o) Language Access Plan - Four Factor Analysis,</li><li>p) Procurement Policy,</li><li>q) Floodplain Documentation,</li><li>r) Optional Coverage Relocation Benefit Policy,</li><li>s) Conflict of Interest and Ethics Statement, and</li><li>t) Complaint, Grievance, and Compliance Statement.</li></ul>	
4. Setup all official Grant records and project management files.	On-going
5. Coordinate with Town for the solicitation of contractor for construction	On-going
6. Report on Quarterly Fair Housing Activities.	On-going
7. Complete Solicitation and reporting on use of minority, female and local contractors and workers	On-going
8. Reporting on benefits, construction activities, and financial transactions.	On-going

- |  |          |
|--|----------|
| 9. Reporting on benefits, construction activities, and financial transactions. On-going  | On-going |
| 10. Document and Report Section 3 Solicitation and Participation   | On-going |
| 10. In coordination with the Town's Project Manager, complete pre-construction conferences and complete meeting minutes.   | On-going |
| 11. In coordination with the Town's Project Manager, complete site monitoring, review and approval of all change orders, and process all requests for payments   | On-going |
| 12. Complete all Davis Bacon Requirements including: <ul style="list-style-type: none"> <li>a. Secure Wage rates,</li> <li>b. Complete Employee Interviews, and</li> <li>c. Review all Payroll Reports.</li> </ul>   | On-going |
| 13. Assist in resolving and responding to citizens' complaints, concerns and questions.  | On-going |
| 14. Assist Town Staff in meeting NC Commerce CDBG-NR Staff in: <ul style="list-style-type: none"> <li>a. Contact for questions/procedures,</li> <li>b. Interpretation of regulations and bulletins,</li> <li>c. Preparation for monitoring visits and responding to findings,</li> <li>d. Preparation of required reports, financial requisitions, and reports in conjunction with Town's financial staff, including annual report.</li> </ul> | On-going |
| 15. Prepare all required reports for Town review and submission: <ul style="list-style-type: none"> <li>a. Quarterly Performance Reports,</li> <li>b. Semi-annual Labor Standards Reports,</li> <li>c. Annual Debarment Report,</li> <li>d. Semi-annual Compliance Report, and</li> <li>e. Annual Performance Report (APR).</li> </ul>   | On-going |
| 16. Attend and prepare all files and documents for each Monitoring Visit.  | On-going |
| 17. Prepare grant closeout documents and closeout procedure for the Town review and submission.  | On-going |

### **SECTION 3 - ADDITIONAL SERVICES**

If authorized by the OWNER, the CONSULTANT will furnish or obtain from others additional services of the following types, which are not considered Basic Services under this Agreement.

- 3.1 Additional services resulting from significant changes in general scope of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, or character of construction. The CONSULTANT and OWNER agree that time is of the essence in order to meet funding deadlines. As such, the OWNER may initiate minor changes in the project scope to be incorporated by the CONSULTANT, subsequent to the permit submittals, as not to impede progress toward the funding application deadlines. No work on any such changes shall occur by the CONSULTANT unless preapproved by the OWNER.
- 3.2 Additional or extended services during construction made necessary by prolongation of the construction contract, award of multiple contracts, or default by the Contractor under any prime construction contract if such construction contract is delayed beyond the original completion date.
- 3.3 Providing engineering services for reports, preparation of design/bid documents, bidding, and construction administration necessary for completion of the project.
- 3.4 Preparing to serve or serving as a witness for the OWNER in any litigation, condemnation or other legal or administrative proceeding involving the Project.



## **SECTION 4 - OWNERS RESPONSIBILITIES**

**The OWNER shall:**

- 4.1 Resolving and responding to citizens' complaints, concerns, and questions.
- 4.2 Review and execute requisition reports for NC Department of Commerce (CDBG-I).
- 4.3 Provide full information as to the requirements for the Project. Assist the CONSULTANT by placing at his disposal in a timely manner all available information pertinent to the Project including previous documents and any other data relative to the evaluation, design, and construction of the Project.
- 4.4 Designate a person to act as OWNER's representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions pertinent to the services in this Agreement.
- 4.5 Guarantee access to and make all provisions for the CONSULTANT to enter upon public and private property as required for the CONSULTANT to perform his services under this Agreement.
- 4.6 Managing financial requisition, reporting and audit requirements. Arranging for annual audit and final audit for the project. Provide such legal, accounting and insurance counseling services as may be required for the Project, and such auditing services as may be required to ascertain how or for what purpose any Contractor will or has used the monies paid to him under the construction contract.
- 4.7 Furnish, or direct the CONSULTANT to provide necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.
- 4.8 Bear all costs incident to compliance with the requirements of this Section 4, except where Contractor will assume responsibility for the same by agreement of the parties in advance of incurring any such costs.

## **SECTION 5 - PERIOD OF SERVICES**

- 5.1 It is understood that work under this Agreement will commence upon execution and is expected to end upon completion of project closeout or the end of the funding contract, currently set to June 30, 2027, or as may be amended from time to time ("TERM").
- 5.2 Unless this Agreement has been terminated as provided in paragraph 7.1, the CONSULTANT will be obligated to render services hereunder during the TERM. The CONSULTANT may decline to render further services hereunder if the OWNER fails to give prompt approval of the various phases as outlined. Upon receiving a written authorization to proceed, the CONSULTANT shall provide the OWNER with a written schedule of completion for the services so authorized.
- 5.3 If the Project is delayed significantly for reasons beyond the CONSULTANT's control, the various rates of compensation provided for elsewhere in this Agreement shall be subject to renegotiation.

## **SECTION 6 - PAYMENT TO THE CONSULTANT**

### **6.1 PAYMENT FOR BASIC SERVICES**

- 6.1.1 The OWNER agrees to pay the CONSULTANT for Basic Services as outlined in Section 2 the following lump sum fees, inclusive of all reimbursable expenditures.  
**South Waynesville Phase II Sanitary Sewer Improvements  
Grant Administration - \$80,390, Environmental Report – \$12,000, and  
Engineering Report - \$12,000, Total \$104,390.00**

### **6.2 PAYMENT FOR ADDITIONAL SERVICES**

- 6.1.2 The OWNER will pay the CONSULTANT for Additional Services as outlined in Section 3 an amount based on actual time spent and expenses incurred by principals and employees of the CONSULTANT assigned to the Project in accordance with the attached CONSULTANT's standard rate and fee schedule Attachment "8", which is subject to update on an annual basis.

### **6.2 TIMES OF PAYMENT**

- 6.2.1 The OWNER will make prompt monthly payments in response to the CONSULTANT's monthly statements for services rendered under this Agreement.

### **6.3 GENERAL**

- 6.3.1 If the OWNER fails to make any payment due the CONSULTANT on account of his services and expenses within sixty days after receipt of the CONSULTANT's bill therefor, the CONSULTANT may, after giving seven days written notice to the OWNER, suspend services under this Agreement until he has been paid in full all amounts due him on account of his services and expenses.
- 6.3.2 If the Agreement is terminated at the completion of any phase of the Basic Services called for under Section 2, progress payment to be made to the CONSULTANT on account of services rendered shall constitute total payment for services rendered. If this Agreement is terminated during any phase of the Basic Services, the CONSULTANT shall be paid for services rendered on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the CONSULTANT will be paid for all his reasonable expenses resulting from such termination, and for any unpaid reimbursable expenses.
- 6.3.3 If, prior to termination of this Agreement, any work designed or specified by the CONSULTANT, under Section 2, is suspended in whole or in part for more than three months or is abandoned, after written notice from the OWNER, the CONSULTANT shall be paid for services performed prior to receipt of such notice from the OWNER as provided in paragraph 6.4.2 for termination during any phase of his service.

## **SECTION 7 - GENERAL CONDITIONS**

### **7.1 TERMINATION**

- 7.1.1 In the event that the OWNER finds that it is inadvisable or impossible to continue the execution of the Project; or if the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this Agreement; or, if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Agreement; or if the services called for in this Agreement are not completed within the time period specified under Section 5, or if the CONSULTANT becomes subject to a voluntary or involuntary adjudication of bankruptcy or makes a general assignment for the benefit of creditors; then the OWNER has the right to terminate at any time this Agreement or any task or phase of work being performed herein by providing ten (10) days written notice to the CONSULTANT of such termination and specifying the effective date of such termination; provided, however, that during such period of ten (10) days the CONSULTANT shall have the opportunity to remedy such failures or violations to avoid such termination.
- 7.1.2 In the event of termination, as provided herein, the CONSULTANT shall be paid for all services performed and actual expenses incurred up to the date of termination pursuant to Section 6.4.2 herein.

### **7.2 INSURANCE AND CLAIMS**

- 7.2.1 The CONSULTANT shall provide and maintain, at its own expense, during the term of this Agreement the following insurance covering its operations. Such insurance shall be provided by Insurer(s) satisfactory to the OWNER, and evidence of such insurance in the form of an industry-standard ACORD Certificate of Insurance satisfactory to the OWNER shall be delivered to the OWNER on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall require that the OWNER be given written notice at least thirty (30) days in advance of any modification or termination of any insurance coverage.
- 7.2.2 AUTOMOBILE LIABILITY - Bodily injury and property damage liability insurance shall be carried covering all owned, non-owned, and hired automobiles for a limit of not less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence.
- 7.2.3 COMMERCIAL GENERAL LIABILITY - Bodily injury and property damage liability shall be carried to protect the CONSULTANT performing work under this Agreement from claims of bodily injury or property damage which arise from operation of this agreement, whether such operations are performed by CONSULTANT or anyone directly or indirectly working for or on CONSULTANT'S behalf. The amounts of such insurance shall not be less than \$1,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$2,000,000. This insurance shall include coverage for product / completed operations liability, personal and advertising injury liability, and contractual liability.

7.2.4 WORKERS' COMPENSATION - Workers' Compensation Insurance coverage shall be carried meeting the statutory requirements of the State of North Carolina, even if the CONSULTANT is not required by law to maintain such insurance. Said Workers' Compensation Insurance coverage shall have at least the following limits of Employer's Liability coverage - \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.

7.2.5 EXCESS / UMBRELLA LIABILITY - Excess or Umbrella Liability coverage shall be carried providing coverage above the above stated limits of Automobile Liability, Commercial General Liability, and Workers' Compensation (Employer's Liability) in an amount of not less than \$3,000,000 Combined Single Limit for bodily injury and property damage in any one occurrence with an aggregate limit of \$3,000,000.

### 7.3 **SUCCESSORS AND ASSIGNS**

The OWNER and the CONSULTANT each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the OWNER nor the CONSULTANT will assign, sublet or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the OWNER and the CONSULTANT.

### 7.4 **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the OWNER and CONSULTANT and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented or modified by a duly executed written instrument.

### 7.5 **SEPARABLE PROVISION**

Should any provision of this Agreement be held to be judicially unenforceable for any reason, the remaining provisions shall have full force and effect.

### 7.6 **NOTICES**

- a. All notices to the Town shall be sent to:  
Rob Hites  
Town Manager Town of Waynesville  
16 South Main Street, PO Box 100  
Waynesville, NC 28786  
828-452-2491  
[rhites@waynesvillenc.gov](mailto:rhites@waynesvillenc.gov)

All notices to CONSULTANT shall be sent to  
RJ Mozeley, PE  
Senior Project Manager  
McGill Associates  
1240 19<sup>th</sup> Lane, NW  
Hickory, NC 28601  
828-328-2024  
rj.mozeley@mcgillassociates.com

## 7.7 **DESIGNATED AGENTS**

- a. The designated agent for contact and all matters related to this Agreement for the Town:  
Charam Miller  
Grant Administrator  
Town of Waynesville  
280 Georgia Avenue  
828-456-3515  
[cmiller@waynesvillenc.gov](mailto:cmiller@waynesvillenc.gov)
  
- b. The designated agent for contact and all matters related to this Agreement for McGill Associates:  
Karen Kiehna  
Grant Administrator  
McGill Associates  
55 Broad St.  
Asheville, NC 28801  
828-252-0575  
[karen.kiehna@mcgillassociates.com](mailto:karen.kiehna@mcgillassociates.com)

## 7.8 **SAFETY**

The parties hereby acknowledge that safety issues are of key importance to the Town and therefore CONSULTANT agrees to comply with all applicable safety policies and procedures of CONSULTANT, as well as those that are standard in the industry or service that is the subject of this Agreement, and CONSULTANT hereby agrees to fully indemnify Town and hold it harmless for any claims, liabilities, debts, or causes of action arising from CONSULTANT'S actions or inactions that are outside of the scope of this limited authority.

## 7.9 **E-VERIFY PROVISION**

Pursuant to G.S. 143-48.5 and G.S. 147-33.95(g), the undersigned hereby certifies that the CONSULTANT named below, and the CONSULTANT'S sub-Consultants, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. E-Verify Systby:



**McGILL ASSOCIATES, P.A.**

By: *Mark Cathey*  
Mark Cathey  
VP/Principal/Regional Manager

(SEAL)

**TOWN OF WAYNESVILLE**

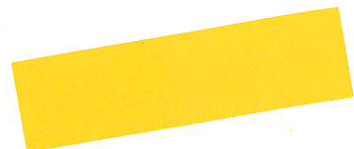
By: *Rob Hites*  
Rob Hites  
Town Manager

ATTEST: \_\_\_\_\_

**PRE-AUDIT CERTIFICATION:**

**THIS INSTRUMENT** has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

By: \_\_\_\_\_  
Finance Officer



**APPROVED AS TO LEGAL FORM:**

By: \_\_\_\_\_  
Town Attorney

**ATTACHMENT "A"**  
**PROJECT UNDERSTANDING**

**Town of Waynesville – South Waynesville Phase II Sanitary Sewer  
Improvements**

**Project Description**

The project will consist of the upgrade and replacement of a portion of the existing sanitary sewer system in West Waynesville along Hendrix, Franklin, Muse and Sawyer Streets. The project proposes to install 2,140 LF new 8-inch PVC sanitary sewer line along Hendrix, Franklin, Muse and Sawyer Streets, along with replacement of 11 manholes and 4-inch sewer services. The project will serve 45 existing residences and 43 new residences, the latter located along Sawyer Street in a mobile home park. The project will benefit 51.51% low- and moderate-income persons.

This project is being funded by a Community Development Block Grant from NC Department of Environmental Quality Division of Water Infrastructure, CDBG I Unit in the Amount of **\$1,376,957**.



# ATTACHMENT "B"

## BASIC FEE SCHEDULE

July 2024

<b>PROFESSIONAL FEES</b>	<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>
Senior Principal	\$300			
Principal – Regional Manager – Director	\$245	\$255	\$280	\$290
Practice Area Lead	\$220	\$240	\$270	\$280
Senior Project Manager	\$220	\$235	\$260	\$270
Senior Engineer	\$220	\$235	\$260	\$270
Project Manager	\$190	\$205	\$210	\$215
Senior Project Engineer	\$190	\$205	\$210	\$215
Project Engineer	\$155	\$165	\$175	\$185
Engineering Associate	\$135	\$140	\$145	\$150
Planner- Consultant – Designer	\$140	\$150	\$175	\$190
Engineering Technician	\$120	\$135	\$140	\$150
CAD Operator – GIS Analyst	\$100	\$110	\$120	\$130
Construction Services Manager	\$155	\$165	\$180	\$200
Construction Administrator	\$130	\$145	\$155	\$165
Financial Services Manager	\$140	\$150	\$160	\$170
Grant Administrator	\$125	\$140	\$150	\$160
Construction Field Representative	\$105	\$115	\$125	\$140
Environmental Specialist	\$105	\$115	\$120	\$125
Administrative Assistant	\$85	\$90	\$100	\$115
Survey Party Chief	\$100	\$115	\$130	\$150
Survey Field Technician	\$85	\$90	\$95	\$100

### EXPENSES

- a. Mileage - \$0.70/mile
- b. Flow Monitoring Equipment: Pressure Flow Meter- \$400/wk.; Gravity Flow Meter - \$1,000/deployment
- c. Robotics/GPS Equipment: \$30/hr.
- d. Telephone, reproduction, postage, lodging, and other incidentals shall be a direct charge per receipt.

### ASSOCIATED SERVICES

- a. Associated services required by the project such as soil analysis, materials testing, etc., shall be at cost plus ten (10) percent.

**ATTACHMENT "C"**  
**REQUIRED SUPPLEMENTARY CLAUSES, TERMS AND CONDITIONS**

**1. Conflict of Interest (2 CFR Part §200.318 General procurement standards)**

Interest of Members, Officers, ,or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials. No member, officer, or employee of the recipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure orfor one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The recipient shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.'

**2. Nondiscrimination Clause = Section 109, Housing and Community Development Act of 1974**

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title.

**3. Age Discrimination Act of 1975, as amended - Nondiscrimination on the Basis of Age**

No qualified person shall on the basis of age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

**4. Section 504 of the Rehabilitation Act of 1973, as amended : Nondiscrimination on the Basis of Disability** .

No qualified disabled person shall on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance.

**5. Access to Records and Record Retainage Clause**

- a. In general, all official project records and documents must be maintained during the operation of this project and for a period of five (5) years following closeout in compliance with 24 CFR §570.490.
- b. The North Carolina Department of the Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and the .NC Department of Environmental Quality, or any of their

duly authorized representatives, shall have access to any books, documents, papers and records of the Administering Agency which are pertinent to the execution of this agreement, for the purpose of making audits, examinations, excerpts and transcriptions in compliance with the above Rule.

## **6. Lobbying Clauses**

### **Required by Section 1352, Title 31, U.S. Code**

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative, agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

## **7. Legal Remedies Provision and Termination Provision**

- a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Contract, the Local Government shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, the Contractor shall be entitled to receive just and equitable compensation for all satisfactorily completed work. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner and Local Government for damages sustained by the Owner and Local Government by virtue of any breach of the Contract by the Contractor, and the Local Government may withhold any payments to the Contractor for the purpose of set-off until such time as the amount of damages due the Local Government from the Contractor is determined.

## **8. Findings Confidential**

Any reports, information, data, etc., given to or prepared or assembled by the Consultant under this contract which the Town requests to be kept confidential shall not be made available to any individual or organization other than the Town, unless the Consultant is required by law to make said item or items available.

Further, the parties acknowledge and agree that the very nature of an independent contracting relationship exposes the Town to an even greater risk of improper disclosure of confidential information. Therefore, Consultant agrees not only not to disclose any of this information, but to take all measures necessary to ensure that an inadvertent disclosure of such information is not possible.

## **9. Section 3 Clause**

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

- a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not

subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

#### **10. Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- a. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- b. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- c. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with

Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- d. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

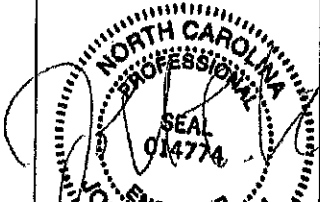
- f. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- g. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act. as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- i. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- j. See §200.322 Procurement of recovered materials.

**7.10 INDEMNIFICATION**


- a. To the extent allowed by law, the CONSULTANT agrees to indemnify, hold harmless and defend the Town as well as its directors, officers, employees, and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the CONSULTANT or its employees or agents in performing or failing to perform any of its obligations under this Agreement.
  
- b. To the extent allowed by law, the Town agrees to indemnify, hold harmless and defend the CONSULTANT as well as its directors, officers, employees, and agents against all claims for personal injury or property damage or both, including reasonable attorney's fees and the cost of defense resulting or alleged to result from any act or omission of the Town or its employees or agents in performing or failing to perform any of its obligations under this Agreement.



## ATTACHMENT "D" PROJECT BUDGET

8a. Project Budget for All Construction Projects and for Emerging Contaminants Evaluation/Assessment Studies Do not use for other planning studies.			
Indicate construction costs by line item (e.g., linear feet of different-sized lines, each type of stormwater control measure, each stream restoration reach). Include a more detailed construction cost budget if needed.	Division Funding Requested	Other Secured Funding Source(s)	Total Cost Amount
<b>Construction Costs</b>			
Mobilization	\$27,690		\$27,690
8" Gravity Sewer Line Extension	\$53,550		\$53,550
8" Gravity Sewer Line Replacement	\$368,900		\$368,900
New 4' Gravity Sewer Manhole	\$51,300		\$51,300
Reconnect Existing Sewer Service Lines	\$147,000		\$147,000
Connect to Existing Sewer	\$28,500		\$28,500
Asphalt Road Trench Repair	\$236,075		\$236,075
Asphalt Driveway Trench Repair	\$24,300		\$24,300
Gravel Driveway Trench Repair	\$13,200		\$13,200
<i>Contingency (10% of construction costs):</i>	<b>\$95,052</b>		<b>\$95,052</b>
<b>Construction Subtotal:</b>	<b>\$1,045,567</b>	<b>0.00</b>	<b>\$1,045,567</b>
<b>Engineering Costs</b>			
Engineering Design and Permitting	\$109,000		\$109,000
Bid and Award	\$12,000		\$12,000
Land Surveying Costs	\$19,000		\$19,000
Construction Observation and Administration	\$77,000		\$77,000
Legal Costs	\$10,000		\$10,000
<b>Engineering Subtotal:</b>	<b>\$227,000</b>	<b>0.00</b>	<b>\$227,000</b>
<b>Administration Costs</b>			
Engineering Report Preparation	\$12,000		\$12,000
Environmental Documentation Preparation (if applicable)	\$12,000		\$12,000
Project Funding Administration (if applicable)	\$80,390		\$80,390
<b>Administration Subtotal:</b>	<b>\$104,390</b>		<b>\$104,390</b>
<b>TOTAL FUNDING REQUESTED AND PROJECT COST:</b>	<b>\$1,376,957</b>	<b>0.00</b>	<b>\$1,376,957</b>
<p>A Professional Engineer seal, signature, and date for the estimate <u>must be provided</u> in the space to the right for the application to be considered complete.            (Note: If not using DocuSign to seal and sign the budget, put the seal/signature on the Word document or use a wet seal/signature with a scan of the wet seal/signature.)</p>		 <p style="text-align: right; font-size: 1.2em; margin-top: 10px;">3-11-24</p>	

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<b>Construction Costs</b>			
Mobilization	\$27,690		\$27,690
8" Gravity Sewer Line Extension	\$53,550		\$53,550
8" Gravity Sewer Line Replacement	\$368,900		\$368,900
New 4' Gravity Sewer Manhole	\$51,300		\$51,300
Reconnect Existing Sewer Service Lines	\$147,000		\$147,000
Connect to Existing Sewer	\$28,500		\$28,500
Asphalt Road Trench Repair	\$236,075		\$236,075
Asphalt Driveway Trench Repair	\$24,300		\$24,300
Gravel Driveway Trench Repair	\$13,200		\$13,200
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25-I-4154

3-11-24