

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

SHADI ESKAF

Director



NORTH CAROLINA
Environmental Quality

August 18, 2023

Mr. John Connet
City of Hendersonville
160 6th Ave E.
Hendersonville, North Carolina 28792

Subject: Preliminary Project-Scope Approval &
Transmittal of Offer-and-Acceptance Funding Award
Stormwater Planning Grant
Hendersonville Comprehensive Stormwater Master
Plan
DWI Project No(s): SRP-SW-ARP-0034

Dear Mr. Connet:

The Division of Water Infrastructure (**Division**) has reviewed the recently submitted preliminary project scope information, and we have no objections concerning the document(s) provided. Therefore, we are pleased to inform you the preliminary scoping document is approved herein.

In addition, with this document's approval, the above-referenced project, thusly, is now authorized to receive its intended *American Rescue Plan Act (ARPA)* funding, provided from the State Fiscal Recovery Fund (SFRF), as established in Session Law (S.L.) 2021-180 please note projects funded from the SFRF must meet applicable federal law and guidance for the ARPA funds. *The ARPA grant funding will cover one hundred percent (100%) of eligible, stormwater study, design or plan costs from the S.L. 2021-180 appropriation.*

Accordingly, enclosed are two (2) copies of an "offer-and-acceptance" document extending the **City of Hendersonville** a **funding award** in the total amount of **\$400,000**. This award is made by the Division subject to the "Assurances" and "Conditions" set forth in the enclosed offer-and-acceptance document.

Upon your acceptance, please submit the following items to the Division, and addressed directly to the attention of **Pam Whitley**, Division of Water Infrastructure, 1633 Mail Service Center, Raleigh NC 27699-1633 (Pam.Whitley@deq.nc.gov):

1. A resolution (sample copy attached), adopted by your governing body, accepting the ARPA grant offer, and making the applicable assurances contained therein; and
2. One (1) original copy of the "offer-and-acceptance" document, executed by the designated Authorized Representative for the project, along with the signed "Standard Conditions" and "Assurances". Please retain the fully executed, second original copy for your files.

Reimbursement requests must be prepared using our standardized reimbursement-request form. A reference copy of this form has been enclosed for your convenience. You are free to reproduce this form should



North Carolina Department of Environmental Quality | Division of Water Infrastructure
512 N. Salisbury Street | 1633 Mail Service Center | Raleigh, North Carolina 27699-1633
919.707.9160

Mr. Connet
City of Hendersonville
August 18, 2023
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additional copies be needed. Reimbursement requests shall be forwarded to a DWI Accountant at dwibusinessoffice@deq.nc.gov. *Once work referenced within the approved scoping document commences, an updated, fully-completed, current and signed/dated copy of our Reimbursement Request Form must be submitted with all reimbursement requests.*

Finally, regarding reimbursements, please note the following:

Disbursement is based on the progress made on the project. To obtain payment, you must document the expenditures for which the payment is requested. Final disbursement (10%) will be made only after receiving a final deliverables documenting the completion and findings of the study, as approved herein. **All costs incurred prior to March 3, 2021, are not eligible for ARPA funds, and all ARPA funds must be expended prior to December 31, 2026.**

On behalf of the Department of Environmental Quality, I am pleased to make this offer of ARPA funds, made available by the SFRF. If you have any questions, please contact Jason Robinson, P.E., by telephone at 919.707.3887 or by e-mail at jason.t.robinson@deq.nc.gov.

Sincerely,

DocuSigned by:

6309A872072B4C5...
Shadi Eskaf, Director
Division of Water Infrastructure, NCDEQ

Enclosures: ARPA Grant Offer-and-Acceptance Document (2 copies)
Reimbursement-Request Form
Resolution-to-Accept ARPA Grant Offer (suggested format)
Professional Engineering Services Procurement Certification

cc: John Connet, City of Hendersonville (via email at jconnet@hvlnc.gov)
Lisa Wells, P.E., WK Dickson, Raleigh (via email at lwells@wkdickson.com)
Tom Murray, P.E., WK Dickson, Raleigh (via email at tmurray@wkdickson.com)
Antonio V. Evans, P.E. (DWI, via e-mail)
Mark Hubbard, P.E. (DWI, via e-mail)
Jason Robinson, P.E. (DWI, via e-mail)
Karin Britt (DWI, via e-mail)
DWI Administrative Unit (DWI, via e-mail)
Pam Whitley (DWI, via e-mail)
Jennifer House (DWI, via e-mail)
ARPA File (EREID – ERAL)
Project Agreement #: 2000067017

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

Funding Offer and Acceptance – Stormwater Planning Grant

Legal Name and Address of Award Recipient (i.e., Applicant): City of Hendersonville
160 6th Ave E.
Hendersonville, North Carolina 28792

Project Number: SRP-SW-ARP-0034
UEID#: PNGBNJ8ALA81
Assistance Listing Number: 21.027

Funding Program:

Drinking Water	<input type="checkbox"/>	Additional Amount for Funding Increases	Previous Total	Total Offered
Stormwater	<input checked="" type="checkbox"/>			
Wastewater	<input type="checkbox"/>			
American Rescue Plan Act (ARPA) Grant	<input checked="" type="checkbox"/>	--	--	\$400,000

Project Description:

Hendersonville Comprehensive Stormwater
Master Plan

Total Financial Assistance Offer: **\$400,000**
Total Project Cost: **\$500,000**
Estimated Closing Fee: **\$ - 0 -**

Pursuant to North Carolina Session Law 2021-180:

- 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:



8/24/2023

Signature

Date

On Behalf of: **City of Hendersonville**

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 Assurances and the Standard Conditions.

Signature

Date

STANDARD CONDITIONS

1. Acceptance of this funding offer does not exempt the Applicant from complying with requirements stated in the U.S. Treasury's [Final Rule](#) for the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and the [SLFRF Compliance and Reporting Guidance](#) (not explicitly referred to in this document) and any future requirements implemented by the U.S. Treasury.
2. Applicants shall comply fully with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. The Applicant is responsible for ensuring that any lower-tier-covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The Applicant is responsible for further requiring the inclusion of a similar term or condition in any subsequent, lower-tier-covered transactions. Applicants may access suspension and debarment information at: <http://www.sam.gov>. This system allows applicants the means to perform searches determining whether an entity or individual is excluded from receiving federal assistance.
3. The Uniform Guidance 2 CFR 200.317 through 2 CFR 200.327 gives minimum requirements for procurement, with 2 CFR 200.319(b) addressing engineering services procurement guidelines. ARPA-funded projects also must adhere to North Carolina (NC) State law, specifically NC General Statute (NCGS) §143-64.31, Article 3D, Procurement of Architectural, Engineering, and Surveying (A/E) Services. NCGS §143-64.32 cannot be used to exempt funding recipients (i.e., applicants) from a qualification-based selection for A/E. The State provides applicable certification forms that must be completed prior to receiving funds for any engineering services covered under this funding offer.
4. Local government units designated as "distressed" must complete the associated requirements of NCGS §159G-45(b).
5. Funds made available by the ARPA to the entity accepting the funds in this document (i.e., the Applicant) must only cover eligible costs incurred on or after March 3, 2021. Funds that are not disbursed by December 31st, 2026, will no longer be available for the project. Unused federal funds will revert from the State of North Carolina to the U.S. Treasury.

ASSURANCES

- 1. The Applicant intends to complete the project in accordance with the Application approved for financial assistance by the Division of Water Infrastructure.
- 2. The Applicant is responsible for paying for those costs ineligible for ARPA funding including, but not limited to, any amount in excess of the amount of this funding offer. The Applicant agrees to establish and to maintain a financial management system that adequately accounts for revenues and expenditures. Adequate accounting and fiscal records shall be maintained during the completion of the project, and these records shall be retained and made available for a period of at least three (3) years following completion of the project.
- 3. All ARPA funds shall be expended solely for carrying out the approved project, and an audit shall be performed in accordance with NCGS §159-34. Partial disbursements on this Award will be made promptly, upon request, subject to adequate documentation of incurred eligible costs, and subject to the Applicant’s compliance with the Standard Conditions of this Award. The Applicant agrees to make prompt payment to its professional services’ provider(s), and to retain only such amount(s) as allowed by NCGS.
- 4. The Applicant shall expend all of the requisitioned funds for the purpose of paying the costs of the project within three (3) banking days following the receipt of the funds from the State.
- 5. Funds must be spent fully (i.e., fully reimbursed to the Applicant) by December 31st, 2026.

Acknowledgement of Standard Conditions and Assurances

The Applicant hereby gives assurance to the Department of Environmental Quality that the declarations, assurances, representations, and statements made by the Applicant in the Application, and all documents, amendments, and communications filed with the Department of Environmental Quality by the Applicant in support of its request for financial assistance, shall be fulfilled.

..... Signature Date
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REIMBURSEMENT REQUEST FORM					NC Division of Water Infrastructure				
Funding Recipient: _____					Payment No. _____		Page No. _____		
DWI Project No. _____					Period Covered From: _____		To: _____		
CONSTRUCTION <small>(Rename as appropriate)</small>	Cumulative Cost to Date	Minus Ineligibles	Minus Overruns Not App'd By Change Order	Subtotal of Payable Cost	Minus Retainage on Payable Cost	Minus Cumulative Sales Tax	Other Adjustments (Other Funds e.g.)	Minus Previously Paid to Date	Requested For This Pay Request
Contract 1	\$1,200,000	(\$100,000)	(\$100,000)	\$1,000,000	(\$50,000)	(\$50,000)	(\$500,000)	(\$300,000)	\$100,000
Contract 2	\$505,000		(\$5,000)	\$500,000	(\$25,000)	(\$10,000)		(\$400,000)	\$65,000
Contract 3									
Contract 4									
Contract 5									
ENGINEERING <small>(Rename as appropriate)</small>	Cumulative Cost to Date						Other Adjustments (Other Funds e.g.)	Minus Previouslsy Paid to Date	Requested For This Pay Request
Item 1	\$250,000							(\$250,000)	\$0
Item 2									
Item 3									
Item 4									
OTHER COSTS <small>(Rename as Appropriate)</small>	Cumulative Cost to Date						Other Adjustments (Other Funds e.g.)	Minus Previously Paid to Date	Requested For This Pay Request
Item 1									
Item 2									
Item 3									
PAY REQUEST TOTALS	Cumulative Cost to Date	Minus Ineligibles	Minus Overruns Not App'd By Change Order		Minus Retainage on Payable Cost	Minus Cumulative Sales Tax	Other Adjustments (Other Funds e.g.)	Minus Previously Paid to Date	Total Requested For This Pay Request
	\$1,955,000	(\$100,000)	(\$105,000)		(\$75,000)	(\$60,000)	(\$500,000)	(\$950,000)	\$165,000
Certification							Grant Percentage for SRP Projects: _____ %		
- I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with terms of the project and that this request represents the monies due which have not been previously received and that an inspection has been performed and all work is in accordance with the terms and conditions of the award.									
- For applicable SRF projects, the project remains in compliance with Davis-Bacon and American Iron and Steel conditions or is the process of remediating noncompliance.									
You must check ONE of the boxes below or your payment will not be processed:									
The funds requested above have already been paid to the respective vendors, consultants & contractors by the funding recipient					<input type="checkbox"/>				
OR									
The funds requested above have not been paid to the respective vendors, consultants & contractors.					<input type="checkbox"/>				
Funds received from the State will be disbursed to these entities within three (3) banking days.					<input type="checkbox"/>				
Type or Print Name and Title					Signature of Authorized Representative			Date	
DWI comments									

Instructions and notes on how to use this form

- Complete guidance for preparing reimbursements can be found in section G.2. of the North Carolina SRF Program Overview and Guidance that was included with your Funding offer (applicable to State grants and loans too) .
- The form, as downloaded, is filled out with sample numbers. It is suggested that the sample be used as a reference (saved or printed).
- Please submit ONE COPY of this form and backup documents when requesting funds.
- Only the Authorized Representative can sign this form, unless declared otherwise in a resolution.
- Construction contract line item overruns and engineering contract overruns must have approved change orders or engineering amendments before those costs will be paid.

(Suggested Format)

RESOLUTION BY GOVERNING BODY OF RECIPIENT

- WHEREAS,** the American Rescue Plan Act (ARPA), funded from the State Fiscal Recovery Fund, was established in Session Law (S.L.) 2021-180 to assist eligible units of local government with meeting their drinking water and/or wastewater and/or stormwater infrastructure needs, and
- WHEREAS,** the North Carolina Department of Environmental Quality has offered LASII ARPA funding in the amount of \$ _____ to perform the work detailed in the submitted application, and
- WHEREAS,** the **(unit of local government)** intends to perform said project in accordance with the agreed scope of work,

NOW, THEREFORE, BE IT RESOLVED BY THE (GOVERNING BODY'S NAME) OF THE (UNIT OF LOCAL GOVERNMENT):

That the **(unit of local government)** does hereby accept the ARPA grant offer of \$ _____; and

That the **(unit of local government)** does hereby give assurance to the North Carolina Department of Environmental Quality that any *Conditions* or *Assurances* contained in the *Funding Offer and Acceptance* (award offer) will be adhered to; has substantially complied, or will substantially comply, with all federal, State of North Carolina (State), and local laws, rules, regulations, and ordinances applicable to the project; and to federal and State grants and loans pertaining thereto; and

That **(name and title of authorized representative)**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with this project; to make the assurances as contained above; and to execute such other documents as may be required by the North Carolina Department of Environmental Quality, Division of Water Infrastructure.

Adopted this the **(date adopted)** at **(place)**, North Carolina.

(Signature of Chief Executive Officer)

Date

NC DEQ Division of Water Infrastructure Professional Engineering Services Procurement

Section 602(b)(14) of the Clean Water Act requires projects receiving Clean Water State Revolving Fund funding to comply with engineering procurement guidelines. North Carolina Session Law 2021-180 authorizes the Division of Water Infrastructure (Division) to award grant funds from the American Rescue Plan Act (ARPA) State Fiscal Recovery Fund for drinking water, wastewater, and stormwater infrastructure projects. The Uniform Guidance 2 CFR 200.317 through 2 CFR 200.327 gives minimum requirements for procurement, with 2 CFR 200.319(b) addressing engineering services procurement guidelines.

To comply, you must follow North Carolina General Statute 143-64.31, Article 3D Procurement of Architectural, Engineering, and Surveying Services. You cannot exempt yourself using NCGS 143-64.32. Complete and sign this form and provide the information indicated to ensure that engineering services for your project are eligible for reimbursement.

Applicant: [Click or tap here to enter text.](#)

Project Name: [Click or tap here to enter text.](#)

Division Funding Number: [Click or tap here to enter text.](#)

- 1) List the basic services being provided: (i.e., planning, design, inspection etc.)
[Click or tap here to enter text.](#)
- 2) Describe the method of announcement for the project.
[Click or tap here to enter text.](#)
- 3) List the firms the announcement was discussed with or that proposals were received from in order of quality.
[Click or tap here to enter text.](#)
- 4) Was a contract negotiated with the best qualified firm? ☐ Yes ☐ No (Check one)
If no, explain why.
[Click or tap here to enter text.](#)

NOTE: Documentation of Qualification-Based-Selection of Engineering Services shall be provided to the Division upon request (to include announcement and qualifications requested).

By signing below, I [Click or tap here to enter text.](#), the Authorized Representative designated for this project in the project application, attest that the contract pricing, as seen in the attached contract(s), contains pricing that is fair and reasonable based on scope, complexity, professional nature, and the estimated value of the services being provided and the firm selected, was selected based on their qualifications.

(signed name, title and date)

(DWI staff use only – Check and initial here if debarment status checked and firm is NOT debarred ☐ _____)

Clean Water Act, Section 602(b)(14)	<p>(14) a contract to be carried out using funds directly made available by a capitalization grant under this title for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services <u>shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40, United States Code, or an equivalent State qualifications-based requirement (as determined by the Governor of the State).</u></p> <p>From: water resources reform and development act guidance.pdf (epa.gov) <i>The requirements of 40 U.S.C. 1101 et seq. are:</i></p> <ul style="list-style-type: none"> • <i>Public announcement of the solicitation (e.g., a Request for Qualifications);</i> • <i>Evaluation and ranking of the submitted qualifications statements based on established, publicly available criteria (e.g., identified in the solicitation); o Evaluation criteria should be based on demonstrated competence and qualification for the type of professional services required (e.g., past performance, specialized experience, and technical competence in the type of work required);</i> • <i>Discussion with at least three firms to consider anticipated concepts and compare alternative methods for furnishing services;</i> • <i>Selection of at least three firms considered to be the most highly qualified to provide the services required; and</i> • <i>Contract negotiation with the most highly qualified firm to determine compensation that is fair and reasonable based on a clear understanding of the project scope, complexity, professional nature, and the estimated value of the services to be rendered;</i> <ul style="list-style-type: none"> ▪ <i>In the event that a contract cannot be negotiated with the most highly qualified firm, negotiation continues in order of qualification.</i>
Uniform Guidance 2 CFR 200.319(b)	<p>Competition.</p> <p>The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.</p>
NC General Statute 143-64.31	<p>Procurement of Architectural, Engineering, and Surveying Services (NC “Mini-Brooks”)</p> <p>...It is the public policy of this State... and Local Governmental Units..., to announce all requirements for architectural, engineering, surveying, construction management at risk services, design-build services,..., to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. ...</p>

NC General Statute 143-64.32	<p><u>NOTE: CWSRF and ARPA funding: NCGS 143-64.32 cannot be used to exempt a local government unit from abiding by NCGS 143-63.31. This is because there is no minimum dollar exemption allowed in the Federal Brooks Act, the Clean Water Act Section 602(b)(14), or 2 CFR 200.319.</u></p> <p>Written exemption of particular contracts.</p> <p>Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000). (1987, c. 102, s. 2; 2013-401, s. 2.)</p>
21 NCAC 56.0701(f)	<p>SECTION .0700 – RULES OF PROFESSIONAL CONDUCT, adopted in accordance with NC General Statute 89C-20 (Board Rules for Professional Engineers, etc.)</p> <p>(f) A licensee shall solicit or accept work only on the basis of qualifications and:</p> <ul style="list-style-type: none"> (1) Shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies; (2) Shall compete for employment on the basis of professional qualification and competence to perform the work. The licensee shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive or unfair statement or claim regarding the cost, quality or extent of services to be rendered; (3) Shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31 et seq., (or for federal projects, the Brooks Act, 40 U.S. Code 541 et seq.) and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31 et seq. (or of 40 U.S. Code 541 et seq.); <p>...</p>