



THE CITY OF HENDERSONVILLE

160 6TH Avenue East
Hendersonville, NC 28792
(828) 697-3000

CONTRACT FOR SERVICES

FIRM: Arnett Muldrow & Associates, Ltd.
316 West Stone Avenue
Greenville, SC 29609
864-233-0950

PROJECT: Seventh Avenue Branding
PROJECT DESCRIPTION: Development of a branding strategy for the Seventh Avenue District in Hendersonville.

PROJECT NUMBER:

This Contract for Services, and all exhibits, (collectively this "Contract") is entered into this ____ day of _____, 2022 by and between, the City of Hendersonville, a municipal corporation of the State of North Carolina, (the "CITY") and, Arnett Muldrow & Associates, Ltd., a South Carolina corporation, having an address of 316 West Stone Avenue, Greenville, SC 29609 (the "FIRM")

WITNESSETH

That for and in consideration of the mutual promises set forth in this Contract below, the sufficiency of which is acknowledged by the parties hereto, the parties do mutually agree as follows:

- 1. Scope of Services.** The FIRM agrees to perform for the City the following services according to the following requirements:

The FIRM agrees to provide design services needed to complete the Project. Such services shall constitute the "Work." The Scope of Services and FIRM's Fee Schedule are attached as Exhibits B and C and are incorporated herein by reference.

The City reserves the right to terminate the service contract of the FIRM based on the FIRM's breach of this Contract (ex: schedule, responsiveness, quality of design, accuracy of documents etc.) or for convenience. The City reserves the right to modify the Scope of Work described in Exhibit B Scope of Services, and in such event the City and FIRM shall negotiate in good faith to make corresponding modifications to the Fee Schedule below.
- 2. Required Insurance.** FIRM shall be required to purchase and maintain during its performance under this Contract insurance coverage as shown on the Insurance Requirements as stated in Exhibit A, which is incorporated herein by reference. With the exception of Worker's Compensation and Professional Liability policies, all insurance purchased shall have a specific endorsement, copy of which shall be provided to the City, naming the City as an additional insured and for all insurance purchased, an endorsement providing that such insurance will not be cancelled without providing thirty (30) days advance written notice to the City.
- 3. Standard Terms and Conditions.** The attached Standard Terms and Conditions shall be a part of this Contract. Such Standard Terms and Conditions are hereby incorporated by reference, and all parties agree to be bound thereby.
- 4. Marketing Use.** The use of this project for marketing and reference purposes is subject to the City's consent.
- 5. Time for Performance of the Work.** The Work will begin within fifteen (15) days of receipt of the Notice to Proceed from the City and tasks shall be completed according to the expectation established in Exhibit B Scope of Services.

6. Terms of Payment. In consideration of the above services, the City will pay the FIRM monthly, in accordance with the submitted fee schedule in Exhibit C, attached hereto and incorporated by reference. The City reserves the right to withhold payment for a monthly invoice payment if the CITY's inspection of such invoice reveals that services provided were not in accordance with the standard of care, or if services were not performed as required by the scope of work as contained in Exhibit B for that period. If the performance can be corrected, then the CITY shall state the necessary corrective actions in a written notice to the FIRM, who shall complete such corrective actions promptly upon receipt of the written notice, after which time the FIRM shall be paid their monthly invoice. If the performance is of such a nature that it cannot be corrected, no payment will be made by the CITY for that month for the portion of the invoice representing the uncorrected services. If any invoice is otherwise disputed by the City, in whole or in part, it shall provide a written explanation for such dispute to FIRM within five days of receipt of the invoice and shall pay all undisputed amounts therein.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals at Hendersonville, North Carolina, this _____ day of _____, 2022.

ARNETT MULDROW & ASSOCIATES, LTD.

THE CITY OF HENDERSONVILLE

BY: _____ (SEAL) BY: _____ (SEAL)
Signature John Connet, City Manager

Printed Name and Title

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

John Buchanan, Finance Director, City of Hendersonville

STANDARD TERMS & CONDITIONS

1. **Acceptance.** FIRM's acknowledgment of the terms of this Contract constitutes an agreement to (i) all terms and conditions set forth or referenced herein, (ii) Exhibits A, B, & C hereto, and (iii) any other terms and conditions of a written agreement signed by FIRM and the CITY that deals with the same subject matter as this Contract (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between FIRM and the CITY with respect to the performance of the Work as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." Except as provided herein, no additional or supplemental provision or provisions in variance herewith that may appear in FIRM's quotation, acknowledgment, invoice or in any other communication from FIRM to the CITY shall be deemed accepted by or binding on the CITY. The CITY hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until the CITY's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by the CITY are subject to correction.
2. **Entire Agreement.** The Contract Documents constitute and represent the complete and entire agreement between the CITY and FIRM and supersede all previous communications, either written or verbal with respect to the subject matter of this Contract.
3. **Changes, Additions, Deletions.** No changes, additions, deletions or substitutions of scope of work, specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges or price will be permitted without the prior written approval from the CITY. However, the FIRM will not be liable for delays caused by circumstances beyond its control including without limitation, delays caused by acts of God, the CITY or its other consultants/contractors, federal, state, and local government authorities, strikes, riots, civil unrest, war, or unknown or concealed conditions, and if such delays occur, the FIRM will be entitled to an equitable adjustment in the time for the performance of the Work and compensation.
4. **Relationship of the Parties.** The FIRM is an independent company and not an affiliate of the CITY. The conduct and control of the work will lie solely with the FIRM. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between the FIRM and the CITY. Employees of the FIRM shall remain subject to the exclusive control and supervision of the FIRM, which is solely responsible for their compensation.
5. **Prices.** If the FIRM's price or the regular market price of any of the Work covered hereunder is lower than the price stated in the Contract Documents on the date of performance of the Work, the FIRM agrees to give the CITY the benefit of such lower price on such Work. In no event shall the FIRM's price be higher than the price contained in the FIRM's Fee Schedule unless otherwise agreed in writing.
6. **Taxes.** Any applicable taxes shall be invoiced as a separate item.
7. **Substitutions.** No substitutions or cancellations shall be permitted without prior written approval from the CITY.
8. **Indemnification.** To the greatest extent allowed by the law each Party (the "Indemnifying Party") shall indemnify and hold harmless the other, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims") arising from the Indemnifying Party's willful misconduct, negligence, and or breach of the Contract. In the event that any portion of the Work performed under the Contract shall be defective in any respect whatsoever, the FIRM shall indemnify and save harmless the CITY, its officers, agents, employees and assigns from all loss or the payment of all sums of money. The parties shall, in the event of liability arising out of their joint negligence or willful misconduct indemnify and hold harmless each other in proportion to their relative degree of fault. Further, the FIRM shall indemnify and hold harmless the City, if officer, agents, employees, elected officials and assigns, from all damages, costs or losses associated with any claims made for copyright infringement or trademark infringement, whether or no such claim is successful, associated in any manner with the Work produced by the Firm pursuant to this Agreement.
9. **Invoices and Payment Terms.** Invoice and Payment Terms are set forth in Section 5 in the Contract for Services. All invoices and statements shall reference the Contract number and be submitted to: CITY of Hendersonville, Accounts Payable, PO Box 664, Hendersonville, North Carolina 28070.
10. **Anti-Discrimination.** During the performance of the Contract, the FIRM shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.
11. **Ethics in Public Contracting.** By submitting their prices and acceptance of this Contract, the FIRM certifies that their proposal was made without collusion or fraud and that they have not offered or received any kickbacks or inducements

from any other supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

12. **Applicable Laws and Courts.** This Contract shall be governed in all respects by the laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, shall be governed in all respects by the laws of the State of North Carolina and exclusive venue shall be in a court of competent jurisdiction for Henderson County, North Carolina. The FIRM represents and warrants that it shall comply with all applicable federal, state and local laws, regulations and orders.
13. **Strict Compliance.** The CITY may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
14. **General Provisions.** The CITY's remedies as set forth herein are not exclusive. Any delay or omission by the CITY in exercising any right hereunder, or any waiver by the CITY of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default.
15. **Obligations of the FIRM.** The FIRM shall adhere to all applicable laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Henderson, and the CITY of Hendersonville in the performance of the Work outlined in this Contract. The Work shall also adhere to all applicable laws, codes, ordinances, and regulations of the United States, the State of North Carolina, the County of Henderson, and the CITY of Hendersonville.
16. **Quality and Workmanship.** The FIRM shall perform all Work in accordance with this Contract and the standard of care and skill ordinarily exercised, under similar circumstances, by others ordinarily providing similar services in and at the same time in Henderson County. In the event any portion of the Work fails to substantially comply with this standard of care obligation and the FIRM is promptly notified in writing prior to one year after completion of such portion of the Work, the FIRM will re-perform such portion of the Work, or if re-performance is impractical, the FIRM will refund the amount of compensation paid to the FIRM for such portion of the Work. FIRM represents and warrants to the CITY that the Work produced will be unique and original, and will not infringe on any copyright, trademark, patent, right of privacy, contain any libelous material, or infringe or violate any other right of any third party.
17. **Default.** Either Party may terminate the Contract, in whole or in part, upon thirty (30) days written notice upon a material breach by the other Party unless the alleged default is cured within the thirty (30) day notice period. The nonbreaching party shall have all remedies available at law or in equity in addition to any remedies provided in this Contract for material breach. In the event of a material breach by the FIRM the CITY may procure upon such terms as the CITY shall deem appropriate, services substantially similar to those so terminated, in which case the FIRM shall be liable to the CITY for any excess costs for such similar services and any expenses incurred in connection therewith.
18. **Termination for Convenience.** The CITY shall have the right, without assigning any reason therefore, to terminate any Work under the Contract, in whole or in part, at any time at its complete discretion by providing ten (10) consecutive calendar days notice in writing from the CITY to the FIRM. If the Contract is terminated by the CITY in accordance with this paragraph, the FIRM will be paid for all Work performed and reimbursable expenses incurred up to the effective date of the termination. The CITY will not be liable to the FIRM for any costs for materials acquired or contracted for, if such costs were incurred prior to the date of this Contract.
19. **Instruments of Service and Work for Hire.** All Work performed by the FIRM, including intellectual property and all data compiled, shall be considered Instruments of Service and Work for Hire, and shall be the Property of the CITY. The City shall hold the sole and absolute copyrights and trademarks in the Work produced. In the event that any portion of the Work should be deemed not to be a Work for Hire for any reason, FIRM hereby assigns, conveys, transfers and grants, and agrees to assign, convey, transfer and grant to CITY all of FIRM's right, title, and interest in and to the Work and any copyright therein, and agrees to cooperate with CITY in the execution of appropriate instruments assigning and evidencing such ownership rights. The FIRM shall retain a license in the Work performed and data compiled to use for the FIRM's own purposes, and not for the benefit of any third party without the CITY's consent. The terms of this Paragraph shall survive the termination of this Contract for any reason, including but limited to for a material breach of either Party, or for the convenience of the Owner. In the event this Contract is terminated for any reason, the CITY shall be entitled to keep and use all design work provided and all data compiled by the FIRM. All representations, warranties, and obligations with respect to the Work by the FIRM under this Contract shall survive termination of this Agreement.
20. **Assignment.** FIRM may not assign, pledge, or in any manner encumber the FIRM's rights under this Contract, or

delegate the performance of any of its obligations hereunder, without the CITY's prior, express written consent.

21. **No Third Party Beneficiaries.** There shall be no intended nor incidental third party beneficiaries of this Contract. The FIRM shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party beneficiaries.
22. **Valid Contract.** In order for this Contract for Services to be valid, it must be executed by the CITY Manager or his or her authorized designee, and must be pre-audited in that manner required by the Local Government Budget and Fiscal Control Act, as the same may be amended.
23. **Severability.** If any provision of this Contract is found to be invalid or unlawful, then remainder of this Agreement shall not be affected thereby, and each remaining provision shall be valid and enforced to the fullest extent permitted by law.
24. **Verification of Work Authorization.** The FIRM shall comply with, and require all contractors and subcontractors to comply with, the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, "Verification of Work Authorization," sometimes known as E-verify for all contractors and subcontractors.
25. **Iran Divestment List.** With the execution hereof, FIRM, certifies that they are not on the Iran Final Divestment List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.58, and will not contract with anyone on such List in performance of the work hereunder.
26. **Companies that Boycott Israel List.** With the execution hereof, FIRM, certifies that they are not on the Companies that Boycott Israel List created by the N.C. State Treasurer pursuant to N.C.G.S. § 147-86.80, and will not contract with anyone on such List in performance of the work hereunder.

EXHIBIT A

MINIMUM INSURANCE REQUIREMENTS

The Work under this Contract shall not commence until the FIRM has obtained all required insurance and verifying certificates of insurance have been approved in writing by the CITY. The CITY shall be named as additional insured on all policies, except Worker's Compensation and Professional Liability policies. These certificates shall document that coverages afforded under the policies will not be cancelled until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the CITY of such cancellation. If endorsements are needed to comply with the notification or other requirements of this article copies of the endorsements shall be submitted with the certificates.

a. Worker's Compensation and Employer's Liability

The FIRM shall provide and maintain, until final acceptance, workers' compensation insurance, as required by law, as well as employer's liability coverage with minimum limits of \$100,000.

b. Comprehensive General Liability Insurance

The FIRM shall provide and maintain, until final acceptance, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by the FIRM or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Bodily Injury: \$1,000,000 per occurrence / \$2,000,000 aggregate

Property Damage: \$100,000 per occurrence / \$300,000 aggregate

Or,

Bodily Injury and Property Damage, combined single limit (CSL): \$1,000,000 per occurrence / \$2,000,000 aggregate

Such coverage for completed operations must be maintained for at least two (2) years following final acceptance of the Work performed under the contract.

c. Deductible

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the FIRM.

d. Other Insurance

The FIRM shall obtain such additional insurance as may be required by the CITY or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

e. Proof of Carriage

The FIRM shall furnish the CITY with satisfactory proof of carriage of the insurance required before written approval is granted by the CITY

EXHIBIT B

FIRM'S SCOPE OF SERVICES

BRANDING STRATEGY FOR SEVENTH AVENUE DISTRICT, HENDERSONVILLE

Task One: Information Gathering and Background Review

Arnett Muldrow will evaluate existing marketing, tourism initiatives, community histories, other applicable documentation that would provide branding and marketing material for Seventh Avenue District. This will be an important step to understand what has happened in the past as well as to coordinate this effort so that it is not duplicative of prior efforts.

Task Two: Kick-off Meeting with the Project Steering Committee (Visit One or Online)

Arnett Muldrow will work with the City and stakeholders from the Seventh Avenue District to serve as a steering committee that will be the executive body for the branding effort from start to finish. We will come to Hendersonville to host a kick-off meeting with the steering committee. We expect this committee to work hand-in-hand with the Arnett Muldrow team towards the successful development and implementation of the branding and marketing strategy.

Task Three: Community Branding/Image Resource Visit (Visit Two)

Modeled after a community planning charrette, the Community Branding/Image Resource Visit is designed to immerse the project team in the community in a rapid way in order to produce a branding program quickly and efficiently. We have conducted these resource visits in over four hundred communities that have gone on to implement the branding in creative ways. The resource visit will involve a two-and-a-half-day process, as described below.

Day One and Part of Day Two: Gathering Input and Community Tour

The first day will concentrate on a series of up to six roundtable meetings with image-setting groups as selected by the Client. These will likely include:

- City of Hendersonville staff;
- Stakeholders from the Seventh Avenue District;
- Key partners in the community;
- Business and property owners;
- Other stakeholders as selected by the Steering Committee; and

The input sessions will be facilitated group sessions that will concentrate on the brand image of Seventh Avenue District as a whole as well as its individual attractions. (These meetings can be as open ended as you desire, we prefer to invite anyone interested to attend as the stakeholders get to value seeing their input put into concepts within days of their initial input.)

We will also conduct a detailed tour and reconnaissance of downtown and its relationship to the Seventh Avenue District recognizing that Hendersonville continues to undergo investment, change, and expansion of its dynamic central business district. During the tour, we will conduct a professional photo shoot of key area assets, including places and people. We will edit these photographs and include them as a photo library as part of our final deliverables. Many of our clients have found these photographs to be a helpful resource in their future marketing initiatives.

Day Two, Afternoon: Optional Progress Report

By the end of the second day, we will have worked with the public and community stakeholders to develop some preliminary concepts, so that the third day can focus on brand refinement as well as continued production of marketing concepts and brand extension. If needed, in the afternoon of the second day we will have a small roundtable meeting with the steering committee to review the progress on the brand's development.

Day Two Evening and Day Three: Brand Development

During the course of the workshop, we will focus not only on developing the brand identity itself that will include such things as logos, themes, typefaces, colors, sample print pieces, and partnership initiatives. As a value-added service will

also coordinate with the City of Hendersonville to ensure that the existing “H” brand is refined, clarified, or otherwise examined in concert with the Seventh Avenue District.

We will also develop many of the creative marketing concepts and brand extension components that focus on the district, its businesses, special events, and attractions. These pieces would include event logos, imagery, digital media, web page concepts, and a host of other creative uses as determined by the client. We like to leave this component open-ended as the roundtable input sessions will help us frame these creative recommendations.

Day Three, Midday-Afternoon: Presentation

Arnett Muldrow will share the draft brand concept in a presentation to the steering committee at the end of the resource team visit on the third day. We believe that this presentation is a critical element in the branding process because while we will develop the brand, it will belong not only to the City as a client but also to the Seventh Avenue District itself. meeting allows us to garner feedback for further refinement to come after the presentation.

As mentioned before, the resource visit deliverables will vary by community but will typically include a variety of components that may include logo designs, typefaces, color palettes, and taglines. We will also develop a compelling brand statement that can be used as a script in marketing the district. In addition, the team will develop a host of creative collateral material including conceptual gateway design. Our presentations have also included banners, brochure templates, mock advertisements, event posters, billboards, shopping bags, hats, tee shirts, sculptures, recognition programs, and many others.

Task Four: Refinement

The presentation at the end of the work session represents a draft version of the brand identity. Arnett Muldrow will coordinate with the Steering Committee to gather input and responses on the draft brand. Typically, this effort works best if the input is provided through a single point of contact who can work directly with Arnett Muldrow. Typically, these include suggestions for refinements to the identity system and for additional collateral and supporting material.

We will provide the Steering Committee a worksheet or internal survey to provide us feedback of modifications and additions to the brand system. We will coordinate these revisions within four weeks of receiving feedback and communicate them via email and conference call for final sign off and review.

Task Five: Draft Branding and Implementation Strategy

Within six weeks of the final “sign off” in Task Four, we will deliver the final products for the market assessment and branding effort. This will include four specific deliverables in draft form:

- A branding resource package with all graphics produced in the work session for the Client and its partners (the resource package will include the designs in a variety of file formats for use by different vendors). This will include the brand statement.
- A style guide for the proper usage of all brand materials, a photo library, and the final PowerPoint presentation.
- Refined messaging strategy targeted at specific interest groups: residents, economic development, downtown, etc.
- Implementation and partnership strategy.

Task Six: Implementation Workshop (Visit three)

We will return to Hendersonville’s Seventh Avenue District to conduct an implementation workshop with the Steering Committee. We will use this workshop to refine the recommendations of task five and will that review the entire branding package. Suggest an implementation action plan that will affirm goals, identify recommendations, place them in timeframes, assign responsible parties, and identify funding techniques and approaches.

Task Seven: BrandPrint Report

The Arnett Muldrow team will make refinements to the plan and deliver three key items: a final BrandPrint Report that outlines the “rules of the road” on implementing the plan, a strategy board with implementation recommendations, and all resources including the brand positioning statement, any PowerPoint presentations, and a complete folder of all designs in five different file formats to the Client.

Arnett Muldrow will also release all intellectual rights for the system to the client. This is a very important consideration for the City as designs can then be modified and used as the client sees fit.

PROJECT DELIVERABLES

- Logo and tagline designs for the Seventh Avenue District plus brand extensions as desired by the client.
- Refinement of the “H” logo as the client sees fit.
- Brand narrative for the district.
- Gateway designs and potential wayfinding extension as desired by the client.
- Custom banner designs applicable to the Client and other initiative partners if desired.
- Print collateral designs.
- Digital media formats.
- Ad templates and marketing concepts.
- Other collateral pieces as desired by the Client
- All related photography.
- Resource package with all deliverables in a variety of digital file formats.
- Style guide for brand implementation.
- Brand presentation on PowerPoint.
- Release granting ownership of all intellectual property to the Client.

PROJECT TIMELINE (PROJECTED)

Arnett Muldrow is prepared to begin this project as soon as June of 2021 with a maximum six-month time frame upon project start to project completion.

EXHIBIT C

Fee Schedule

Fee and Terms of Payment

FIRM proposes to complete the Work for a lump sum cost as follows:

Branding Strategy for Seventh Avenue District \$10,500 (Lump Sum)*

All anticipated expenses for the Work, including three trips to Hendersonville's Seventh Avenue District, will be included in the lump sum fee.

Payments by CITY shall be made to FIRM upon receipt of monthly invoices for Work performed based upon the FIRM's estimate of the percentage of the total Work completed during the billing period. Monthly invoices shall be paid by CITY thirty (30) days after receipt of undisputed invoices delivered. If any invoice is disputed by the City, in whole or in part, it shall provide a written explanation for such dispute to FIRM within five days of receipt of the invoice and shall pay all undisputed amounts therein.