

SPECIFICATIONS

2021 Locust St Curb & Gutter and Sidewalk

Hendersonville, NC

City of Hendersonville
Public Works Department
305 Williams Street Hendersonville,
North Carolina 28792 (828) 697-3084
twooten@hvlnc.gov
cfreeman@hvlnc.gov
FAX: (828) 697-3089

2021 Locust St Curb & Gutter and Sidewalk

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INVITATION FOR BIDS

FOR

CITY OF HENDERSONVILLE
**2021 Locust St Curb & Gutter and
Sidewalk**
HENDERSONVILLE, NORTH CAROLINA

SCOPE OF WORK

2021 Locust St Job includes but is not limited to: mobilization, demolition of existing curb & gutter and sidewalk, installation of new curb & gutter and sidewalk as described in Bid Schedule. The contractor will also be responsible installation of curb ramps as necessary, backfilling, and seed and straw. The contractor shall be responsible for all State and local permits and Call Before You Dig matters. The contractor will provide all necessary traffic control signs, cones, etc. and provide flagmen as needed. The contractor is also responsible for notifying businesses and residences within each work zone of the construction schedule and of any changes to that schedule.

BIDS

Bids for this work will be received by:

Tom Wooten., Public Works Director
City of Hendersonville
305 Williams Street
Hendersonville, NC 28792
Ph: 828-697-3084/ Fax: 828-697-3089

up to **9:00 AM**, on **Friday, February 19, 2021** and immediately thereafter publicly opened and read aloud in the Operations Center Small Conference room located at 305 Williams Street, Hendersonville, NC. No bids will be accepted after this time.

PLANS, SPECIFICATIONS, AND CONTRACT DOCUMENTS

Complete specifications and contract documents may be examined at the following locations:

City of Hendersonville
City Operations Center
305 Williams Street
Hendersonville, NC 28793
(828) 697-3084

Copies of complete plans, specifications and contract documents may be obtained in person at the following location:

City of Hendersonville
City Operations Center
305 Williams Street
Hendersonville, NC 28793
(828) 697-3084

QUESTIONS AND CLARIFICATIONS

All questions and requests for clarification of the plans and specifications must be in writing and mailed, faxed or emailed to Tom Wooten, 305 William St Hendersonville, NC 28793, fax (828) 697-3089, twooten@hvlnc.gov. No verbal answers will be given. Questions and clarifications will be addressed at the pre-bid meeting.

License Requirements

Contractors are hereby notified that they must have proper license under the NC State laws governing their respective trades and that North Carolina General Statute 87 will be observed in receiving and awarding contracts. General Contractors must have general license classification for HIGHWAY CONTRACTOR.

SUBMISSION OF BIDS

Bids shall be made only on the form provided herein with the bid amount properly filled in and all signatures properly executed. Bids shall be submitted in a sealed envelope with the following clearly marked on the outside.

Bid Proposal: Attn: Tom Wooten, Public Works
Director

**2021 Locust St Curb & Gutter and
Sidewalk**

*(Bid Date) (Contractor) (License
Number)*

An optional pre-bid conference will be held on Monday February 15, 2021 at 9:00 AM in the Operations Center small conference room located at 305 Williams Street, Hendersonville, NC.

GENERAL CONDITIONS

GENERAL

It is understood and agreed that by submitting a bid that the Contractor has examined these contract documents, drawings and specifications and has visited the site of the Work, and has satisfied himself relative to the Work to be performed.

MATERIALS, EQUIPMENT AND EMPLOYEES

The contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, fuel, sanitary facilities and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the contract documents.

All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.

No changes shall be made in the Work except upon written approval and change order of the Designer/Owner. Change orders shall be subject to provisions in the current North Carolina Construction Manual.

Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed.

However, the contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Substitution of materials, items or equipment of equal or equivalent design shall be submitted to the City for approval or disapproval; such approval or disapproval shall be made by the City prior to the opening of bids.

If at any time during the construction and completion of the work covered by these contract documents, the conduct of any workman of the various crafts be adjudged a nuisance to the Owner or if any workman be considered detrimental to the work, the Contractor shall order such parties removed immediately from the site.

The contractor shall designate a foreman/superintendent who shall direct the work.

CODES, PERMITS AND INSPECTIONS

The Contractor shall obtain the required permits, if required, give all notices, and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this contract. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Designer in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Owner, he shall bear all cost arising therefrom.

All work under this contract shall conform to the current North Carolina Building Code and other state and national codes as are applicable

SAFETY REQUIREMENTS

The Contractor shall be responsible for the entire site and the construction of the same and provide all the necessary protections as required by laws or ordinances governing such conditions and as required by the Owner or Designer. He shall be responsible for any damage to the Owner's property or that of others on the job, by himself, his personnel or his subcontractors, and shall make good such damages. He shall be responsible for and pay for any claims against the Owner arising from such damages.

The Contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926 published in Volume 39, Number 122, Part 11, June 24, 1974 Federal Register), and revisions thereto as adopted by General Statutes of North Carolina 95-126 through 155.

The Contractor shall provide all necessary safety measures for the protection of all persons on the work, including the requirements of the AGC Accident Prevention Manual in Construction as amended, and shall fully comply with all state laws or regulations and North Carolina Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.

EQUAL OPPORTUNITY

The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein. The Contractors agree not to discriminate against any employees or applicant for employment because of physical or mental disability in regard to any position for which the employees or applicant is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices.

INSURANCE

The Contractor shall not commence work until he has obtained all insurance required, and the Owner has approved such insurance, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been obtained.

The Contractor shall provide and maintain during the life of this contract Workmen's Compensation Insurance for all employees employed at the site of the project under his contract.

The Contractor shall provide and maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect him and any subcontractor performing work covered by this contract, from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operation be by the Contractor himself or by any subcontractor, or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:

INSURANCE PROVISIONS

- A. **Worker's Compensation:** The Contractor agrees during the pendency of any agreement with the City to carry Insurance covering all employees meeting statutory limits in compliance with the applicable state and federal laws. The coverage must include employer's liability with a limit of **\$100,000** for each accident, **\$100,000** bodily injury by disease each employee; and **\$500,000** bodily injury by disease, policy limit.
- B. **Commercial General Liability:** The Contractor agrees during the pendency of any agreement with the City to carry Commercial General Liability Insurance. Coverage shall have minimum limits of **\$1,000,000** general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence. This shall include premises and operations, broad form property damage, XCU coverage and contractual liability. The coverage shall be written on an occurrence basis.
- C. **Business Auto Liability:** The Contractor agrees during the pendency of any agreement with the City to carry Business Auto liability insurance. Coverage shall have a minimum limit of **\$1,000,000** per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.

The Contractor shall furnish such additional insurance as may be required by General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory limits.

Each Certificate of Insurance shall bear the provision that the policy cannot be canceled, reduced in amount or coverage eliminated in less than fifteen {15} days after mailing written notice to the insured and/or the Owner of such alteration or cancellation, sent by registered mail.

The Contractor shall furnish the Owner with satisfactory proof of carriage of the insurance required before written approval is granted by the Owner.

STORAGE OF MATERIALS

The Contractor shall assure proper storage, meeting Federal and State regulations, of all potentially toxic and/or harmful chemicals or materials, to prevent possible access to these materials.

INVOICES FOR PAYMENT

Not later than the fifth day of the month, the contractor shall submit to the owner a request for payment for work done during the previous month. The request shall be in the form Application for Payment contained in these documents. The contractor shall substantiate the request with invoices of vouchers or payrolls or other evidence.

Executed contract documents, insurance certifications and, upon completion and acceptance of the work, invoices and other information requested are to be sent to:

Tom Wooten., Public Works Director
City of Hendersonville
305 Williams Street
Hendersonville, NC 28792
Ph: 828-697-3084/ Fax: 828-697-3089

It is imperative that contract documents, invoices, etc., be sent only to the above address in order to assure proper and timely delivery and handling.

CLEANING UP

The Contractor shall be responsible, at the completion of each day's work, to leave the site in a clean workmanlike condition. The Contractor shall keep the site and surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the Owner. Before final inspection and acceptance of the project, the Contractor shall thoroughly clean the site, and completely prepare the project and site for use by the owner/public.

GUARANTEE

The contractor shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the final acceptance of the work and shall replace such defective materials or workmanship without cost to the owner.

Where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that particular piece of equipment or material. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.

Additionally, the owner may bring an action for latent defects caused by the negligence of the contractor, which is hidden or not readily apparent to the owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with applicable law.

CONTRACTOR-SUBCONTRACTOR RELATIONSHIPS

The Contractor agrees that the terms of these contract documents shall apply equally to a subcontractor as to the Contractor, and that the subcontractor is bound by those terms as an employee of the Contractor.

BID PROPOSAL

The undersigned hereby proposes to furnish all labor, equipment and materials required and to perform all work for the construction of improvements referred to herein as:

2021 Locust St Curb & Gutter and Sidewalk HENDERSONVILLE, NORTH CAROLINA

In strict accordance with the Contract Documents and in consideration of the amounts shown on the Bid Schedule attached hereto and totaling:

TWO HUNDRED TWENTY FIVE THOUSAND SEVEN HUNDRED FIFTY ONE
_____, and NO /100 dollars (\$ 225,751⁰⁰)

The undersigned hereby agrees that, upon written acceptance of this Bid Proposal, he will execute a Contract with the Owner and provide any bonds or guarantees and certificates of insurance required by the Contract Documents within ten (10) days of the receipt of the Notice of Award.

The undersigned agrees that, if awarded the Contract, he will commence the work within ten (10) calendar days after the date of receipt of written Notice to Proceed, and that he will complete the work within 60 calendar days thereafter.

The undersigned acknowledges receipt of the following addenda:

Respectfully submitted

Trace and Company

Firm Name

1163 Mountain Rd

Mountain Home, NC 28758

Address

By: 

Attest to:

Elizabeth A. McCoy
Secretary Office Manager
(Corporate Seal)

**2021 Locust St Curb & Gutter
and Sidewalk**

BID SCHEDULE

[illegible]

New gutter elevation will match existing asphalt elevation.

New sidewalk elevation will match top back of curb.

Sidewalk and curb & gutter will be raised approximately 4".

C & G on east side of street will wrap around corners of cross streets approx. 6 to 8 feet and tie down to existing C & G as necessary.

Sidewalk will extend through drive entrances and be poured at 6".

Accessible crosswalk ramps will be installed on N side of Bearcat and Locust, on W side of N Main and Locust, and on the E side of N Main and Locust.

Suitable backfill may be stored on site and reused if approved.

Alternate bid for 30" curb and gutter installation should not be included in bid total but will be considered in awarding the project.

Alternate 30" curb and gutter shall have straight edge along existing asphalt. Small chunks of asphalt that were removed during demo to be patched with S 9.5C hot mix asphalt.

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NOTICE OF AWARD

To: _____

Project Description: **2021 Locust St Curb & Gutter and Sidewalk**

The City of Hendersonville has considered the Bid Proposal submitted by you on _____
_____ day of _____, 20_____, for the above-described Project in response to its
Invitation to Bid and Instructions to Bidders.

You are notified that your Bid Proposal has been accepted in the amount of _____
_____ Dollars (\$_____).

You are required by the Instructions to Bidders to execute the Agreement and furnish the required Performance Bond,
Payment Bonds and Certificates of Insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds with ten (10) days from the date of this Notice,
the City will be entitled to consider all your rights arising out of the acceptance of your Bid Proposal as
abandoned and as a forfeiture of your Bid Guaranty. The City will be entitled to such other rights as may be
granted by law.

The City reserves the right to rescind the award of the work at any time before the execution of the Contract by all
parties without incurring any liability. Therefore, if you change your position, economically or otherwise, after
receiving a verbal or written notice of award and in reliance upon the Authority executing the Agreement, you agree to
do so solely at your own risk and the City will not incur any liability from your change of position.

You are required to return an acknowledged copy of this Notice of Award to the City.

Dated this _____ day of _____. 20_____.

City of Hendersonville

OWNER

By: _____

Title: _____

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged by_____

(Firm)

this _____ day of _____, 20_____.

Name

Title

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called PRINCIPAL, and (Corporation, Partnership, Individual)

(Name of Surety)

(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

City of Hendersonville

(Name of Owner)

305 Williams Street, Hendersonville, North Carolina 28792

(Address of Owner)

hereinafter called OWNER, in the penal sum of:

(words)

(numbers)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, a copy of which is hereto attached and made a part hereof for the construction of:

Locust St Curb & Gutter and Sidewalk

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, Subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work whether by Subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the OWNER and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20____.

ATTEST:

(Principal) Secretary

Principal

(SEAL)

BY: _____

Address

Witness as to Principal

(Address)

ATTEST:

Secretary) (Surety)

(SEAL)

BY: _____

Attorney-in-Fact

Address

Witness as to Surety

(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT:

Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called PRINCIPAL, and
(Corporation, Partnership, Individual)

(Name of Surety)

(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

City of Hendersonville

(Name of Owner)

305 Williams Street, Hendersonville, North Carolina 28792

(Address of Owner)

hereinafter called OWNER, in the penal sum of:

(words)

(numbers)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas, the Principal entered into a certain contract with the Owner, dated the ____ day of _____, a copy of which is hereto attached and made a part hereof for the construction of:

Locust St Curb & Gutter and Sidewalk

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to Work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20____.

ATTEST:

(Principal) Secretary

Principal

(SEAL)

BY: _____

Address

Witness as to Principal

(Address)

ATTEST:

Secretary (Surety)

Surety

(SEAL)

BY: _____

Attorney-in-Fact

Address

Witness as to Surety

(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT:

Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

NOTICE TO PROCEED

To: _____ Date: _____

Project Description: **Locust St Curb & Gutter and Sidewalk**

You are hereby notified to commence work in accordance with the Agreement dated _____, 20____ on
or before _____, 20____ and in accordance with the Agreement, the date of Substantial Completion
is _____, and the date of readiness for final payment is _____.

You are required to return an acknowledged copy of this Notice to Proceed to the City.

City of Hendersonville

Date: _____, 20____

By: _____

Title: _____

Acceptance of Notice

Receipt of the above Notice of Award is hereby acknowledged by _____

(Firm)

this _____ day of _____, 20____.

Name

Title

AGREEMENT

This Agreement made and entered into this _____ day of _____ 2021 by and between the City of Hendersonville, party of the first part, hereinafter designated as the owner, and _____, party of the second part, hereinafter designated as the Contractor.

WITNESSETH: That the parties hereto, for the considerations contained herein, hereby mutually agree as follows:

ARTICLE I:

Under this Agreement and Contract, the Contractor shall construct the project entitled:

Locust St Curb & Gutter and Sidewalk

HENDERSONVILLE, NORTH CAROLINA

ARTICLE II:

In consideration of the payments to be made as hereinafter provided, the Contractor agrees, at his sole cost and expense, to perform all the labor and services and to furnish all the labor and materials, plant and equipment necessary to complete and to complete in good, substantial, workmanlike and approved manner, the work named under Article I hereof, within the time hereinafter specified and in accordance with the terms, conditions and provisions of this Contract and with the instructions, orders and directions of the Owner made in accordance with this contract.

ARTICLE III:

The owner agrees to pay and the Contractor agrees to accept as full compensation for all work done, and materials furnished, and for materials, equipment, and supplies sold, and also for all costs and expenses incurred, and loss or damages sustained by reason of the action of the elements or growing out of the nature of the work, or from any unforeseen obstruction or difficulty encountered in the execution of the work and for all risks of every description connected with the work, and for all expenses incurred by, or in consequence of, the suspension or discontinuance of the work as herein specified, and for faithfully completing the work and the whole thereof as herein provided, and for maintaining the work in good condition until the final payment is made, the prices stipulated in the Bid hereto attached.

The Owner shall pay to the contractor for the performance of the contract the amounts determined for the total number of each of the units of work in the attached Bid Proposal. The final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by the Contract.

ARTICLE IV:

The following documents shall constitute integral parts of the Agreement, the whole to be collectively known and referred to as the Contract Documents, or Contract: Bid; Agreement; general Conditions; Summary of Work and all interpretations of or addenda to the Contract Documents issued by the Owner, or his representative.

The Table of Contents, Headings and Titles contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit, or cast light on the interpretation of the provisions to which they refer.

ARTICLE V:

The work to be performed under this contract shall be commenced within 10 calendar days after the date of written notice by the Owner to the Contractor to proceed. The work shall be completed within 60 calendar days after the date of such notice and with such extensions of time as are provided for in the contract.

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning, rate of progress and the time for completion of the work to be done hereunder as ESSENTIAL CONDITIONS of this Contract. The Contractor agrees that said work shall be executed regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion of the work described herein in a reasonable time for the completion of the same, taking into consideration the average climatic range and construction conditions prevailing in this locality.

It is further agreed that time is of the essence to each and every portion of this contract and to the specifications wherein a definite portion and-certain length of time is fixed for the performance of any act whatsoever; and where under the Contract, any additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this contract.

ARTICLE VI:

If the Contractor shall fail to comply with any of the terms, conditions, provisions or stipulations of this contract, according to the true intent and meaning thereof, then the owner may make use of all remedies provided in that behalf in the contract and shall have the right and power to proceed in accordance with the provisions thereof.

The following alterations and addenda have been made and included in this Contract before it was signed by the parties hereto:

IN WITNESS WHEREOF, the parties of this Agreement have hereunto set their hands and seals and have executed this Agreement, the day and year first above written.

This instrument has been pre-audited in the manner required by the local government fiscal control act.

Finance Director

**CITY OF HENDERSONVILLE
OWNER**

(Seal)

Attest: _____

BY: _____

Title: Public Works Director

(Seal)

By: _____

Title: _____

Contractor

ATTACH INSURANCE CERTIFICATES

CONTRACT CHANGE ORDER

Project: **Locust St Curb & Gutter and Sidewalk**
HENDERSONVILLE, NORTH CAROLINA

Owner: CITY OF HENDERSONVILLE
145 5th Ave East
Hendersonville, N.C. 28793

To:

Per the North Carolina State Construction Manual the contract is changed as follows:

The original **Contract Sum** was \$ _____
The net change by previously authorized Change Orders \$ _____
The **Contract Sum** prior to this Change Order was \$ _____
The **Contract Sum** will be increased by this Change Order in the amount of \$ _____ The new
Contract Sum including this Change Order will be \$ _____
The Contract Time will be increased by () Days
The date of Substantial Completion as of the date of this Change Order therefore is _____ -

Purpose of WORK CHANGE ORDER DIRECTIVE:

Attachments:

Approved By Owner:

BY: _____

TITLE: Director, Public Works

DATE: _____

Receipt Acknowledged By Contractor:

BY: _____

TITLE: _____

DATE: _____

APPLICATION FOR PAYMENT

APPLICATION #

Date:

Project: **Locust St Curb & Gutter and Sidewalk**
HENDERSONVILLE, NORTH CAROLINA

ENGINEER: City of Hendersonville, Hendersonville, North Carolina

CONTRACTOR:

SUMMARY:	TOTAL WORK COMPLETED TO DATE	\$
	TOTAL MATERIALS STORED ON SITE	\$
	TOTAL EARNED THIS APPLICATION	\$
	LESS PREVIOUS PAYMENTS	\$
	CURRENT PAYMENT DUE	\$

APPLICATION:

CONTRACTOR:

_____	_____	_____
Name	Title	Date

VERIFICATION:

CONSTRUCTION INSPECTOR: City of Hendersonville

IN ACCORDANCE WITH THE CONTRACT AND THIS APPLICATION FOR PAYMENT, THE CONTRACTOR HAS COMPLETED THE WORK STATED ABOVE AND IS ENTITLED THE FULL PAYMENT IN THE AMOUNT SHOWN.

_____	_____	_____
Name	Title	Date

APPROVAL:

OWNER: City of Hendersonville
THIS APPLICATION IS HEREBY APPROVED FOR PAYMENT:

_____	<u>Director of Public Works,</u>	_____
Name	Title	Date

SECTION 01500 - SPECIAL CONDITIONS

01500.1 LIMITS OF CONSTRUCTION

The Contractor shall confine all operations and personnel to the limits of construction as designated by the City. There shall be no disturbance whatsoever of any areas outside the limits of construction.

01500.2 CLEANLINESS

The Contractor shall maintain the work and project grounds free from rubbish, debris and waste materials during all phases of the work.

Immediately upon completion of the work but prior to final acceptance, the Contractor shall remove all rubbish, debris, temporary structures, equipment, excess or waste materials and shall leave the work and project grounds in a neat and orderly condition that is satisfactory to the Owner.

01500.5 EQUIPMENT AND MATERIAL STORAGE

The Contractor shall plan his activities so that all materials and equipment can be stored within the limits of construction or in areas provided by the Owner.

01500.6 CONTROL OF EROSION, SILTATION AND POLLUTION

- A. The Contractor shall take whatever measures necessary to minimize soil erosion and siltation, water and air pollution caused by his operations. The Contractor shall also comply with the applicable regulations of all legally constituted authorities relating to pollution prevention and control.

The Contractor shall keep himself fully informed of all such regulations which in any way affect the conduct of the work, and shall at all times observe and comply with all such regulations. In the event of conflict between such regulations and the requirements of the specifications, the more restrictive requirements shall apply.

- B. The Contractor shall control dust throughout the life of the project within the project area and at all other areas affected by the construction of the project, including, but not specifically limited to, access roads, disposal sites, borrow and material pits, and production sites. Dust control shall not be considered effective where the amount of dust creates a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property.

01500.7 TRAFFIC CONTROL

The Contractor shall provide, erect, and maintain all necessary devices to control traffic and protect the public, the work and workers. All traffic control shall be provided as established in The Manual of Uniform Traffic Control Devices and any and all supplements of the North Carolina Department of Transportation.

In special cases, additional traffic control may be required as directed by the Owner or by the North Carolina Department of Transportation, and a Change Order will be issued.

MATERIALS

Satisfactory soil materials are defined as those complying with American Association of State Highway and Transportation Officials M145, soil classification Groups A-1, A-2-4, A-2-5, and A-3.

Unsatisfactory soil materials are those defined in AASHTO M145, soil classification Groups A-2-6, A-2-7, A-4, A-5, A-6, and A-7: also peat and other highly organic soils.

ABC Stone: Aggregate Base Course "Crusher Run" shall be an NCDOT approved material from an approved quarry unless otherwise specified by the City of Hendersonville.

ASPHALT MATERIALS

Asphalt Surface Treatment: Asphalt surface treatment shall be in accordance with Type RS 9.5C. Asphalt shall be a NCDOT approved mix and shall be installed to conform to the standard requirements of NCDOT.

CONCRETE MATERIALS

Sidewalks: Sidewalks shall be constructed using the "Standard Specifications and Details for Construction" set forth by the City of Hendersonville and shall be constructed using 4000 psi concrete.

Curb and Gutter: Curb and gutter that has been removed shall be reinstalled to the same dimensions as the existing curb and gutter that surrounds it. Curb and gutter shall be constructed of 4000 psi concrete and shall be constructed using the "Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

Valley Gutter: Valley gutter shall be installed in accordance with the "Standard Specifications and Details for Construction" set forth by the City of Hendersonville. Valley gutter may be used as drive entrances as specified by the City and shall be constructed using 4000 psi concrete.

Drive Aprons: Aprons shall be installed using 4000 psi and in accordance with the Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

Crosswalk Aprons: Aprons shall be installed using 4000 psi and in accordance with the Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

ADA Detectable Warning Plates: Shall be constructed of cast iron and shall be installed in accordance with the Standard Specifications and Details for Construction" set forth by the City of Hendersonville.

FINE GRADING

Grading : Finished Grading - Lawn Areas: After the finish-grade has been prepared, available on-site topsoil shall be spread in a uniform manner over areas that require it. Topsoil that is in a frozen or muddy condition shall not be used. If suitable topsoil is not available on-site, the Contractor is responsible for supplying topsoil if it is determined that the existing soil conditions are unsuitable for establishing an acceptable lawn. Reseeding shall be complete using a fescue type seed or blend with straw mulch.

**RESOLUTION ADOPTING THE RULES IMPLEMENTING MEDIATED
SETTLEMENT CONFERENCES IN
CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS**

WHEREAS, N.C. Gen. Stat. § 143-128(f1) requires that for any building construction project in the formal bidding range the City have in place a dispute resolution procedure involving mediation for disputes of at least \$15,000.00; and

WHEREAS, City Council wishes to adopt such a policy; and

WHEREAS, a proposed policy entitled “RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS” has been presented to the City Council for consideration; and

WHEREAS, as written, the proposed policy, applies to any City contract which, by its terms, makes it applicable;

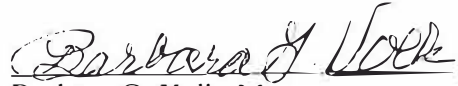
NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that resolves that the policy entitled “RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS” is adopted as presented.

Adopted the City Council of the City of Hendersonville, North Carolina this 7th day of January 2021.

ATTEST:

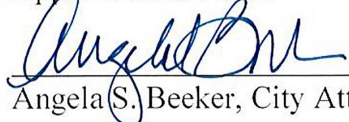


Angela L. Reece, City Clerk



Barbara G. Volk, Mayor

Approve as to Form:



Angela S. Beeker, City Attorney

RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN
CITY OF HENDERSONVILLE CONSTRUCTION PROJECTS

Adopted: January 7, 2021

RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

- A. Purpose of Mandatory Settlement Conferences. These Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.
- B. Applicability/Initiating the Dispute Resolution Process
1. Applicability. These Rules Implementing Mediated Settlement Conferences in City of Hendersonville Construction Projects ("Rules") shall apply to any party to a contract related to a City of Hendersonville construction project involving the erection, construction, alteration or repair of a building as required by N.C.G.S. § 143-128(g). These Rules shall also apply to any party to a contract, involving any other City construction project, which by its terms incorporates these Rules. As used herein "party to a contract" shall include, but not be limited to, contractors, subcontractors, and design professionals and their subcontractors.
 2. Initiating the Dispute Resolution Process. Any party to a contract who is a party to a dispute arising out of the construction process in which the amount in controversy is at least \$15,000 may submit a written request to the City Representative for mediation of the dispute. As used herein, the "City Representative" shall refer to the person(s) designated as the City Representative for the purposes of these Rules, or if no one is so designated, "City Representative" shall refer to the person(s) designated as project manager, project liaison, or notice agent(s) for the City in the contract between the City and prime contractor or Project Designer. Disputes of less than \$15,000 are not subject to these Rules.

Prior to submission of a written request for mediation to the City Representative, the party(ies) requesting mediation,

- a. If a prime contractor, must have first submitted its claim to the Project Designer (Architect, Engineer or other as designated by the City) for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes eligible for mediation in this dispute resolution process, and the party may submit their written request for mediation to the City Representative.
- b. If the party requesting mediation is the Project Designer, then it must first submit its claim to the City Representative to resolve. If the dispute is not resolved with the City Representative's involvement, then the Project Designer's dispute is eligible for mediation in this dispute resolution process, and the Project Designer may submit its written request to the City Representative for mediation.
- c. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor or design professional with whom it has a contract. If the

dispute is not resolved through the prime contractor's or design professional's involvement, then the dispute becomes eligible for mediation in this dispute resolution process, and the party may submit its written request for mediation to the City Representative.

3. If a matter or issue arises in the dispute resolution process that is not addressed by these Rules, the rules of procedure governing the Superior Court Mediation Program shall be used as a guide.

RULE 2. SELECTION OF MEDIATOR

- A. Selection of Certified Mediator by Agreement of the Parties. The parties may select a certified mediator pursuant to these Rules by agreement within 21 days of requesting mediation. The requesting party shall file with the City Representative a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and the other parties have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.
- B. Nomination and City Representative Approval of a Non-Certified Mediator. The parties may select a mediator who does not meet the certification requirements of these Rules but who, in the opinion of the parties and the City Representative is otherwise qualified by training or experience to mediate the action.

If the parties select a non-certified mediator, the requesting party shall file with the City Representative a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

The City Representative shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

- C. Appointment of Mediator by the City Representative. If the parties cannot agree upon the selection of a mediator, either the party or party's attorney shall notify the City Representative and request, on behalf of the parties, that the City Representative appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the City Representative shall appoint a certified attorney mediator. If no preference is expressed, the City Representative may appoint a certified attorney mediator or a certified non-attorney mediator.
- D. Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained by Henderson County for the Superior Court Mediation Settlement Conference Program.
- E. Disqualification of Mediator. Any party may request replacement of the mediator by the City Representative for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 3. THE MEDIATED SETTLEMENT CONFERENCE

- A. Where Conference is to be Held. Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the City of Hendersonville. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.
- B. When Conference is to be Held. The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.
- C. Request to Extend Deadline for Completion. A party, or the mediator, may request that the City Representative extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the City Representative.

The City Representative may grant the request by setting a new deadline for completion of the conference or deny the request to extend the deadline.
- D. Recesses. The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.
- E. **The mediated settlement or the matter subject of the mediation conference shall not be cause for the delay of the construction project which is the focus of the dispute.**

RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN THE DISPUTE RESOLUTION PROCESS

- A. Attendance.
 - 1. All parties to the dispute originally presented to the Designer or Prime Contractor or County for initial resolution must attend the mediation. Failure of a party to attend the mediation may result in the City's withholding of monthly payment to that party until such party attends the mediation, or if the party is a subcontractor the withholding of the subcontractor's payment by the contractor or design professional if the subcontractor's contract so provides.
 - 2. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
 - 3. Attorneys on behalf of parties may attend the mediation but are not required to do so.
 - 4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.
- B. Finalizing Agreement. If an agreement is reached in the conference, parties to the agreement shall reduce the terms to writing and sign it along with their counsel, if counsel is present.

- C. Mediation Fee. The mediation fee shall be divided equally among the parties to the dispute, unless otherwise agreed to as part of the mediation. If the City is a party to the dispute, the City shall pay its equal share of the mediator's fee based on the number of parties to the dispute, or 1/3 of the mediator's fee, whichever is greater as required by N.C.G.S. § 143-128(f1) in which case the remaining parties shall equally divide the remaining 2/3 of the mediator's fee.
- D. Failure to compensate mediator. Any party's failure to compensate the mediators in accordance with these Rules shall subject that party to a withholding of said amount of money from the party's monthly payment by the City of Hendersonville, or if the party is a subcontractor the withholding of the subcontractor's payment by the contractor or design professional if the subcontractor's contract so provides.

RULE 5. AUTHORITY AND DUTIES OF MEDIATOR

A. Authority of Mediator.

1. Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
2. Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
3. Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

B. Duties of Mediator

1. The mediator shall define and describe the following at the beginning of the conference:
 - a. The process of mediation;
 - b. The difference between mediation and other forms of conflict resolution;
 - c. The costs of the mediated settlement conference;
 - d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
 - e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - g. The inadmissibility of conduct and statements as provided by N.C.G.S. 7A-38.1(1);
 - h. The duties and responsibilities of the mediator and the participants; and
 - i. That any agreement reached will be reached by mutual consent.
2. Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
3. Declaring Impasse. It is the duty of the mediator to timely determine that an impasse exists and

that the conference should end.

4. Reporting Results of Conference. The mediator shall report to the City Representative within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform the City Representative of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. The City Representative may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
5. Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by these Rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order from the City Representative.

RULE 6. COMPENSATION OF THE MEDIATOR

- A. By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of N.C.G.S. 143-128(f1) are observed.
- B. By Appointment. When the mediator is appointed by the City Representative, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

RULE 7. MEDIATOR CERTIFICATION.

All certified mediators shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina. (Except when otherwise allowed by the City Representative upon the request of the parties to the mediation.) When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.

All mediators chosen must demonstrate either they are certified in accordance with these Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of the City Representative to mediate any dispute in accordance with these Rules.

RULE 8. RULE AMENDMENTS.

These Rules are subject to amendment by the City of Hendersonville City Council at any time the City deems it appropriate. Further, these Rules may be modified or waived for a particular project by the City Manager, provided that the City contract(s) related to the project reflect such modification or waiver.

RULE 9. TIME LIMITS.

Any time limit provided for by these Rules may be waived or extended by the mediator for good cause shown. If a mediator has not yet been appointed, if the mediator has disqualified him/herself, or if the City Representative is in the process of replacing the mediator as allowed by these Rules, the City Representative shall decide all waivers or extensions of time for good cause shown.