



THE CITY OF HENDERSONVILLE

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

CONTRACT FOR PROFESSIONAL SURVEYING SERVICES

FIRM: Black Wall Street AVL
346 Depot Street
Asheville, NC 28801
(XXX) XXX-XXXX

PROJECT: Brooklyn Business Investment Initiative
PROJECT DESCRIPTION: Funded By Dogwood Health Trust Access to Capital Grant, This project intends to develop 'under-fueled' and historically disadvantaged entrepreneurs and businesses. ("Project").
PROJECT NUMBER: 12012022-01

This Contract for Professional Surveying Services, and all exhibits, (collectively this "Contract") is entered into this ____ day of _____, 20____ by and between, the City of Hendersonville, a municipal corporation of the State of North Carolina, (the "City") and, Black Wall Street AVL a North Carolina Nonprofit Entity, having an address of 346 Depot Street, Asheville NC, 28801 (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 professional training and technical assistance services needed to complete the Project. Such professional training and technical assistance services shall constitute the "Work." The Scope of Services and Firm's Fee Schedule are attached as Exhibits B and C, which are incorporated herein by reference.

In addition to the indemnification obligations contained in the STANDARD TERMS AND CONDITIONS attached to this Contract, the Firm further agrees to indemnify and save harmless the City from claims and liabilities to the extent caused by the negligent errors or omissions of the Firm, including its subcontractors.

The Firm agrees to coordinate its Work with the work of any other separate professional services, contractors or with the work of the City's own forces to avoid delaying or interfering with their work.

The Firm must be properly authorized to conduct business in the state of North Carolina.

The City reserves the right to terminate the professional service contract of the Firm based on the Firm's breach of this Contract (ex: schedule, responsiveness, quality of work 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 in Exhibit C.

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 ten (10) days of receipt of the Notice to Proceed from the City and shall conclude with the conclusion of the Project, unless sooner terminated as allowed by the Contract Documents.
6. Payment for Services. In consideration of the above services, the City will pay the Firm **on a time and materials basis, in accordance with the submitted fee schedule in Exhibit C**, attached hereto and incorporated by reference, up to, but not exceeding, the not-to-exceed-sum stated in the Fee Schedule in Exhibit C. Unless otherwise specifically stated in Exhibit C, reimbursables must be approved by the City prior to being reimbursed. Firm will submit quarterly invoices for Work performed during the month based upon the Work completed during the billing period which shall be paid thirty (30) days after receipt of undisputed invoices delivered. Invoices must be detailed as to time worked and tasks performed, materials used, and reimbursables billed. 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.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals at Hendersonville, North Carolina, this _____ day of _____, 20_____.

Black Wall Street AVL

THE CITY OF HENDERSONVILLE

BY: _____ (SEAL)
Signature

BY: _____ (SEAL)
John Connet, City Manager

Joseph Tyreice Hackett, Founder, Black Wall Street AVL

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 & D 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 Professional Surveying 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. **(RESERVED).**
6. **Taxes.** Any applicable taxes paid shall be itemized on invoices.
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 the Firm shall indemnify and hold harmless the City, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims"), but only to the extent the fault of the Consultant or its derivative parties (as defined in N.C.G.S §22B-1) is a proximate cause of the Claim. 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, but only to the extent the fault of the Consultant or its derivative parties (as defined in N.C.G.S §22B-1) is a proximate cause of the Claim.
9. **Invoices and Payment Terms.** Invoice and Payment Terms are set forth in Section 5 in the Contract for Professional Surveying Services. All invoices and statements shall reference the City's Purchase Order Number, Contract number(if applicable) and Project Number, and shall be submitted to: City of Hendersonville, Accounts Payable, 160 6th Avenue East, Hendersonville, North Carolina 28792.
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. **Insurance.** The Firm shall provide the insurance coverages shown on Exhibit A, attached hereto and incorporated herein by reference. The Firm shall provide the City with a North Carolina Certificate of Insurance and such endorsements as may be required by the Contract Documents PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. Such certificates of insurance shall be considered part of the Contract.
12. **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.

13. **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.
14. **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.
15. **Assignment.** The Firm shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of the City.
16. **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.
17. **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 and any survey documents, drawings and specifications applicable to the Work. The Work shall also adhere to all applicable federal, state and local laws, codes, ordinances, and regulations.
18. **Quality and Workmanship.** The Firm shall perform all Work in accordance with this Contract and the standard of care ordinarily used by members of the surveying profession practicing under similar circumstances and at the same time in Henderson County.
19. **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, professional surveying 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.
20. **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 at actual cost to the Firm 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.
21. **Instruments of Service and Work for Hire.** All Work performed by the Firm, and all data compiled, shall be considered Instruments of Service and Work for Hire, and shall be the Property of the Owner. 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 survey work provided by the Surveyor and all data compiled by the Surveyor. All representations and obligations with respect to the Work by the Firm under this Contract shall survive termination of this Agreement unless this Contract is terminated by the Firm for the City's material breach, in which case use by the City of the Firm's survey work and data compiled shall be at the City's own risk, and without any representation by the Surveyor as to its accuracy or fitness for any purpose.
22. **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.
23. **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.
24. **Valid Contract.** In order for this Contract for Professional Surveying 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.

25. **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.
26. **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.
27. **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.
28. **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.

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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, workmen's 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

Black Wall Street AVL will provide the following services in coordination with City staff and other contractors:

Black Wall Street AVL Scope of Services

\$25,000 in Training and Services (2 years):

Black Wall Street AVL (BWS) will work with the City of Hendersonville Community Development Department, Downtown Division to support 'under-fueled entrepreneurs' and 'historically underutilized businesses' (HUB) in downtown Hendersonville. BWS will develop a clientele of businesses who primarily fall in the category as defined per N.C.G.S. 143-128.4(a) and 143-48.4(a):

To qualify as a historically underutilized business, a business must be:

- at least 51% owned, controlled and managed, by one or more citizens or lawful permanent residents of the United States, and must be members of one or more of the following groups: (1) Black, (2) Hispanic, (3) Asian American, (4) American Indian, (5) Female, (6) Disabled and (7) Disadvantaged.

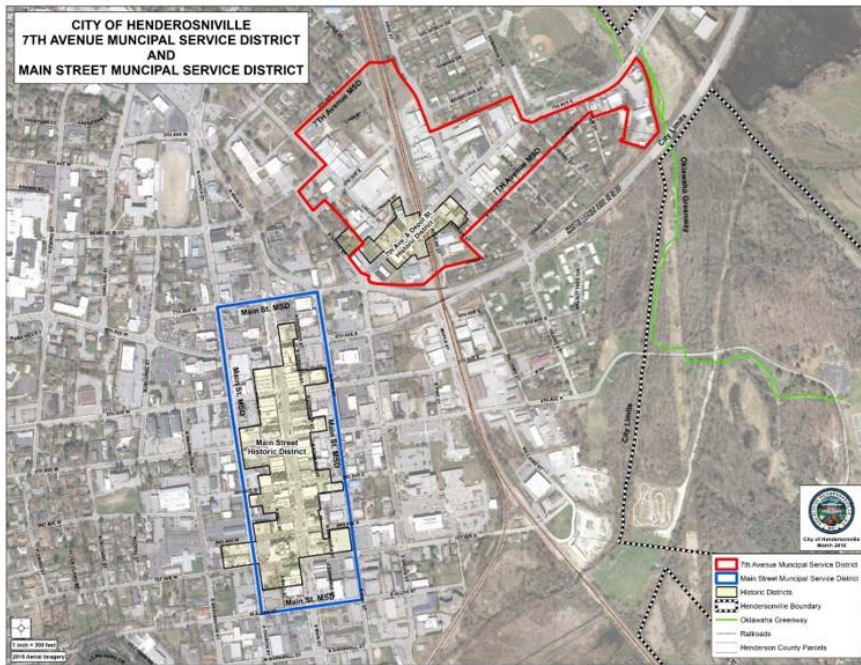
BWS Services include:

1. Maintain a database of clientele who are mentored and supported in their small business efforts.
2. Document efforts, events and communications and work with Downtown Division staff to coordinate on additional support services needed.
3. Maintain regular contact with Downtown Division staff and grant project team.
4. Work with Downtown Division Staff on marketing and promotion efforts to have a coordinated voice and appearance in the program.

BWS Outcomes:

1. Marketing/Outreach to low-income business owners and interested entrepreneurs, with an emphasis on HUB businesses . Approximately 75% of participants shall reside in the City of Hendersonville with special emphasis on businesses in or interested in opening a business within the Municipal Service District in the City of Hendersonville (see map).

Main Street and 7th Avenue MSD's



MSD = Municipal Service District

Tax revenue generated by each district must go **above and beyond** typical city services.

Resources must stay within those district boundaries because it supports the properties that are paying the additional tax.

2. Serve as a 'connector' to connect entrepreneurs to opportunities for businesses, including but not limited to training, technical assistance and loan services, and networking. Examples of support include:
 - a. Small business startup plan courses offered by Blue Ridge Community College and Small Business Center
 - b. Business Accelerator Program offered by Blue Ridge Community College
 - c. Foundations course offered by Mountain BizWorks
 - d. Connections with SCORE mentors
 - e. Support to become a HUB qualified contractor in the State of North Carolina
 - f. Connecting businesses with event producers to become a vendor at downtown events and festivals
 - g. Connecting with Downtown Division staff to identify locations for business or pop-ups.
3. Connecting clients to access to capital and loan programs through the Hendersonville Business Investment Initiative Fund and other lending products at Mountain BizWorks and area financial institutions.
4. Make other program services already offered by BWS available to program participants.

EXHIBIT C
Fee Schedule for the Work

| Services | Fee Type | Fee |
|---|-----------------|--------------------|
| A. Startup Expenses | Flat Rate | \$7500 |
| B. Quarterly Payment to begin at end of each quarter, with first payment made June 30, 2023 and last payment made June 30, 2024 | Flat Rate | \$3500 |
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| XXXXXXXXXX | | |
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| | | |
| | SUB TOTAL | |
| | | |
| | TOTAL = | \$25,000.00 |

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