

**RESOLUTION BY THE CITY OF HENDERSONVILLE CITY COUNCIL TO
AUTHORIZE THE CONTRACT AWARD AND SOLE-SOURCE EXCEPTION OF THE
FRENCH BROAD RIVER INTAKE AND PUMPING STATION PERMANENT REPAIRS
DUE TO HURRICANE HELENE**

WHEREAS, prior to completion of construction, the French Broad River intake and pumping station was substantially flooded, including but not limited to the electrical room, as a result of Hurricane Helene; and

WHEREAS, the City originally contracted with Crowder Construction Company for the construction of the French Broad River intake and pumping station by way of that contract dated March 10, 2022 which was procured in accordance with the requirements of NCGS 143-129; and

WHEREAS, Crowder Construction Company has previously assessed the flooding of the French Broad River intake, and then completed immediate measures to dewater and dehumidify the building and facilities and such other actions as were necessary to minimize further damage to the French Broad River intake as a result of the flooding, all of the foregoing being performed under an emergent contract; and

WHEREAS, it is necessary to perform additional, permanent repair services for the French Broad River intake in order to restore it to its pre-storm condition; and

WHEREAS, NCGS 143-129(e) lists the authorized exceptions to the formal bid procedures. NCGS 143-129(e)(6) allows for purchases of apparatus, supplies, materials, or equipment to be purchasing using sole-source exception when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. The governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract; and

WHEREAS, NCGS 143-129(e)(4) provides that construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to NCGS 143-129 is exempt from the bidding process; and

WHEREAS, Crowder Construction Company is the sole contractor that can perform the permanent repair services as the intake was currently under construction by Crowder at the time of Helene, and pursuant to the terms of the March 10, 2022 contract, the certificate of substantial completion had not been issued by the City, and the intake was and is still under Crowder's possession and control for purposes of completing the construction of the intake, and allowing a third party contractor to perform the repairs to a work in progress would result in substantial duplication of costs that would not be expected to be recovered through competition; and

WHEREAS, the permanent repair services are to repair work that was originally undertaken pursuant to NCGS 143-129; and

WHEREAS, in order to segregate the permanent repair work that is necessary to restore the intake to the stage of construction existing immediately prior to the Helene from the completion of the construction of the intake project under the March 22, 2022 contract, Crowder Construction Company and the City are entering into this separate permanent repair agreement, rather than amending the March 10, 2022 contract by change order.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hendersonville, North Carolina that:

1. A soul-source exception to the formal bid procedures applies as performance or price competition are not available for the permanent repairs of the French Broad River Intake and Pumping Station.
2. The City Manager is authorized to award and execute a contract for the construction of the French Broad Intake and Pump Station Permanent Repairs Due to Hurricane Helene in the total amount of \$1,871,961.00.
3. The City Manager is authorized to approve change orders which cumulatively do not exceed 10% of the approved contract amount of \$1,871,961.00, provided however that any necessary budget ordinance amendments must be brought back to the City Council for approval.
4. To the extent that compliance with State or Federal Bidding requirements require that an amendment to the March 10, 2022 contract be entered, the contract entered pursuant to the authority of this Resolution for the permanent repair work (and all change orders entered thereto) shall be considered an amendment to the March 10, 2022 contract.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____, _____.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney