

Welcome and Call to Order by Mayor O. Stanhope Anthony III

~ Invocation ~

~ Pledge of Allegiance ~

A. Approval of agenda:

Discussion and revision of the proposed agenda, including consent agenda; adoption of an agenda

- 1) Motion to adopt the agenda as proposed or amended

B. Special Presentations:

- 1) Recognition of Melvin David Durham on the occasion of his retirement from employment with the City of Shelby 1
- 2) Recognition of the Shelby Fire and Rescue Department on its Award of Accredited Agency status by the Commission on Fire Accreditation International (CFAI) through the Center for Public Safety Excellence (CPSE) – Deputy Chief Cynthia Bonham, CFAI, Charlotte, North Carolina 3

C. Consent Agenda:

Prior to approval and adoption of the agenda, a Council Member may move an item from the Consent Agenda to the regular agenda. Items remaining on the Consent Agenda will be considered collectively through a single motion and vote.

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- 2) Approval of Special Event Permit Applications: 20
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- 1) To establish or instruct staff concerning the position to be taken by or on behalf of City Council in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease pursuant to North Carolina General Statute 143-318.11 (a) (5)

I. Adjournment:

To adjourn a meeting of City Council, a majority of the Council members must vote for a motion to adjourn.

- 1) Motion to adjourn 115

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: B-1

Special Presentations

- 1) Recognition of Melvin David Durham on the occasion of his retirement from employment with the City of Shelby

(Comments: Mayor Anthony)

Summary of Available Information:

- Resolution

City Manager's Recommendation / Comments

This time is scheduled on your agenda to recognize Melvin Durham on the occasion of his retirement from employment. In keeping with policy City Council previously adopted Resolution 61-2019 to recognize him for having served the City faithfully for the past 30 years with the Utilities Department. He is to be congratulated!

Melvin was a dedicated employee who has provided veteran leadership over the past several years in the performance of his duties. He has been a vital part of the team at the Natural Gas and GIS Departments. He will be missed both personally and professionally.

As is in keeping with current policy Melvin will be presented with a shadow box, framed resolution, a city lapel pin and a key to the City. It is customary and appropriate to recognize Melvin Durham for his many years of service to the City.

Please join me in wishing him a healthy and happy retirement.

A RESOLUTION

HONORING MELVIN DAVID DURHAM ON THE OCCASION OF HIS RETIREMENT FROM EMPLOYMENT WITH THE CITY OF SHELBY

WHEREAS, on the occasion of his retirement from employment on September 1, 2019, it is fitting and proper for the City Council to express its sincere appreciation to Melvin David Durham for his loyal, dedicated, and committed service to the City of Shelby from July 5, 1989 to September 1, 2019; and,

WHEREAS, Mr. Durham has been a loyal team member in the continuing development of the City of Shelby serving in the Natural Gas and GIS Departments and to the City of Shelby government as a whole and to all of its citizens; and,

WHEREAS, during his tenure of service, Mr. Durham has been a loyal employee for the City of Shelby, beginning as Natural Gas Laborer in 1989, receiving a promotion to Utility Serviceman I in June 1991, receiving a promotion to Utility Serviceman II in September 1993, re-classifying to Natural Gas Line Worker in July 1994, receiving a promotion to Natural Gas Line Worker II in March 1996, transferring to Energy Services Locator Technician in September 1999, re-classifying to Utility Services Locator in September 2003, receiving a promotion to Engineering Technician II in December 2004, transferring to GIS/GPS Technician in 2008, and finishing his career as GIS Technician, and has been an outstanding example of the quality of employee necessary to the development of the good of the City; and,

WHEREAS, Mr. Durham worked on many miles of the natural gas system on a routine basis no matter what the weather conditions were. Mr. Durham located many miles of utilities during his time as locator. Mr. Durham mapped out the entire natural gas, stormwater, and sewer systems for the City of Shelby, and he also maintained GIS data for other utilities; and,

WHEREAS, the City of Shelby is most grateful for the devoted, community, and personal contributions Mr. Durham has given to all the citizens, organizations, and businesses within the greater Shelby community; and,

WHEREAS, the City Council of the City of Shelby wishes to acknowledge and express its appreciation to Mr. Durham for his 30 years of dedicated and devoted duty in service to its citizens, noting that Mr. Durham will be missed both professionally and as a fellow co-worker who was always on call and returned to care for Shelby nearly every time he was called upon over the course of his career.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council publicly express their sincere appreciation to Melvin David Durham for his performance of duty to the City of Shelby during the past 30 years, and extend the very best wishes for a successful, long, safe, and happy retirement.

BE IT FURTHER RESOLVED that this Resolution be entered upon the permanent Minutes of the City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Shelby to be affixed this the 16th day of September 2019.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: B-2

- 2) Recognition of the Shelby Fire and Rescue Department on its Award of Accredited Agency status by the Commission on Fire Accreditation International (CFAI) through the Center for Public Safety Excellence (CPSE)

(Comments: Stan Anthony, Mayor and Fire Chief, William Hunt)

Summary of Available Information:

- Memorandum dated September 25, 2019 from William Hunt, Fire Chief to Rick Howell, City Manager
- Congratulations email from Cynde Singer to William Hunt

City Manager's Recommendation / Comments

This time is scheduled a City Council's agenda to allow for the presentation of the award from the Commission on Fire Accreditation International (CFAI) to the City of Shelby recognizing the Fire and Rescue Department for maintaining accreditation status. A tremendous amount of work has gone in to the reaccreditation process and it is certainly appropriate for these efforts to be recognized publicly. Deputy Chief Cynthia Bonham (City of Charlotte Fire and Rescue) will present the plaque on behalf of CFAI. Chief Hunt has also requested a few minutes at this time on the agenda to make a presentation required by the terms of international accreditation received by the City of Shelby Fire and Rescue Department through the Commission on Fire Accreditation International. This re-accreditation is valid for a five year period. An important component is for the department to demonstrate to the accrediting agency that it has worked toward "continuous improvement" and demonstrated accountability to the governing board, city management and the community at large. Chief Hunt will provide relevant information pertaining to the recommendations for improvement identified by the peer assessment team.

Please join me in congratulating Chief William Hunt and the entire Fire and Rescue Department for their efforts.



September 25, 2019

Memorandum:

To: Rick Howell, City Manager
From: William Hunt, Fire Chief

Subject: Recognition of the Fire & Rescue Department on its award of accredited agency status by the Commission on Fire Accreditation International (CFAI) through the Center for Public Safety Excellence (CPSE).

Background

The Center for Public Safety Excellence (CPSE) is the only program of agency accreditation and professional credentialing serving the fire service profession. The CPSE's *Commission on Fire Accreditation International (CFAI)* oversees the agency accreditation process through an eleven (11) member commission consisting of professionals representing the fire service, city-county management, consensus standards, organized labor, the insurance industry, and the Department of Defense. There are currently 270 accredited agencies in the United States, Canada, and on US military installations. Approximately eleven percent (11%) of the US population is protected by an accredited fire department. Accredited agency status is awarded for a five (5) year period, the City of Shelby Fire & Rescue was initially accredited on August 14, 2014.

Review

The Fire & Rescue Department filed its fourth *accredited agency annual compliance report* on July 15, 2018, and subsequently submitted application for a second term as an accredited agency. The department was designated candidate status on February 4, 2019 after submission of its agency self-assessment documents. The CFAI formed a peer team consisting of four (4) fire service professionals under the leadership of Chief Steven Locke (Burlington, VT) to perform an assessment of the Fire & Rescue Department to determine eligibility. After a preliminary evaluation, a site visit was scheduled for April 28-May 1, 2019 to allow the peer team to verify and validate the findings in the department's self-assessment documents. During the site visit, peer team members reviewed documents and exhibits, toured critical public safety infrastructure, and conducted interviews of fire department staff, city officials and representatives from partnering agencies.

At the conclusion of the site visit, the peer team found the Fire & Rescue Department to be credible in all areas and recommended it for accredited status. On August 7, 2019, representatives from the department attended the CFAI commission hearings in Atlanta GA., and based upon review of the peer team accreditation report and testimony given by those in attendance; the commission gave unanimous approval for accredited agency status for the term 2019 through 2024 to the City of Shelby Fire & Rescue.

Action

Please place on the Shelby City Council's agenda for October 7, 2019 the presentation of the plaque designating accredited agency status by the Commission on Fire Accreditation International to the City of Shelby Fire & Rescue. Deputy Chief Cynthia Bonham (Charlotte, NC) will present the award of accreditation to the city on behalf of CFAI. Following, I will make a short presentation of the peer team's findings and recommendations.

Enclosures

cc: Bernadette Parduski, Cynthia Bonham

William Hunt

From: Cynde Singer <csinger@cpse.org>
Sent: Thursday, August 8, 2019 3:46 PM
To: William Hunt
Subject: Congratulations! Accredited Agency Information
Attachments: City of Shelby Fire & Rescue, Shelby, North Carolina.doc; Press Release Template-7 August 2019.docx

Dear Chief,

It is with great honor that the Commission on Fire Accreditation International (CFAI) has awarded your agency with accredited status. As an internationally accredited agency you help lead the fire and emergency services to higher and greater standards for their communities. As an advocate for self-assessment and quality improvement you desire opportunities to improve and to be proactive as an emergency service organization. Also, thank you for your bravery and transparency to invite peers into your organization to verify and validate the work you accomplished. The accreditation process is a worthwhile journey, and this is an important step in that journey.

I ask that you begin talking to your community on what you learned while self-assessing your organization. Communicate what you found that was great and not so great. Also, speak to your local and regional neighbors about what self-assessment can do for them. If you sincerely believe your organization has benefited from this process, please consider meeting with your neighbors to help them get started. The focus on continuous improvement is critical to this process, and your commitment will be the key to their success as well. You are encouraged to review and consider purchasing decals, pins, or other merchandise from our on-line store located on the Center for Public Safety Excellence [website](#). This will promote your achievement to your peers and recognize you as an international accredited agency.

Attached is your accreditation Letter of Agreement and a sample press release that you can use to create your own and is issued only to assist the development of your release. Please return the Letter of Agreement to Karl Ristow, kristow@cpse.org or Cynde Singer, csinger@cpse.org by August 30, 2019.

Please take a few moments to complete our Accreditation Process survey. [Click Here](#).

Again, congratulations on this important step in the accreditation journey. As this process continues to become engrained in the fire service on an international level; you can take pride that you are part of a group of organizations that have recognized the importance of aligning your programs with national industry best practices for the fire and emergency services.

Sincerely:



Chief Steve Dongworth, Chairman
Commission on Fire Accreditation International

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

C. Consent Agenda:

Prior to approval and adoption of the agenda, a Council Member may move an item from the Consent Agenda to the regular agenda. Items remaining on the Consent Agenda will be considered collectively through a single motion, second, and vote.

Agenda Item: C-1

- 1) Approval of the Minutes of the Regular Meeting of September 16, 2019

Consent Agenda Item: (Bernadette Parduski, City Clerk)

Summary of Available Information:

Please read and offer changes as you deem necessary.

- Minutes of the Regular Meeting of September 16, 2019

City Manager's Recommendation / Comments

Approve the minutes as presented or as amended by the Mayor and City Council via the Consent Agenda.

MINUTES

Regular Meeting
City Hall Council Chamber

September 16, 2019
Monday, 6:00 p.m.

Present: Mayor O. Stanhope Anthony III, presiding; Council Members Eric B. Hendrick, David Causby, Violet Arth Dukes, Charles Webber, and Dicky Amaya; City Manager Rick Howell, ICMA-CM, City Clerk Bernadette A. Parduski, City Attorney Robert W. (Bob) Yelton, Assistant City Manager/Director of Finance Justin S. Merritt, MPA, Director of Human Resources Deborah C. (Deb) Jolly, Director of Water Resources David W. Hux, Director of Engineering Services Benjamin (Ben) Yarboro, Police Chief Jeffrey H. (Jeff) Ledford, Fire Chief William P. Hunt, MPA, EFO, Director of Public Works Daniel C. (Danny) Darst, and Director of Planning and Development Services Walter (Walt) Scharer, AICP; and Director of Cable Programming Greg Tillman of Cleveland Community College and The Video Factory

Absent: Council Member David W. White

Mayor Anthony called the meeting to order at 6:00 p.m., welcomed all who were in attendance, and acknowledged former Mayor Mike Philbeck in attendance. The Mayor gave the invocation then Mrs. Arth Dukes led the *Pledge of Allegiance*.

A. Approval of agenda:

- 1) Motion to adopt the proposed agenda

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve the agenda as presented.

B. Special Presentations:

- 1) Presentation of the North Carolina Sheriffs' Education and Training Standards Commission Advanced Service Award to Amy E. Fredell, Telecommunications Supervisor, Shelby Police Department

Mayor Anthony called upon Miss Fredell. He formally read and presented the Advanced Service Award conferred by the North Carolina Department of Justice Sheriffs' Standards Division to Telecommunications Supervisor Amy

Fredell, commending her commitment to law enforcement professionalism and extending his congratulations.

2) Proclamation declaring October 6-12, 2019 as “Public Natural Gas Week” in the City of Shelby, North Carolina

Mayor Anthony called upon Natural Gas Superintendent, Jeff Champion. The Mayor formally read and presented the Proclamation declaring October 6 through 12, 2019 as “Public Natural Gas Week” in the City of Shelby to Mr. Champion, commending the City’s employees of the Natural Gas Department.

3) Proclamation declaring October 6-12, 2019 as “Public Power Week” in the City of Shelby, North Carolina

Mayor Anthony called upon Electric Superintendent, Jeff Freeman. The Mayor formally read and presented the Proclamation declaring October 6 through 12, 2019 as “Public Power Week” in the City of Shelby to Mr. Freeman, commending the City’s employees of the Electric Department.

C. Public Comment:

1) Jamie Yarbrow who resides at 854 West Warren Street in Shelby, North Carolina spoke against the demolition of 211 Chestnut Street. Mr. Yarbrow owns the property and purchased it with the intent to repair and renovate the dwelling for rental purposes. He requested City Council’s indulgence for a continuance in order to bring said property into compliance with the City’s housing standards.

D. Public Hearings:

1) Consideration of a resolution and order permanently closing a section of County Home Road: Resolution No. 58-2019

Mr. Scharer introduced Resolution No. 58-2019 for Council’s consideration. He stated the owners of the properties adjacent to County Home Road, the State Employees’ Credit Union and the Shelby Hospitality Group, LLC, have petitioned the City of Shelby to permanently close the right-of-way and the road.

Utilizing a location map, Mr. Scharer pointed to the section of County Home Road located between the frontage road of US Highway 74 and Kings Road. He stated County Home Road, as displayed on the plat of Right-of-Way Abandonment/Dedication, will be permanently closed effective December 31, 2019 and all rights, title, and interest that is vested in the public for street

purposes is released to the abutting property owners. Mr. Scharer noted the City of Shelby retains a utility easement for any utilities that may lie on or cross the road.

Lastly, it was discussed the State Employees' Credit Union has preliminary plans to construct a new facility, which may include a new connector road between Kings Road and the Highway 74 frontage road.

Mayor Anthony opened the public hearing at 6:13 p.m. and invited comments from the public:

Bill McCarter who resides at 107 Plantation Court in Shelby, North Carolina spoke in appreciation and in support of Council's action to close County Home Road, which, in his opinion, is long overdue.

Mike Philbeck who resides at 1805 Arbor Way Drive in Shelby, North Carolina spoke in support of closing County Home Road for various reasons. Mr. Philbeck stated the City will be well-served by the road closure from a public safety point-of-view and, personally as a real estate broker, the closure should provide a better, possible economic development opportunity.

Mayor Anthony closed the public hearing at 6:17 p.m.

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to approve and adopt Resolution No. 58-2019 entitled, "A RESOLUTION AND ORDER PERMANENTLY CLOSING A SECTION OF COUNTY HOME ROAD".

- 2) Consideration of a resolution and order permanently closing an unopened right of way at the west end of East Shannonhouse Street and south end of Railroad Avenue: Resolution No. 59-2019

Mr. Scharer introduced Resolution No. 59-2019 for Council's consideration. He stated the property owners, Alfred Alexander Taylor of Tube Enterprises, Inc. and Jay S. Hennett of Hill Property Management, Inc., are located adjacent to this unopened right-of-way for Shannonhouse Street and have petitioned the City to close this section of right-of-way. Utilizing a location map, Mr. Scharer pointed to the west end of East Shannonhouse Street and the south end of Railroad Avenue as the site of the proposed closing and abandonment. The unopened right-of-way on the west end of East Shannonhouse Street and on the southern end of Railroad Avenue is also displayed on the plat titled, "Proposed Street and Alley Closing/Abandonment". He added a portion of the Shannonhouse Street right-of-way was never completed as a street. Both will be permanently

closed and all rights, title, and interest that may be vested in the public to said area for street purposes is released to the abutting property owners. Mr. Scharer concluded by stating City staff has reviewed this request and found the closure of the unopened right-of-way will not impact the provision of City services now or in the future. However, Tube Enterprises has agreed to pay for the cost of moving City utilities as well as acquire ownership and maintenance of the stormwater system located within the proposed closure.

Mayor Anthony opened the public hearing at 6:18 p.m. and invited comments from the public:

Alfred Taylor who owns the property and business at 1028 Railroad Avenue in Shelby, North Carolina spoke in support of his petition to permanently close the subject unopened right-of-way for business purposes. Mr. Taylor stated Tube Enterprises, Inc. is a family business which relocated from Kings Mountain to Shelby several years ago. The company purchased two parcels on Morgan Street and now wishes to add building frontage facing Morgan Street as well as expand the business by approximately 10 to 15 percent.

Mayor Anthony closed the public hearing at 6:20 p.m.

ACTION TAKEN: Upon a motion made by Mr. Causby, City Council voted unanimously to approve and adopt Resolution No. 59-2019 entitled, “A RESOLUTION AND ORDER PERMANENTLY CLOSING AN UNOPENED RIGHT OF WAY AT THE WEST END OF EAST SHANNONHOUSE STREET AND SOUTH END OF RAILROAD AVENUE”.

3) Consideration of a proposed ordinance to amend the Unified Development Ordinance (UDO) of the City of Shelby: Ordinance No. 59-2019

Mr. Scharer introduced a proposed textual amendment to the City’s UDO for tattoo studios as a conditional use in the Central Business (CB) Zoning District as submitted by applicant, Eric Metcalf. He explained tattoo studios are currently a permitted use with development standards in General Business and General Business 2 Zoning Districts. Mr. Scharer discussed the only development standards for tattoo studios bar tattoo studios from being located within 500 feet of any other tattoo studio. This current standard would also apply to any potential tattoo studios in the CB District. Next, a 300-foot buffer area from the property line of the Historic Court Square has also been proposed for the CB District Development Standards. He utilized a map to display the proposed buffer area. Any tattoo studios in the CB District will require a Conditional Use Permit from the Zoning Board Adjustment. The proposed ordinance would restrict the hours of operation between 8:00 a.m. to 8:00 p.m. on Sundays. Lastly, the transparent or see-through

windows will encourage a comfortable and safe place for citizens in the Uptown District, promoting Uptown Shelby as more attractive and welcoming to pedestrians.

Mr. Scharer concluded by stating the Planning and Zoning Board recommended approval of the proposed text amendment as submitted by staff.

Mayor Anthony opened the public hearing at 6:22 p.m. and invited comments from the public:

Brenton Young, D.D.S. who resides at 144 West Ross Grove Road in Shelby, North Carolina spoke in support of the proposed text amendment to permit tattoo studios in the Central Business District. Dr. Young stated he has known the applicant, Eric Metcalf, for 20 years, endorsing the hygienic and sterile condition of his tattoo shop and the caliber of his personality as a tattoo artist.

Howard Young who resides at 606 Grace Street in Shelby, North Carolina spoke in support of the proposed text amendment to permit tattoo studios in the Central Business District. Mr. Young stated he has known the applicant, Eric Metcalf, for 20 years and personally supports the establishment of his tattoo business in Uptown Shelby.

Eric Metcalf who resides at 1204 New Crest Lane in Shelby, North Carolina spoke in support of his application requesting a proposed text amendment to permit tattoo studios in the Central Business District. He lived and worked in downtown Asheville before relocating to Shelby 20 years ago. Mr. Metcalf submitted this application in the hopes of legitimizing his tattoo business and becoming a part of the Uptown Shelby community.

Lori Metcalf who resides 1204 New Crest Lane in Shelby, North Carolina spoke in support of her husband's application requesting a proposed text amendment to permit tattoo studios in the Central Business District. Mrs. Metcalf is an Associate Dean and Psychology instructor at a local community college and as such, she urged Council to think about their attitudes towards tattoos and tattoo businesses since she has concluded attitudes and opinions have changed dramatically over the last 20 years. Her husband is a responsible business owner and should have the right to operate his business in the Central Business District of Uptown Shelby.

Angela Franklin who resides at 112 North Lafayette Street in Shelby, North Carolina spoke in support of the proposed text amendment to permit tattoo studios in the Central Business District. As a nurse by profession, Miss

Franklin knows many people from many walks of life who have and get tattoos, representing both the changes in attitudes over time and as a means of art expression. She also stated a tattoo studio in the Central Business District may be beneficial to other businesses in Uptown Shelby.

Mayor Anthony closed the public hearing at 6:30 p.m.

ACTION TAKEN: Upon a motion made by Mrs. Arth Dukes, City Council voted unanimously to approve and adopt Ordinance No. 59-2019 entitled, “A PROPOSED ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF SHELBY”.

- 4) Consideration of a proposed ordinance amending the zoning map of the City of Shelby, North Carolina: Ordinance No. 60-2019

Mr. Scharer introduced a zoning map amendment for the property located at 845 North Post Road from Residential 20 (R20) zoning district to Corridor Protection District Conditional Use (CRD-CU) zoning district. Utilizing both location and zoning maps of the area, Mr. Scharer pointed to the subject property owned by Cleveland County. The applicant is Odom Engineering and the proposed project is submitted on behalf of Cleveland Community College. The application includes the proposed site plan for the conditional uses within the City of Shelby. Mr. Scharer further stated the proposed zoning map amendment is inconsistent with the Shelby Comprehensive Land Use Plan. However, he explained this area will be near the 150-74 Bypass Interchange and will be a part of the future Small Area Plan for the area. Mr. Scharer concluded by stating the Planning and Zoning Board recommended approval of the proposed zoning map amendment for property located at 845 North Post Road from Residential 20 (R20) zoning district to Corridor Protection District Conditional Use (CPD-CU) zoning district.

Mayor Anthony opened the public hearing at 6:32 p.m. and invited comments from the public. The public offered no comments.

Mayor Anthony closed the public hearing at 6:33 p.m.

ACTION TAKEN: Upon a motion made by Mr. Webber, City Council voted unanimously to approve and adopt Ordinance No. 60-2019 entitled, “A PROPOSED ORDINANCE AMENDING THE ZONING MAP OF THE CITY OF SHELBY, NORTH CAROLINA”.

- 5) Consideration of a resolution granting a Special Use Permit to Cleveland Community College at 845 North Post Road: Resolution No. 60-2019

Mayor Anthony opened the public hearing at 6:35 p.m. and sworn testimony was given as follows:

Mr. Scharer introduced Resolution No. 60-2019 and the proposed Special Use Permit request by the applicant, Odom Engineering, and as the designer of a vocational school for Cleveland Community College.

Utilizing both location and zoning maps of the area, Mr. Scharer pointed to the subject parcel within the City of Shelby fronting at 845 North Post Road in the Corridor Protection District Conditional Use zoning district. The applicant wishes to build a vocational school facility for utility linemen. Mr. Scharer discussed the following conditions recommended by staff for the proposed Conditional Use District:

- **100 foot front setback**
- **15 foot side setback**
- **No street access shall be on Spake Circle**
- **All street access shall be on North Post Road**
- **The right-of-way screening for every 50 feet of road frontage shall have four large maturing trees planted in a two by two arrangement, one small maturing tree in the center, and fifteen shrubs.**

Mr. Scharer concluded by stating the Planning and Zoning Board recommended approval of the proposed zoning map amendment for property located at 845 North Post Road from Residential 20 (R20) zoning district to Corridor Protection District Conditional Use (CPD-CU) zoning district.

Mayor Anthony closed the public hearing at 6:36 p.m.

Having heard all of the evidence and arguments presented at the hearing, Council finds and determines the application is complete. Council was presented with no evidence as to the following findings as read by Mayor Anthony:

- **The development will not materially endanger the public health or safety**
- **The development will not substantially injure the value of adjoining or abutting property**
- **Will be in harmony with the area in which it is to be located**
- **Will be in general conformity with the Comprehensive Land Use Plan or other plans officially adopted by Council**

ACTION TAKEN: Upon a motion made by Mr. Amaya approving a Special Use Permit on South Dekalb Street due to the fact this project will not materially

endanger the public health or safety, will not substantially injure the value of adjoining or abutting properties, will be in harmony with the area in which it is to be located, and will be in general conformity with the Shelby Comprehensive Land Use Plan or other plans officially adopted by City Council, City Council voted unanimously to approve and adopt Resolution No. 60-2019 entitled, "A RESOLUTION GRANTING A SPECIAL USE PERMIT TO CLEVELAND COMMUNITY COLLEGE AT 845 NORTH POST ROAD".

E. Consent Agenda:

ACTION TAKEN: Mayor Anthony presented the consent agenda. Mr. Amaya made a motion to approve the consent agenda. The consent agenda and following items were approved by a vote of 4 (Hendrick, Causby, Webber, and Amaya) to 1 (Arth Dukes).

- 1) Approval of the Minutes of the Regular Meeting of August 19, 2019
- 2) Approval of Special Event Permit Applications:
 - a. Art of Sound, requested dates: September 27 and September 28, 2019
 - b. Shelby High Homecoming Parade, requested date: October 4, 2019
 - c. Carolinas on Tap, requested date: October 18, 2019
 - d. Mush, Music & Mutts Festival commonly known as the Liver Mush Festival, requested date: October 19, 2019
 - e. The Light Ball Dash, requested date: December 22, 2019
- 3) Approval of a resolution honoring Melvin David Durham on the occasion of his retirement from employment with the City of Shelby: Resolution No. 61-2019
- 4) Approval of a resolution authorizing selection of McGill Associates based on qualifications for civil engineering services for the Plato Lee Road industrial site design: Resolution No. 62-2019
- 5) Adoption of an ordinance authorizing demolition of a dwelling: Ordinance No. 61-2019
- 6) Adoption of an ordinance authorizing demolition of structures: Ordinance No. 62-2019
- 7) Adoption of Fiscal Year (FY) 2019-2020 Budget Ordinance Amendment No. 3: Ordinance No. 63-2019

8) Adoption of Fiscal Year (FY) 2019-2020 Budget Ordinance Amendment No. 4: Ordinance No. 64-2019

9) Adoption of Fiscal Year (FY) 2019-2020 Budget Ordinance Amendment No. 5: Ordinance No. 65-2019

END CONSENT AGENDA

F. Unfinished Business:

1) Consideration of appointments to City advisory boards and commissions:

a. Parks and Recreation Advisory Board

Mrs. Parduski reported the terms of three incumbents, Allen Langley, David Lynn, and Robert Coleman, concluded July 2019. All three incumbents are seeking reappointment to this board.

There are three applications on file in the Clerk's Office:

- Richard Baker, Jr.
- Darrell Gerald
- Chris Gray

Mr. Causby nominated Allen Langley, David Lynn, and Robert Coleman for reappointment.

ACTION TAKEN: Upon a motion by Mr. Amaya, City Council voted unanimously to close the nominations and accept the nominees by acclamation.

G. New Business: None

H. City Manager's Report:

1) Capital purchase for replacement of self-contained breathing apparatus (SCBA) equipment for the Fire and Rescue Department

Mr. Howell summarized the documentation provided by Chief Hunt regarding the capital purchase for the replacement of self-contained breathing apparatus equipment for the Fire and Rescue Department. He reminded Council of their approval of this purchase as part of the Fiscal Year 2019-

2020 budget. The project provides for the replacement of obsolete and aging equipment that is at the end of its useful service life. Staff utilized the group purchase method to acquire the SCBA equipment manufactured by Scott Fire & Safety Products through Rhinehart Fire Services of Asheville, North Carolina at a specified price of \$373,975.67.

Council received the information. No action was required.

- 2) Mr. Howell informed Council the North Carolina Department of Transportation (NCDOT) has announced project delays statewide due to unexpected costs related to the hurricanes, expected damages from the Map Act being found unconstitutional, and the rising cost of construction. (Clerk's note: The Map Act gave NCDOT the power to impose absolute, permanent development moratoria on land within designated transportation corridors, suppressing the value of the land and reducing the amount it would have to pay when it eventually acquired it for highway rights-of-way.) The delays affect many projects around the State. These factors have caused what hopefully will be short-term cash flow issues. The City will continue to monitor the status of several projects, namely, US 74 Shelby Bypass, Dekalb Street and Dixon Boulevard and Dixon Boulevard and Earl Road construction improvements, and Marion Street and Cherryville Road realignment of intersection. Mr. Howell suggested Council consider a discussion and potential action sometime in the future.

Mr. Amaya, who serves as a Gaston-Cleveland-Lincoln Metropolitan Planning Organization board member, has contacted elected officials at the General Assembly in Raleigh for their support of Shelby's NCDOT projects, urging others to do the same.

- 3) Mr. Howell updated Council on the following projects:

- Farmville Road Elevated Storage Water Tank Project – The tank is scheduled to be functional within two weeks.
- Wastewater Treatment Plant Bio-solids Improvement Project – There is good progress on this project.
- Water Treatment Plant Upgrades Project – The project should be substantially complete in September 2020.
- T-Hangar Project at Shelby Cleveland County Regional Airport – There is good progress on this project.
- Uptown Shelby Streetscape Project – This project is currently in the stormwater improvements phase.
- Street Resurfacing Program – The project has begun and is moving along.

I. Council Announcements and Remarks:

- 1) Mayor Anthony shared the details of his recent tour led by David Hux at the Wastewater Treatment Plant Improvements Project and encouraged Council members to do the same.**
- 2) Mr. Amaya announced early voting for the Shelby Primary Election begins Wednesday, September 18, 2019.**

J. Closed Session:

- 1) To approve the Minutes and General Account of the Closed Session of May 20, 2019**
- 2) To approve the Minutes and General Account of the Closed Session of July 15, 2019**
- 3) To establish or instruct staff concerning the position to be taken by or on behalf of City Council in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease pursuant to North Carolina General Statute 143-318.11
(a) (5)**

ACTION TAKEN: Mr. Amaya made a motion to enter into a closed session pursuant to the appropriate North Carolina General Statutes as cited. Mayor Anthony consulted with Mr. Yelton who advised the topic met the statutory requirements for a closed session. The Mayor invited all Council members present along with Mr. Howell and Mr. Yelton to attend. The motion passed unanimously and Council moved into closed session at 6:58 p.m.

Council returned to the regular session at 7:20 p.m.

K. Adjournment:

- 1) Motion to adjourn**

ACTION TAKEN: Upon a motion made by Mr. Amaya, City Council voted unanimously to adjourn the meeting at 7:21 p.m.

Respectfully submitted,

**Bernadette A. Parduski, NCCMC, MMC
City Clerk**

**O. Stanhope Anthony III
Mayor**

Minutes of September 16, 2019

DRAFT

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-2

2) Approval of Special Event Permit Applications:

- a. Cleveland County Scholarship Foundation Halloween Party, requested date: October 31, 2019
- b. Cleveland County Veterans Day Parade, requested date: November 11, 2019

Consent Agenda Item: (Staff Resource, Bernadette A. Parduski, City Clerk)

Summary of Available Information:

- Memorandum dated September 30, 2019 from Bernadette A. Parduski, City Clerk to Rick Howell, City Manager
- Memorandums from Bernadette A. Parduski, City Clerk to Police Chief Jeff Ledford, Fire Chief William Hunt, Fire Marshal Phil Lane, Parks and Recreation Director Charlie Holtzclaw, Public Works Director Danny Darst, Assistant Director Public Works Scott Black, Director of Water Resources David Hux, Director of Engineering Services Ben Yarboro, Director of Energy Services Julie McMurry, Electric Superintendent Jeff Freeman and Planning Director Walter Scharer
- Special Event Permit Applications

City Manager's Recommendation / Comments

These events are in keeping with special event practices of the City. It is my recommendation that this item be approved by City Council at this time via the Consent Agenda.

Memo

To: Rick Howell, City Manager
From: Bernadette A. Parduski, City Clerk
Date: September 30, 2019
Re: Special Event Permit Applications

BACKGROUND:

Special Event Permit Applications have been submitted for the following:

- ✓ Cleveland County Scholarship Foundation Halloween Party, requested date: October 31, 2019
- ✓ Cleveland County Veterans Day Parade, requested date: November 11, 2019

REVIEW:

All responding City departments have received, reviewed, and approved the referenced applications.

RECOMMENDATION:

Please place the attached Special Event Permit Applications on the Consent Agenda of October 7, 2019 for Council's review and approval.

ATTACHMENTS:

- A. Special Event Permit Application packet received September 19, 2019
- B. Special Event Permit Application packet received September 13, 2019

Memo

To: Police Chief Jeff Ledford, Fire Chief William Hunt, Fire Marshal Phil Lane, Parks & Recreation Director Charlie Holtzclaw, Public Works Director Danny Darst, Assistant Director of Public Works Scott Black, Director of Engineering Services Ben Yarboro, Stormwater/Engineering Coordinator Tyler Brooks, and Planning and Development Services Director Walt Scharer

From: Bernadette A. Parduski, City Clerk

CC: Rick Howell, City Manager

Date: September 23, 2019

Re: Special Event Permit Application

All:

Attached you will find a Special Event Permit Application submitted by Jackie Sibley-Newton on behalf of the Cleveland County Scholarship Foundation, as follows:

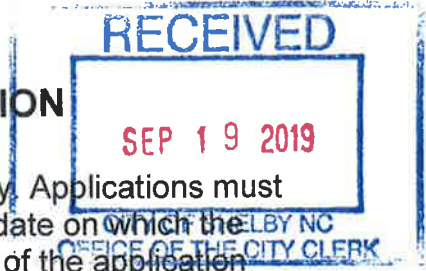
- ✓ Cleveland County Scholarship Foundation Halloween Party, requested date: October 31, 2019

Please carefully review the details of this application as it pertains to your department, and let me know of any anticipated problems/objections that you would like to bring to the attention of the City Council. If there are none, please let me know that as well. The event will be considered by City Council at the October 7, 2019 meeting and recommended for approval unless you advise otherwise. If I do not hear from you by September 27, 2019, it will be assumed that you are in agreement with the application as presented.

As always, thanks for your attention and consideration.

Attachment

**CITY OF SHELBY
SPECIAL EVENT PERMIT APPLICATION**



Each question must be legible and answered clearly and completely. Applications must be filed with the City Clerk not less than thirty (30) days before the date on which the event is to take place. A fee of \$20.00 will be due upon submission of the application form.

1. EVENT NAME:

Halloween Party

2. PURPOSE AND BRIEF DESCRIPTION OF EVENT:

Charity event for scholarship award through Cleveland County Scholarship Foundation

3. LOCATION OF EVENT (ATTACH MAP):

Uptown Indigo, 112 North Lafayette Street, Shelby, NC 28152

4. PLEASE INDICATE:

Approximately how many people will attend the event? 200

Approximately how many vehicles will be present? 100

Approximately how many animals will be present? 0

If the event is a parade, please indicate the amount of street that will be needed:

Single lane _____

All lanes in travel direction Campbell Street

Whole street Campbell Street from Lafayette to Dale

5. PLEASE LIST THE FOLLOWING PARTY (IES) RESPONSIBLE FOR THE EVENT:

Name: Megan Pope

Address: PO Box 1223, Boiling Springs, NC 28017

Phones: (910) 334-1354
(Daytime) (Evening)
megan@popemarketingevents.com

E-mail address

Name: Jackie Sibley-Newton

Address: 213 Dehart Drive, Shelby, NC 28152

Phones: (704) 310-8522
(Daytime) (Evening)

Jsibley2405@gmail.com

E-mail address

6. PLEASE LIST THE FOLLOWING:

Requested day(s) and date(s) October 31, 2019 – November 1, 2019

Alternate day(s) and date(s) N/A

Requested hours of operation, from 5:00 pm AM/PM to 1:00 am AM/PM

7. EVENT NOTIFICATION TO RESIDENTS AND BUSINESSES: As an event planner, you are responsible for notifying the neighbors and businesses in the surrounding area of your event. The City requires notifying as many businesses and residents around the event site as possible as early as possible. Please provide your plan of notification at the time you submit your permit application.

Since this event is held in an established event venue, there are no neighbors or businesses to notify. A committee member will notify the First Baptist Church of the street closure on October 31, 2019 in order to make arrangements for childcare pick up; however, there should be little interruption to the normal traffic pattern.

8. SANITATION: Please attach your "Plan for Clean-Up." Please check **24** Application Instruction sheet for details.

Volunteers and staff of Pope Marketing & Events and Uptown Indigo will be responsible for trash pick up and disposal.

9. AVAILABILITY OF FOOD, BEVERAGES, AND/OR ENTERTAINMENT:

If there will be music, sound amplification, or any other noise impact, please describe on attached sheet, including the intended hours of the music, sound, or noise.

Will alcoholic beverages be served? Yes, inside Uptown Indigo

If yes, attach to the application a copy of your permit from the Cleveland County Alcoholic beverage Control Board. Alcohol may not be served without a permit.

Will food and/or no-alcoholic beverages be served? Yes, by food trucks who will be required to provide proof of the health department approval and liability insurance

If yes, attach to the application a copy of your permit from the Cleveland County Department of Health Services.

10. SECURITY AND SAFETY PROCEDURES: Attach to this application a copy of your building permit(s) if you are installing any electrical wiring on a temporary or permanent basis and/or if you are building any temporary or permanent structures such as bleachers, scaffolding, a grandstand, viewing stands, stages, or platforms. N/A

Attach a copy of your Shelby Fire & Rescue Department Permit or permits to this application if you will use parade floats; an open flame; fireworks; or pyrotechnics; vehicle fuel; cooking facilities; enclosures (and tables within those enclosures); tents; air-supported structures; and/or any fabric shelter. N/A

Give name, address, and phone numbers of the agency or agencies, which will provide first aid staff and equipment. Attach additional sheets if necessary.

Name: Jackie Sibley-Newton (Advanced First Aid/CPR/AED/Event Crowd Management)

Address: 213 Dehart Drive, Shelby, NC 28152

Phones: (704) 310-8522

Indicate medical services that will be provided for the event.

AMBULANCE: 911
DOCTOR (S): _____
PARAMEDICS: 911

11. CITY SERVICES/EQUIPMENT REQUESTED FOR THIS EVENT:

Street shut down and barricades.

12. ANY ADDITIONAL COMMENTS:

Alcohol will be served inside Uptown Indigo, but not allowed outside the building. Food Trucks will be parked on Campbell Street between Lafayette and Dale in front of Uptown Indigo during the event. Uptown Indigo has the proper permits for such an event and to serve alcohol.

THE CITY OF SHELBY IS NOT A CO-SPONSOR OF THE EVENT

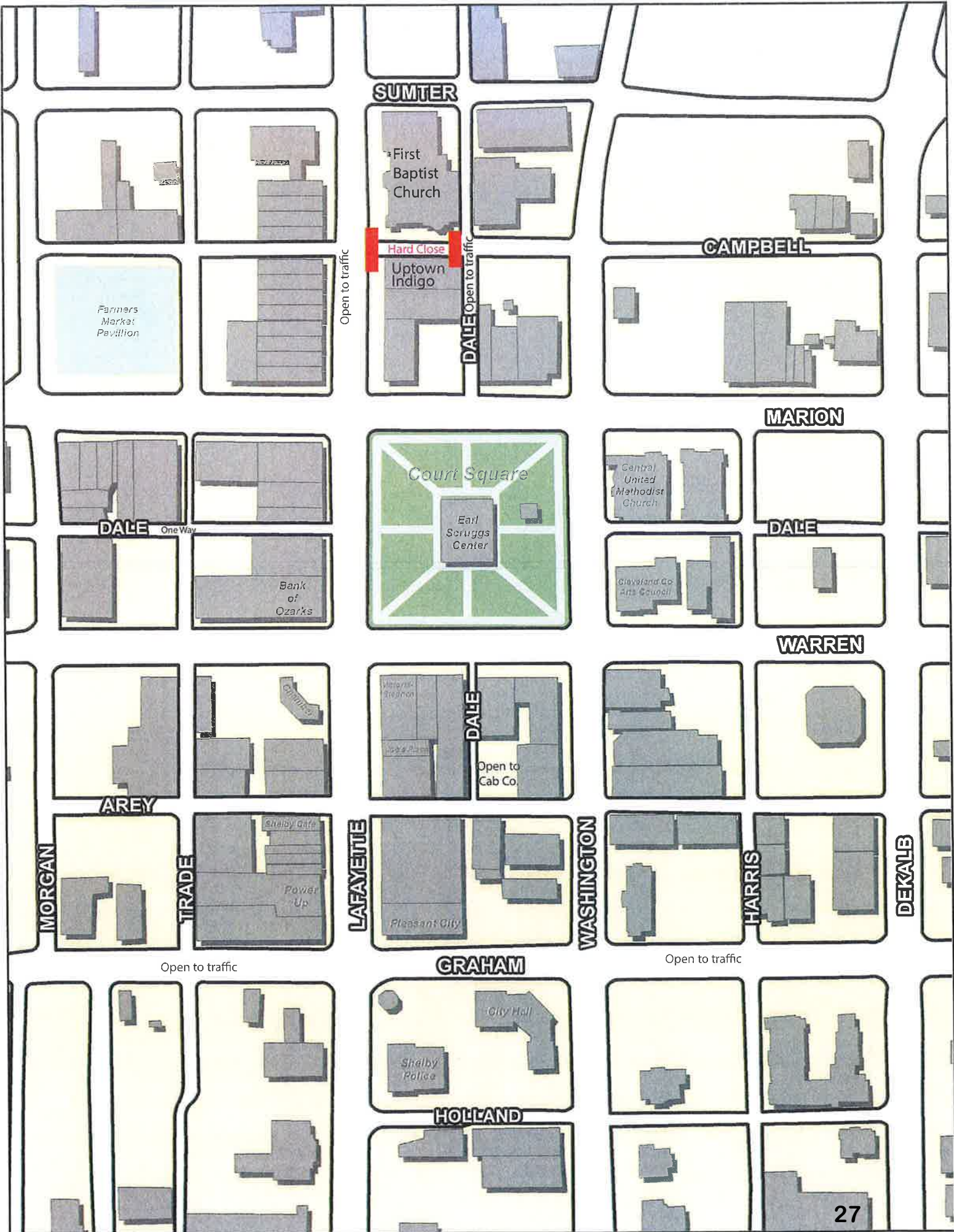
It is understood and agreed that any permit issued pursuant to this application is issued on the condition that the answers herein given are true and correct to the best of the knowledge, information, and belief of the applicant.

Jackie Sibley-Newton
SIGNATURE
Jackie Sibley-Newton (704) 310-8522

APPLICANT PHONE
112 North Lafayette Street, Shelby, NC 28150

PHYSICAL ADDRESS
Jsibley2405@gmail.com

E-MAIL ADDRESS
9/9/19
DATE



SUMTER

First Baptist Church

Hard Close

Uptown Indigo

CAMPBELL

Farmers Market Pavilion

Open to traffic

DALE Open to traffic

MARION

Court Square

Earl Scruggs Center

Central United Methodist Church

DALE

DALE One Way

Bank of Ozarks

Cleveland Co Pitts Council

WARREN

Victoria Preston

DALE

Open to Cab Co.

AREY

Chapman

MORGAN

TRADE

Shelby Gate

Power Up

LAFAYETTE

Pleasant City

WASHINGTON

HARRIS

DEKALB

Open to traffic

GRAHAM

Open to traffic

City Hall

Shelby Police

HOLLAND

Memo

To: Police Chief Jeff Ledford, Fire Chief William Hunt, Fire Marshal Phil Lane, Parks & Recreation Director Charlie Holtzclaw, Public Works Director Danny Darst, Assistant Director of Public Works Scott Black, Director of Engineering Services Ben Yarboro, Stormwater/Engineering Coordinator Tyler Brooks, and Planning and Development Services Director Walt Scharer

From: Bernadette A. Parduski, City Clerk

CC: Rick Howell, City Manager

Date: September 17, 2019

Re: Special Event Permit Application

All:

Attached you will find a Special Event Permit Application submitted by Marty Pendergraft, as follows:

- ✓ Cleveland County Veterans Day Parade, requested date: November 11, 2019

Please carefully review the details of this application as it pertains to your department, and let me know of any anticipated problems/objections that you would like to bring to the attention of the City Council. If there are none, please let me know that as well. The event will be considered by City Council at the October 7, 2019 meeting and recommended for approval unless you advise otherwise. If I do not hear from you by September 27, 2019, it will be assumed that you are in agreement with the application as presented.

As always, thanks for your attention and consideration.

Attachment

b. This section shall have no application to any ordinance, which may allow criminal sanctions for its violation. All violations of this Code, which are criminal in nature, shall be subject to the maximum penalty authorized by G.S. 14-4, as amended.



**CITY OF SHELBY
SPECIAL EVENT PERMIT APPLICATION**

Each question must be legible and answered clearly and completely. Applications must be filed with the City Clerk not less than thirty (30) days before the date on which the event is to take place. A fee of \$20.00 will be due upon submission of the application form.

1. **EVENT NAME:** Cleveland County
Veterans Day parade

2. **PURPOSE AND BRIEF DESCRIPTION OF EVENT:**
parade

3. **LOCATION OF EVENT (ATTACH MAP):** Stage on Market St.
TR on Warren St, TR on Lafayette St.
TL and on Market St. End @ pavilion market.

Revised map is attached.

4. **PLEASE INDICATE:**
Approximately how many people will attend the event: 150
Approximately how many vehicles will be present: 40
Approximately how many animals will be present: 0

If the event is a parade, please indicate the amount of street that will be needed:
Single lane _____
All lanes in travel direction _____
Whole street yes

5. PLEASE LIST THE FOLLOWING PARTY (IES) RESPONSIBLE FOR THE EVENT:

Name: Marty Pendergraft
Address: P.O. Box 1507, Bowling Springs 28011
Phones: 704 287 8912
(Daytime) (Evening)
Marty.pendergraft@gmail.com
(e-mail address)

Name: _____
Address: _____
Phones: _____
(Daytime) (Evening)

(e-mail address)

6. PLEASE LIST THE FOLLOWING:

Requested day(s) and date(s) Monday, 11 November 2019
Alternate day(s) and date(s) _____
Requested hours of operation, from 9 AM/PM to 11 AM/PM

7. SANITATION: Please attach your "Plan for Clean-Up." Please check Application Instruction sheet for details.

8. AVAILABILITY OF FOOD, BEVERAGES, AND/OR ENTERTAINMENT;

NONE
If there will be music, sound amplification, or any other noise impact, please describe on attached sheet, including the intended hours of the music, sound, or noise.

Will alcoholic beverages be served? NO
If yes, attach to the application a copy of your permit from the Cleveland County Alcoholic beverage Control Board. Alcohol may not be served without a permit.

Will food and/or no-alcoholic beverages be served? NO
If yes, attach to the application a copy of your permit from the Cleveland County Department of Health Services.

9. **SECURITY AND SAFETY PROCEDURES:** *NONE*
Attach to this application a copy of your building permit(s) if you are installing any electrical wiring on a temporary or permanent basis and/or if you are building any temporary or permanent structures such as bleachers, scaffolding, a grandstand, viewing stands, stages, or platforms.

Attach a copy of your Shelby Fire & Rescue Department Permit or permits to this application if you will use parade floats; an open flame; fireworks; or pyrotechnics; vehicle fuel; cooking facilities; enclosures (and tables within those enclosures); tents; air-supported structures; and/or any fabric shelter.

Give name, address, and phone numbers of the agency or agencies, which will provide first aid staff and equipment. Attach additional sheets if necessary.

Name: _____
Address: _____
Phones: _____

Indicate medical services that will be provided for the event.

AMBULANCE: _____
DOCTOR (S): _____
PARAMEDICS: _____

10. **CITY SERVICES/EQUIPMENT REQUESTED FOR THIS EVENT:** *Public works for lane closures*
Police Dept. for traffic control

11. **ANY ADDITIONAL COMMENTS:** _____

THE CITY OF SHELBY IS NOT A CO-SPONSOR OF THE EVENT.

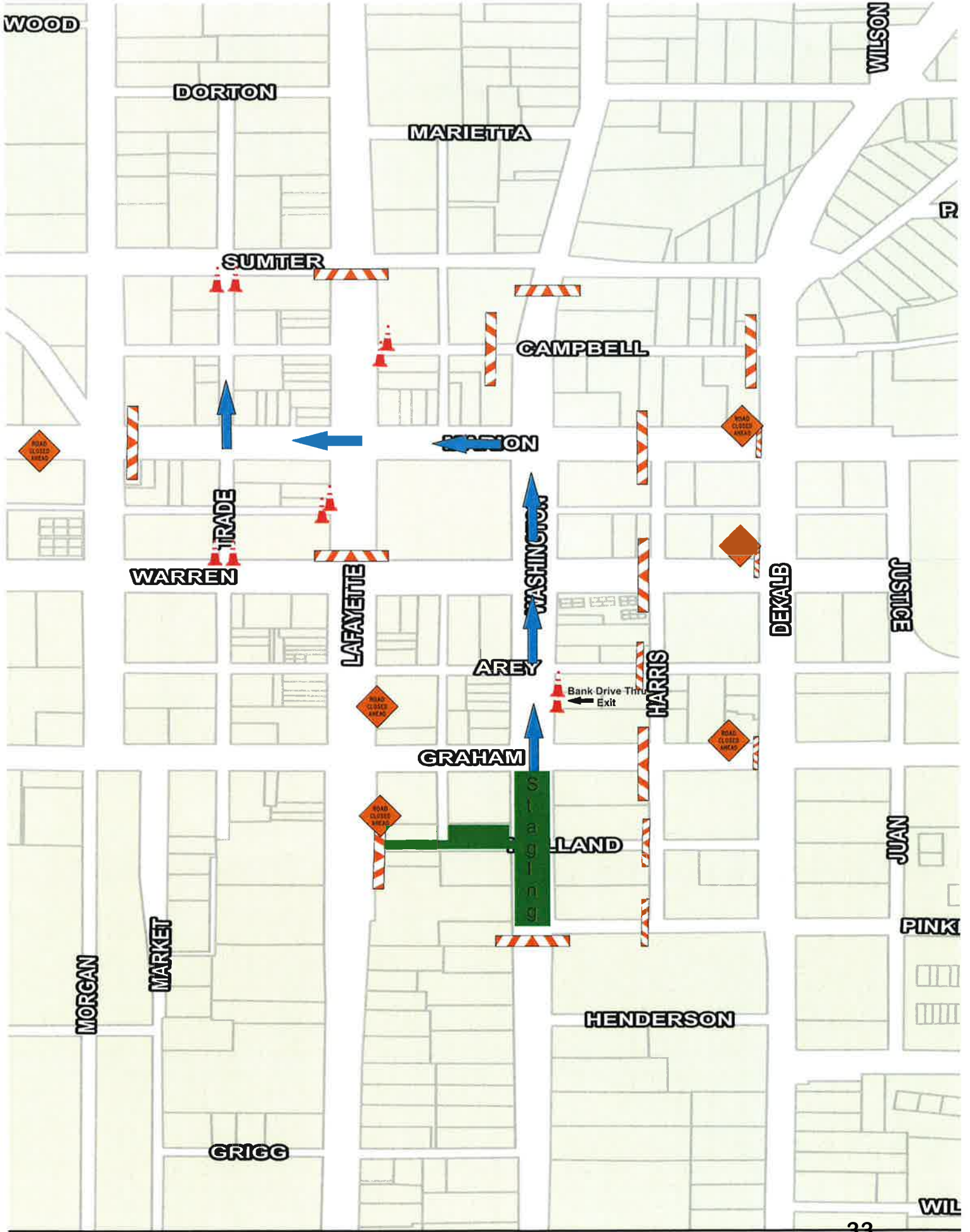
It is understood and agreed that any permit issued pursuant to this application is issued on the condition that the answers herein given are true and correct to the best of the knowledge, information, and belief of the applicant.

Marty Pendergraft
(SIGNATURE)

Marty Pendergraft 704 287 8312
(APPLICANT) (PHONE)

P. O. Box 1507, Bowling Springs 28017
(ADDRESS)

13 Sept. 2018
(DATE)



City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-3

- 3) Approval of a resolution honoring William Craig Earwood on the occasion of his retirement from employment with the City of Shelby: Resolution No. 63-2019

Consent Agenda Item: (Jeff Ledford, Chief of Police)

Summary of Available Information:

- Memorandum dated September 26, 2019 from Jeffrey H. Ledford, Chief of Police to Rick Howell, City Manager
- Resolution No. 63-2019

City Manager's Recommendation / Comments

This time is scheduled on your agenda to consider a resolution recognizing William Craig Earwood on the occasion of his retirement from employment. In keeping with policy Resolution No. 63-2019 will recognize him for having served the Cleveland County and the City of Shelby faithfully for the past 30 years. He is to be congratulated! Sergeant Earwood will be greatly missed by his fellow officers and the citizens of Shelby.

As is in keeping with current policy Sergeant Earwood will be presented with a framed resolution, a city lapel pin and a key to the City. It is customary and appropriate to recognize Craig Earwood for his many years of service to the City. Sergeant Earwood's dedication to our Police Department is to be admired.

Please join me in wishing him a healthy and happy retirement. He is scheduled to attend a future meeting of City Council for a formal presentation.

It is recommended that Resolution No. 63-2019 be adopted and approved via the Consent Agenda.

Retiring or Separating Employee Recognition - Employees leaving City employment in good standing will receive a plaque from the City Manager after they have attained at least their 20th anniversary of service with the City or have attained their 10th anniversary and are at least 60 years of age or over. Employees with 25 or more years of service will receive a key to the City, a framed Council resolution and City lapel pin upon retirement from the City. Separating employees who have attained at least five years of service and are leaving in good standing can be recognized on a Department level with a gift or some other form of recognition.

Shelby Police Department

Memorandum

To: Rick Howell, City Manager
Bernadette Parduski, City Clerk

From: Jeffrey H. Ledford, Chief of Police

Re: Recognition of William Craig Earwood's Retirement from the
Shelby Police Department and NC Order of the Long Leaf Pine Award

Date: September 26, 2019



SHELBY POLICE DEPARTMENT

JEFFREY H. LEDFORD
CHIEF OF POLICE



CALEA Accredited
2001



CALEA Accredited
2014



Sergeant William Craig Earwood retired as a law enforcement officer with the City of Shelby on September 1, 2019. At that time, Sergeant Earwood had served the City of Shelby, the citizens of Cleveland County and the Shelby Police Department for 30 years. Sergeant Earwood began his career with the Shelby Police Department August 8, 1990. In November 2004, he was promoted to the rank of Sergeant and served in that role until his retirement September 2019.

Sergeant Earwood worked in various positions throughout his career with the Shelby Police Department. He served as a K-9 Officer, a Crime Scene Investigator for the Criminal Investigations Division, a Patrol Squad Sergeant, a Field Training Officer, a C.O.P. Sergeant for the Problem Solving Unit, an Explosive and Hazmat Instructor, a Law Enforcement General Instructor, and finishing his career as the Professional Standards Division Sergeant. During his tenure, Sergeant Earwood completed over 2,000 hours in advanced law enforcement training, receiving his Law Enforcement Advanced Certificate, which is the highest certification that Law Enforcement Officers can receive from the State of NC. He received his Criminal Investigation Certificate from the Justice Academy, and also is a successful graduate of the NC Justice Academy's Management Development Program.

When Sergeant Earwood retired on September 1, 2019, he had 30 years of credible service to the NC Local Government Retirement System. On August 20, 2019, a reception was held in the City Council Chambers to honor his service to the community. As a follow-up to his retirement, we ask Council to consider honoring Sergeant Earwood with a Council Resolution. In addition, for his years of service, Sergeant Earwood qualifies for NC's Order of the Long Leaf Pine Award, which is presented through the Governor's office. The application is pending; however, we have every confidence that Sergeant Earwood will be awarded this high honor.

It is recommended that consideration be given in honoring Sergeant Earwood's service to the city through a City Council Resolution, and he be presented the States' Order of the Long Leaf Pine award for his service to our community.

Thank you.

RESOLUTION NO. 63-2019

**A RESOLUTION HONORING WILLIAM CRAIG EARWOOD
ON THE OCCASION OF HIS RETIREMENT
FROM EMPLOYMENT WITH THE CITY OF SHELBY**

WHEREAS, on the occasion of his retirement from employment on September 1, 2019, it is fitting and proper for the City Council to express its sincere appreciation to William Craig Earwood for his loyal, dedicated, and committed service to the City of Shelby from August 8, 1990 to September 1, 2019; and,

WHEREAS, Mr. Earwood has been a loyal team member in the continuing development of the Shelby Police Department, especially for his strength, courage, and bravery exhibited in providing protection and service to the City of Shelby and to all of its citizens; and,

WHEREAS, during his tenure of service, Mr. Earwood has been a loyal employee for the City of Shelby, beginning as a Patrol Officer in August 1990; receiving a promotion to Police Sergeant in November 2004; serving also as a K-9 Police Officer, a Crime Scene Investigator for the Criminal Investigations Division, a Patrol Squad Sergeant, and a Community Oriented Policing Unit Sergeant for the Problem Solving Unit. Mr. Earwood was also a Field Training Officer, a Law Enforcement General Instructor, and an Explosive and Hazmat Instructor, finishing his career as the Professional Standards Division Sergeant, and has been an outstanding example of the quality of employee necessary to the development of the good of the City; and,

WHEREAS, Mr. Earwood is a successful graduate of the North Carolina Justice Academy's Management Development Program, received his Criminal Investigation Certificate from the Justice Academy, completed over 2,000 hours of advanced law enforcement training and, having done so, received his Law Enforcement Advanced Certificate which is the highest certification that a Law Enforcement Officer can receive from the State of North Carolina and; received a Merit Award for his support and dedication to the Shelby Police Department and the Citizens of Shelby by exhibiting the highest standards of Professionalism and Customer Service; and provided security for the 2012 Historic Democratic National Convention for the 44th President of the United States President Barak Hussein Obama, II, held in Charlotte, North Carolina; and,

WHEREAS, Mr. Earwood's commitment, leadership, laudatory work effort, and devotion to duty has helped create a winning attitude within the Shelby Police Department of the City of Shelby; and,

WHEREAS, the City of Shelby is most grateful for the devoted, community, and personal contributions Mr. Earwood has given to all the citizens, organizations, and businesses within the greater Shelby community; and,

WHEREAS, the City Council of the City of Shelby wishes to acknowledge and express its appreciation to Mr. Earwood for his dedicated and devoted duty to law enforcement service to its citizens, noting that Mr. Earwood will be missed both professionally and as a fellow co-worker.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council publicly express their sincere appreciation to William Craig Earwood for his performance of duty to the City of Shelby, and extend the very best wishes for a successful retirement.

BE IT FURTHER RESOLVED that this Resolution be entered upon the permanent Minutes of the City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Shelby to be affixed this the 7th day of October 2019.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-4

- 4) Adoption of Fiscal Year (FY) 2019-2020 Budget Ordinance Amendment No. 6:
Ordinance No. 66-2019

**Consent Agenda Item: (Rick Howell, City Manager and Justin S. Merritt,
Assistant City Manager/Director of Finance)**

Summary of Available Information:

- Ordinance No. 66-2019

City Manager's Recommendation / Comments

Ordinance No. 66-2019 is presented for Council consideration at this time. If approved this ordinance would appropriate an additional \$300,000 from the general fund reserve to allow for additional street resurfacing, sidewalk repair and minimum housing code enforcement demolition in the current fiscal year 2019-2020 budget. This funding is available due to a one time revenue surplus that resulted from the high position vacancy rate early in last fiscal year as well as savings within several general fund budgetary line items. It is my hope we can make a little large "dent" in the backlog of street and sidewalk work as well as accelerate the demolition of the dilapidated homes ready for demolition.

It is my recommendation Ordinance No. 66-2019 be adopted and approved by City Council at this time via the Consent Agenda.

ORDINANCE NO. 66-2019

CITY OF SHELBY
FISCAL YEAR 2019-2020 BUDGET ORDINANCE AMENDMENT

WHEREAS, in accordance with applicable provisions of the North Carolina Budget and Fiscal Control Act, the City of Shelby finds it advisable and necessary to revise and amend its annual budget for FY 2019-2020; and,

WHEREAS, the City Manager (Budget Officer) has recommended certain amendments to the budget which the governing body finds acceptable; and,

WHEREAS, City Council now desires to act on the recommended budget amendments and approve same for implementation and compliance with the Fiscal Control Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. Ordinance No. 31-2019, the City’s FY 2019-2020 Budget Ordinance, is hereby amended as follows to provide for Budget Amendment No. 6 for the year:

(A) The City of Shelby has identified a need to provide additional funding to allow for certain sidewalk repairs, additional street resurfacing and minimum housing code violation demolitions. Accordingly, the following budget modifications are approved in accordance with the chart of accounts heretofore established for the City of Shelby.

(1) The following General Fund line items are amended:

(a) Increase 11001000-39900 Fund Balance Appropriated	\$ 300,000
(b) Increase 110451-42510 Contracted Construction	\$ 200,000
Increase 110435-42510 Contracted Construction	\$ 100,000

Section 2. That the revenues, expenditures and amendments set forth in Section 1 of this ordinance are hereby summarized as follows:

	<u>Current Budget</u>	<u>Amendment No. 6</u>
General Fund	\$ 25,973,621	\$ 26,273,621
Emergency Telephone System Fund	162,200	162,200
Powell Bill Fund	790,200	790,200
Economic Dev. Fund	680,450	680,450
Housing Fund	1,549,408	1,549,408
Cemetery Fund	30,000	30,000
Utilities-Water Fund	5,145,000	5,145,000
Utilities-Sewer Fund	5,548,800	5,548,800
Utilities-Electric Fund	22,408,955	22,408,955
Utilities-Gas Fund	16,301,600	16,301,600
Utilities – Stormwater Fund	832,160	832,160
FY 2019-2020 Budget Total:	<u>\$ 79,422,394</u>	<u>\$ 79,722,394</u>

Section 3. Copies of this Budget Ordinance Amendment shall be furnished to the City Manager as Budget Officer and to the Finance Director to be kept on file by them for their direction in the collection and disbursement of funds. Said officials are hereby authorized to receive and expend funds as herein set forth in accordance with the Shelby City Code, the General Statutes of North Carolina, and the provisions of the original budget ordinance; inclusive of GS 159-28 governing budgetary accounting of appropriations.

Section 4. This ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 7th day of October 2019.

O. Stanhope Anthony, III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-5

- 5) Adoption of Fiscal Year (FY) 2019-2020 Budget Ordinance Amendment No. 7:
Ordinance No. 67-2019

**Consent Agenda Item: (Rick Howell, City Manager and Justin S. Merritt,
Assistant City Manager/Director of Finance)**

Summary of Available Information:

- Ordinance No. 67-2019

City Manager's Recommendation / Comments

Ordinance No. 67-2019 is presented for City Council consideration at this time. If approved this ordinance would appropriate \$133,500 to be paid to Cleveland County for the City's share of the 47 acre Plato Lee Road parcel where Shell Building #3 is proposed for construction. As part of the City and County long time understanding each entity agreed to share 50% of the land acquisition costs for economic development projects. The County has owned this site for a number of years and up to this point the City had not paid its share of the purchase price.

It is my recommendation Ordinance No. 67-2019 be adopted and approved by City Council at this time via the Consent Agenda.

ORDINANCE NO. 67-2019

CITY OF SHELBY
FISCAL YEAR 2019-2020 BUDGET ORDINANCE AMENDMENT

WHEREAS, in accordance with applicable provisions of the North Carolina Budget and Fiscal Control Act, the City of Shelby finds it advisable and necessary to revise and amend its annual budget for FY 2019-2020; and,

WHEREAS, the City Manager (Budget Officer) has recommended certain amendments to the budget which the governing body finds acceptable; and,

WHEREAS, City Council now desires to act on the recommended budget amendments and approve same for implementation and compliance with the Fiscal Control Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. Ordinance No. 31-2019, the City’s FY 2019-2020 Budget Ordinance, is hereby amended as follows to provide for Budget Amendment No. 7 for the year:

(A) The City of Shelby has identified a need to partner with the County of Cleveland to plan and construct a job ready shell building on a site with Parcel Identification Number 2518816572 located on Plato Lee Road in Cleveland County NC. The City and County will share all costs at 50% each, including the cost of land acquisition. Accordingly, the following budget modifications are approved in accordance with the chart of accounts heretofore established for the City of Shelby.

(1) The following Economic Development Fund line items are amended:

- (a) Increase 23009000-39900 Fund Balance Appropriated \$ 133,500
- (b) Increase 230590-52000 Land \$ 133,500

Section 2. That the revenues, expenditures and amendments set forth in Section 1 of this ordinance are hereby summarized as follows:

	<u>Current Budget</u>	<u>Amendment No. 7</u>
General Fund	\$ 26,273,621	\$ 26,273,621
Emergency Telephone System Fund	162,200	162,200
Powell Bill Fund	790,200	790,200
Economic Dev. Fund	680,450	813,950
Housing Fund	1,549,408	1,549,408
Cemetery Fund	30,000	30,000
Utilities-Water Fund	5,145,000	5,145,000
Utilities-Sewer Fund	5,548,800	5,548,800
Utilities-Electric Fund	22,408,955	22,408,955
Utilities-Gas Fund	16,301,600	16,301,600
Utilities – Stormwater Fund	832,160	832,160
FY 2019-2020 Budget Total:	<u>\$ 79,722,394</u>	<u>\$ 79,855,894</u>

Section 3. Copies of this Budget Ordinance Amendment shall be furnished to the City Manager as Budget Officer and to the Finance Director to be kept on file by them for their direction in the collection and disbursement of funds. Said officials are hereby authorized to receive and expend funds as herein set forth in accordance with the Shelby City Code, the General Statutes of North Carolina, and the provisions of the original budget ordinance; inclusive of GS 159-28 governing budgetary accounting of appropriations.

Section 4. This ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 7th day of October 2019.

O. Stanhope Anthony, III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-6

- 6) Adoption of Fiscal Year (FY) 2019-2020 Budget Ordinance Amendment No. 8:
Ordinance No. 68-2019

**Consent Agenda Item: (Rick Howell, City Manager and Justin S. Merritt,
Assistant City Manager/Director of Finance)**

Summary of Available Information:

- Memorandum dated October 1, 2019 from Justin S. Merritt, Assistant City Manager/Director of Finance to Rick Howell, City Manager
- Ordinance No. 68-2019

City Manager's Recommendation / Comments

Ordinance No. 68-2019 is presented for City Council consideration at this time. If approved this ordinance would increase professional services within the Parks and Recreation department by \$110,000. Of this \$110,000 costs, \$65,750 are being transferred from the building repairs line item and \$44,250 is being recognized as a revenue from the sale of a right of way at Hanna Park to NCDOT for the bypass construction.

It is my recommendation Ordinance No. 68-2019 be adopted and approved by City Council at this time via the Consent Agenda.



To: Rick Howell, City Manager

From: Justin S. Merritt, Assistant City Manager/Director of Finance

Date: October 1, 2019

Subject: BA #8 – Parks and Recreation Master Plan

Background:

On June 17th, 2019 City Council passed Resolution 45-2019 authorizing the City Manager to proceed with the development of the Parks and Recreation Comprehensive Master Plan.

The City Manager then formed a selection committee consisting of City Staff (Justin Merritt, Assistant City Manager/Finance Director; Walt Scharer, Director Planning Services; Ben Yarbrow, Engineering Services Director; Charlie Holtzclaw, Director Parks & Recreation.)

Requests for Qualifications were sent to 8 planning firms with 4 submitting proposals. All submitting firms were then scheduled for interviews and presentations on August 1st. Afterwards, the committee met and discussed the proposals on three different occasions and ranked the firms based on the criteria given in the RFQ process.

At the final meeting on August 5th, the committee voted to recommend Destination by Design as the most qualified firm to perform the new Parks & Recreation Master Plan and PARTF grant application.

A final fee for this Master Plan has been negotiated, with a cost of approximately \$110,000. The attached budget amendment will provide funding to move forward with the master planning process.

Recommendation:

Seek Council approval of Budget Amendment #8 for FY 2020.

Master Planning Services Agreement

Destination by Design and City of Shelby

9.05.2019

THIS AGREEMENT entered into this 20 day of September, 2019, by and between the City of Shelby, hereinafter referred to as the "Owner" or "Client" and Destination by Design Planning, LLC., (DbD) a professional consulting firm, hereinafter referred to as the "Consultant" or "DbD."

1. Scope of Work

Destination by Design (DbD) will complete two major planning tasks for the City, including the development of a Comprehensive Recreation Master Plan and a Rail Trail Site-Specific Master Plan Specifically, DbD will provide the following services:

Task 1: Comprehensive Recreation Master Plan

Phase 1. Direction Setting and Communications

- 1.1 *Kick-off Vision Meeting.* Conduct a project launch meeting with the project steering committee and facilitate a visioning workshop that identifies specific opportunities and constraints associated with recreation development throughout the City of Shelby. DbD to submit an overall project work schedule for approval.
- 1.2 *Project Branding.* Develop a project brand and theme to be incorporated within all print and digital material. This visual brand will support public meeting advertising and the final master plan document layout.
- 1.3 *Develop Online Survey Instrument.* Create an online survey tool in accordance with NC Parks and Recreation Trust Fund (PARTF) standards. Obtain approval from the steering committee to publish the survey.
- 1.4 *Public Engagement Video.* Produce a professional promotional video (approximately :30 - :45 in length) that features interviews with key leaders expressing the need and opportunity for recreation development in the City. Highlight opportunities for public engagement including the project website and public meeting opportunities.
- 1.5 *Website.* Produce a project website that serves as a portal for obtaining and disseminating information. The site will feature the public recreation survey and information about public meetings.

Phase II. Discovery + Analysis

- 2.1 *Asset and Programming Inventory.* Develop a database and asset map featuring all existing park facilities, natural resources, and important areas for connectivity.
- 2.2 *National Industry LOS Standard Analysis.* Conduct a Level of Service (LOS) analysis based on population and industry standards for park facilities, including acreage, type, and staffing. Identify primary gaps in accordance with national standards.

- 2.3 *Field Analysis*. Conduct a thorough assessment of City recreation facilities.
- 2.4 *Focus Group Meetings and Interviews*. Conduct a series of focus group meetings and individual interviews with key community stakeholders to identify recreation priorities. These groups/individuals will be identified by the project steering committee. Produce a summary of findings.
- 2.5 *Neighborhood Meetings*. Conduct three (3) major neighborhood meetings to encourage citizen input concerning future recreation needs throughout the City. DbD will create an engaging platform to obtain citizen ideas. The City will provide food for the events.
- 2.6 *Survey and Info-graphics*. Analyze the results of the online public survey and create a series of compelling info-graphics that summarizes key findings.
- 2.7 *Steering Committee Meeting: Discovery Presentation & Framework Plan*. Present all analysis findings to the steering committee, including the site analysis and results from the online survey and focus group meetings. Present preliminary alternatives for advancing the master plan. Identify any areas of conflict to be resolved by the steering committee. Obtain consensus on overall plan direction.

Phase III. Draft Plan Development and Public Meeting

- 3.1 *Draft Master Planning*. Produce up to three (3) site plan illustrations and photo-renderings that highlight preliminary recommendations in accordance with direction provided by the project steering committee, public survey, LOS analysis, and focus group and interview meetings.
- 3.2 *Public Meeting*. Conduct a public meeting and present a summary of all findings and preliminary planning concepts. Provide an opportunity for verbal and written comments. Obtain consensus on overall plan direction. Note, this format will allow the public to respond to specific recommendations, creating an informative and engaging meeting.

Phase IV. Final Plan and Recommendations

- 4.1 *Final master plan and supporting illustrations*. Produce a final overall comprehensive master plan. Revise any supporting illustrations as necessary.
- 4.2 *Implementation & Estimate of Probable Cost*. Create a detailed implementation chapter that outlines a clear phasing plan and an estimate of probable costs for recreation development. Outline potential grant funding partners, including, but not limited to PARTF, Recreational Trails Program, and NC Division of Water Resources.
- 4.3 *Plan Adoption*. Revise the plan as necessary to obtain adoption by City Council.

Task 2: Phase 1 Rail Trail Site-specific Parks & Recreation Master Plan

Complete a site-specific park master plan in accordance with NC Parks and Recreation Trust Fund (PARTF) standards for the Phase 1 Rail Trail project from W. Grover Street to S. Lafayette Street. This scope of work will be executed concurrently with the Comprehensive Recreation Master Plan.

Phase 1. Direction Setting, Research, and Analysis

- 1.1 *Project Kick-off Meeting.* Conduct a project launch meeting with the project steering committee and facilitate a visioning workshop that identifies specific opportunities and constraints associated with site specific study area.
- 1.2 *Online Survey Instrument.* Ensure that a portion of the Comp Rec Plan online survey is dedicated to the Rail Trail study area and meets NC Parks and Recreation Trust Fund (PARTF) standards.
- 1.3 *Site analysis.* In accordance with PARTF requirements, describe and evaluate the site's natural, historic, and man-made features. These include items such as topography, soils, vegetation, hydrology, significant natural communities, wetlands, existing structures, and public access.
- 1.4 *GIS Mapping.* Produce a series of maps that support the site analysis, including Site Context; Natural Environment; and Built Environment.

Phase 2. Preliminary Design and Public Engagement

- 2.1 *Draft Conceptual Master Plan.* Develop a preliminary conceptual master plan for the rail trail corridor, which may include alternative concepts for key areas.
- 2.2 *Custom Design Illustrations.* DbD will develop up to two (2) perspective custom drawings/renderings that further demonstrate how the study area might development.
- 2.3 *Rail Trail Support Facilities.* In accordance with the final Rail Trail brand elements, create a conceptual facility design package for rail trail signage, kiosks, mile markers, gateways, and shelters.
- 2.4 *Public Meeting.* DbD will prepare and present all draft elements at a public meeting to provide an opportunity for public comment.

Phase 3. Final Master Plan and Adoption

- 3.1 *Develop Final Master Plan.* DbD will work with the steering committee to determine a final direction for the rail trail master plan and all associated elements. Develop a master plan document that highlights the project goals, site analysis, public engagement, and final recommendations for the rail trail design, facilities, and programs.
- 3.2 *Implementation.* Include within the report an estimate of probable cost for all capital facilities, ongoing operational costs, and a timeline/phasing plan for construction.
- 3.3 *Final Presentation.* DbD will make a final presentation of the rail trail master plan to City Council.

Phase 4. Grant Writing and Implementation

4.1 PARTF Grant Preparation and Writing. DbD will manage the completion of all project elements required for a May 2020 PARTF application, including, but not limited to the following:

- Grant narrative writing;
- Conduct site visit with regional PARTF representative;
- Conduct site visit with voting PARTF board member(s);
- City staff to plan, attend, and document public and civic meetings necessary to obtain maximum grant points;
- Prepare all required maps, schematics, and plans; and
- Prepare project budget.

2. Fees and Payment Schedule

2.1 Fees for services shall be in accordance with phases below. The Consultant shall make monthly billings in accordance with project progress. The Consultant shall be paid within thirty (30) days of receipt of a detailed invoice.

Task 1: Comprehensive Parks and Recreation Master Plan (Sept. – April)

<i>Phase 1. Direction Setting and Communications</i>	\$ 9,000
<i>Phase 2. Discovery + Analysis</i>	\$ 21,000
<i>Phase 3. Draft Plan Development and Public Meeting</i>	\$ 24,000
<i>Phase 4. Final Plan and Recommendations</i>	\$ 12,400

Comprehensive Rec Master Plan Lump Sum Total **\$ 66,400**

Task 2: Rail Trail Site-Specific Master Plan (Sept. – April)

<i>Phase 1. Direction Setting, Research, and Analysis</i>	\$ 9,000
<i>Phase 2. Preliminary Design + Public Engagement</i>	\$ 13,500
<i>Phase 3. Final Master Plan + Adoption</i>	\$ 13,000
<i>Phase 4. Grant Writing and Implementation</i>	\$ 5,000

Site-Specific Master Plan Total: **\$ 40,500**

2.2 *Travel and Printing Expenses.* The Consultant shall be paid a lump sum of \$2,400 for all travel expenses to complete Task 1 and Task 2. The Client will be responsible for all printing costs associated with the public meetings, the PARTF grant application, and final plan printing.

Travel Expense Lump Sum **\$ 2,400**

2.3 The Consultant or the Owner shall be allowed to renegotiate this Agreement upon substantial change in the project budget, scope of service, or schedule.

3. Ownership of Documents

3.1 The Consultant shall be deemed the author and owner of all deliverables provided to the Client, including but not limited to plans, drawings, displays, graphic art, and other images and devices of any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by the Consultant (collectively, the "Deliverables").

3.2 Subject to payment by the Client of all fees and costs owed to the Consultant, the Consultant grants ownership to the Client. The Consultant may use materials for marketing purposes.

4. Complete Agreement

This Agreement represents the entire understanding between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement only may be amended in writing signed by both the Owner and the Consultant.

5. Signatures

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

City of Shelby

Rick Howell 9/20/2019
Signature Date

City Manager
Title

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

Steve By
Finance Officer (signature)

Destination by Design

Eric Workidge 9/23/19
Signature Date

Director of Planning & Business Development

Title

ORDINANCE NO. 68-2019

CITY OF SHELBY
FISCAL YEAR 2019-2020 BUDGET ORDINANCE AMENDMENT

WHEREAS, in accordance with applicable provisions of the North Carolina Budget and Fiscal Control Act, the City of Shelby finds it advisable and necessary to revise and amend its annual budget for FY 2019-2020; and,

WHEREAS, the City Manager (Budget Officer) has recommended certain amendments to the budget which the governing body finds acceptable; and,

WHEREAS, City Council now desires to act on the recommended budget amendments and approve same for implementation and compliance with the Fiscal Control Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. Ordinance No. 31-2019, the City’s FY 2019-2020 Budget Ordinance, is hereby amended as follows to provide for Budget Amendment No. 8 for the year:

(A) The City of Shelby has identified a need to conduct a Parks and Recreation Master Plan in order to properly assess future recreational needs within the City. Accordingly, the following budget modifications are approved in accordance with the chart of accounts heretofore established for the City of Shelby.

(1) The following General Fund line items are amended:

(a) Increase 11001000-36301 Proceeds from Sale of Assets	\$ 44,250
(b) Decrease 110613-43403 Building Repairs	\$ 65,750
Increase 110612-42000 Professional Services	\$ 110,000

Section 2. That the revenues, expenditures and amendments set forth in Section 1 of this ordinance are hereby summarized as follows:

	<u>Current Budget</u>	<u>Amendment No. 8</u>
General Fund	\$ 26,273,621	\$ 26,317,871
Emergency Telephone System Fund	162,200	162,200
Powell Bill Fund	790,200	790,200
Economic Dev. Fund	813,950	813,950
Housing Fund	1,549,408	1,549,408
Cemetery Fund	30,000	30,000
Utilities-Water Fund	5,145,000	5,145,000
Utilities-Sewer Fund	5,548,800	5,548,800
Utilities-Electric Fund	22,408,955	22,408,955
Utilities-Gas Fund	16,301,600	16,301,600
Utilities – Stormwater Fund	832,160	832,160
FY 2019-2020 Budget Total:	<u>\$ 79,855,894</u>	<u>\$ 79,900,144</u>

Section 3. Copies of this Budget Ordinance Amendment shall be furnished to the City Manager as Budget Officer and to the Finance Director to be kept on file by them for their direction in the collection and disbursement of funds. Said officials are hereby authorized to receive and expend funds as herein set forth in accordance with the Shelby City Code, the General Statutes of North Carolina, and the provisions of the original budget ordinance; inclusive of GS 159-28 governing budgetary accounting of appropriations.

Section 4. This ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 7th day of October 2019.

O. Stanhope Anthony, III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-7

- 7) Adoption of a budget ordinance amendment for the City of Shelby's Hanna Property Multi-purpose Recreation Complex Project: Ordinance No. 69-2019

Consent Agenda Item: (Rick Howell, City Manager and Justin S. Merritt, Assistant City Manager/Director of Finance)

Summary of Available Information:

- Memorandum dated October 1, 2019 from Justin S. Merritt, Assistant City Manager/Director of Finance to Rick Howell, City Manager
- Ordinance No. 69-2019

City Manager's Recommendation / Comments

Ordinance No. 69-2019 is presented for City Council consideration at this time. If approved this ordinance would transfer remaining funds from the Hanna Park project in the amount of \$48,000 and appropriate them for signage improvements at City Park which will include a new entrance sign as well as other directional signs within the park.

It is my recommendation Ordinance No. 69-2019 be adopted and approved by City Council at this time via the Consent Agenda.



To: Rick Howell, City Manager
From: Justin S. Merritt, Assistant City Manager/Director of Finance
Date: October 1, 2019
Subject: Hanna Park Project Budget Amendment #3

Background:

As you are aware, the Hanna Park project has been completed and, after final accounting, funding remains available that may be applied to additional amenities. One amenity that has been discussed is updated and additional signage at City Park.

This budget amendment will recognize community grant funding that will be applied towards this signage project.

Recommendation:

Seek Council approval of Hanna Park Project Budget Amendment #3.

ORDINANCE NO. 69-2019

A BUDGET ORDINANCE AMENDMENT FOR THE CITY OF SHELBY'S HANNA PROPERTY MULTI-PURPOSE RECREATION COMPLEX PROJECT

WHEREAS, in accordance with applicable provisions of the North Carolina Budget and Fiscal Control Act, the City of Shelby finds it advisable and necessary to revise and amend its capital project ordinance and budgets for the City of Shelby's Hanna Property Multi-Purpose Recreation Complex Project; and

WHEREAS, the City Manager (Budget Officer) has recommended certain amendments to the budget which the governing body finds acceptable; and,

WHEREAS, City Council now desires to act on the recommended budget amendments and approve the same for implementation and compliance with the North Carolina Local Government Budget and Fiscal Control Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. Ordinance No. 68-2015, the City's Hanna Property Multi-Purpose Recreation Complex Project, is hereby amended as follows to provide for Budget Amendment No. 3 for said project:

Hanna Property Multi-Purpose Recreation Complex Project

(1) The following General Fund Cap. Project Revenues are amended by the City:

Community Grants	11101000-34503-HPMRC	\$48,000
------------------	----------------------	----------

(2) The following General Fund Cap. Project Expenditures are amended by the City:

Construction	111612-53000-HPMRC	\$48,000
--------------	--------------------	----------

Section 2. That the revenues, expenditures and amendments set forth in Section 1 of this ordinance are hereby summarized as follows:

Hanna Property Multi-Purpose Recreation Complex Project

	<u>Current Budget</u>	<u>Amendment No. 3</u>
Revenues		
Transferred from Gas Fund	\$ 520,800	\$ 520,800
Proceeds from Financing	\$7,700,000	\$ 7,748,000
Expenditures		
Engineering	\$ 520,800	\$ 520,800
Construction	\$ 7,700,000	\$ 7,748,000

Ordinance No. 69-2019
October 7, 2019
Page 2

Section 3. Copies of this Budget Ordinance Amendment shall be furnished to the City Manager as Budget Officer and to the Finance Director to be kept on file by them for their direction in the collection and disbursement of funds. Said officials are hereby authorized to receive and expend funds as herein set forth in accordance with the Shelby City Code, the General Statutes of North Carolina, and the provisions of the original budget ordinance; inclusive of GS 159-28 governing budgetary accounting of appropriations.

Section 4. This ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 7th day of October 2019.

O. Stanhope Anthony, III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-8

- 8) Adoption of a budget ordinance amendment for the City of Shelby's Job Ready Shell Building No. 3 Project: Ordinance No. 70-2019

Consent Agenda Item: (Rick Howell, City Manager and Justin S. Merritt, Assistant City Manager/Director of Finance)

Summary of Available Information:

- Draft of Agreement between City of Shelby and WHN Architects, PA
- Ordinance No. 70-2019

City Manager's Recommendation / Comments

Ordinance No. 70-2019 is presented for City Council consideration at this time. If approved this ordinance would appropriate funding from financing proceeds for this project as well as the county's ½ share of cost for engineering, architectural and design costs associated with the site preparation (grading), and building design for Shell Building #3 to be constructed on the 47 acre Plato Lee Road parcel. As a reminder this entire project is funded 50/50 between the City and County. The City is acting as the developer of the project and will collect a developer's fee to offset City staff time and some overhead cost. WHN Architects will be the building designer and McGill Associates is the site preparation engineer.

It is my recommendation Ordinance No. 70-2019 be adopted and approved by City Council at this time via the Consent Agenda.

DRAFT AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the «1 » day of «October » in the year «2019 »
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

«City of Shelby »« »
«300 South Washington Street »
«Shelby, NC 28151 »
« »

and the Architect:
(Name, legal status, address and other information)

«WHN Architects, PA »« »
«330 West 10th Street »
«Charlotte, NC 28202 »
«704-333-9952 »

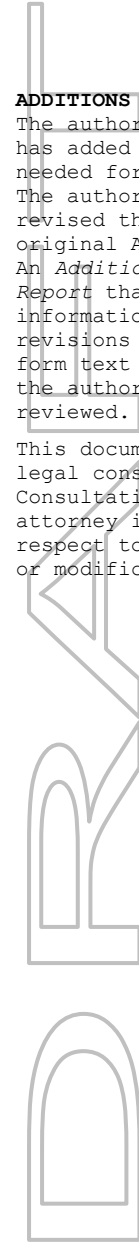
for the following Project:
(Name, location and detailed description)

«Shelby Spec Building #3»
« Plato Lee Industrial Park, Plato Lee Road, Shelby, North Carolina»
«Shelby Spec Building #3 will consist of a 100,000 sf shell warehouse/industrial building in the Plato Lee Industrial Park in Shelby, North Carolina. The project will include an insulated pre-cast concrete panel building, associated structural, plumbing, mechanical, electrical and fire protection and coordination of site work and utilities (by Civil Engineer under separate contract with City), as outlined in the RFP by The City of Shelby.»

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

«Exhibit A – City of Shelby "Project Description and Outline Specifications" »

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

«Plato Lee Road Industrial Park – Address: TBD»

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

«\$4,600,000.00 »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

«Permit / Bid / Construction Set: January 2020 »

.2 Construction commencement date:

«March 2020 »

.3 Substantial Completion date or dates:

«October 2020 »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

«Competitive Bid »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«N/A »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address, and other contact information.)

«N/A »

« »

« »

« »

« »

« »

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.)

«N/A »

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

«TBD »« »

« »

« »

« »
« »

.2 Civil Engineer:

McGill Associates, PA 55 Broad Street Asheville, NC 28801 828*252-0575

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

« »

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«WGPM, Inc.» « »
«11220 Elm Lane, Ste. 201 »
«Charlotte, NC 28277 »
«704-542-7199 »
« »

.2 Mechanical Engineer:

« Teeter Engineering Group, PA
» « »
«5500 77 Center Drive, Ste. 140
»
«Charlotte, NC 28217 »
«704-376-2999 »
« »

.3 Electrical Engineer:

«Teeter Engineering Group, PA » « »
«5500 77 Center Drive, Ste. 140 »
«Charlotte, NC 28217 »
«704-542-7199 »
« »

§ 1.1.11.2 Consultants retained under Supplemental Services:

« »

§ 1.1.12 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than «one million » (\$ «1,000,000.00 ») for each occurrence and «two million » (\$ «2,000,000.00 ») in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than «one million » (\$ «1,000,000.00 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than «one million » (\$ «1,000,000.00 ») per claim and «one million » (\$ «1,000,000.00 ») in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in

terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	N/A
§ 4.1.1.2 Multiple preliminary designs	N/A
§ 4.1.1.3 Measured drawings	N/A
§ 4.1.1.4 Existing facilities surveys	N/A
§ 4.1.1.5 Site evaluation and planning	N/A
§ 4.1.1.6 Building Information Model management responsibilities	N/A
§ 4.1.1.7 Development of Building Information Models for post construction use	N/A
§ 4.1.1.8 Civil engineering	N/A
§ 4.1.1.9 Landscape design	N/A
§ 4.1.1.10 Architectural interior design	N/A
§ 4.1.1.11 Value analysis	N/A
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	N/A
§ 4.1.1.13 On-site project representation	N/A
§ 4.1.1.14 Conformed documents for construction	N/A
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Architect

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.17 Post-occupancy evaluation	N/A
§ 4.1.1.18 Facility support services	N/A
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect's coordination of the Owner's consultants	N/A
§ 4.1.1.21 Telecommunications/data design	N/A
§ 4.1.1.22 Security evaluation and planning	N/A
§ 4.1.1.23 Commissioning	N/A
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	N/A
§ 4.1.1.29 Other services provided by specialty Consultants	N/A
§ 4.1.1.30 Other Supplemental Services	N/A

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

«PDF set of record drawings at permit approval and as-built based on general contractor mark-ups »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 «Two » («2 ») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 «Twenty » («20 ») visits to the site by the Architect during construction
- .3 «Two » («2 ») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «Two » («2 ») inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within «twelve » («12 ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;

- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

«\$0.00 »

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

«\$0.00 »

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

«\$144,000.00
(+ \$2,000 Reimbursable Allowance)
See Exhibit B – "Design Fee Proposal" »

.2 Percentage Basis
(Insert percentage value)

« » (« ») % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

«§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«Included in Article 11.1 of this document. »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

«Standard Hourly Rates – Contained within Exhibit B

Energy Consultant or Solar \$ 8,500.00

Building Rendering \$ 4,500.00

»

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus «One and Fifteen Hundredths » percent («1.15 »%), or as follows:

(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

« »

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	«Ten »	percent («10 »	%)
Design Development Phase	«Twenty »	percent («20 »	%)
Construction Documents Phase	«Forty Five »	percent («45 »	%)
Procurement Phase	«Five »	percent («5 »	%)
Construction Phase	«Twenty »	percent («20 »	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«See Exhibit B – Design Fee Proposal with Standard Hourly Rates »

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «One Hundred and Fifteen Hundredths » percent («1.15 » %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

«To be determined if required. »

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of «Zero Dollars and Zero Cents » (\$ «0.00 ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid «Thirty » («30 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

«1.50 » % «Monthly »

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

«12.1 To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Architect and the Architect's officers, directors, partners, employees and subconsultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Architect under this Agreement. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. »

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

« »

- .3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

[] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

«Exhibit A – City of Shelby Project Description
Exhibit B – Fee Proposal and Standard Hourly Rates
Exhibit C – Probable preliminary cost estimate »

- .4 Other documents:

(List other documents, if any, forming part of the Agreement.)

« »

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

«Justin Merritt, »«Director of Finance – City of
Shelby »

(Printed name and title)

ARCHITECT *(Signature)*

«Paul R. Garafola, »«AIA, Principal »

(Printed name, title, and license number, if required)

ORDINANCE NO. 70-2019

A BUDGET ORDINANCE AMENDMENT FOR THE CITY OF SHELBY'S
JOB READY SHELL BUILDING NO. 3 PROJECT

WHEREAS, in accordance with applicable provisions of the North Carolina Budget and Fiscal Control Act, the City of Shelby finds it advisable and necessary to revise and amend its capital project ordinance and budgets for the City of Shelby's Job Ready Shell Building No. 3 Project; and

WHEREAS, the City Manager (Budget Officer) has recommended certain amendments to the budget which the governing body finds acceptable; and,

WHEREAS, City Council now desires to act on the recommended budget amendments and approve the same for implementation and compliance with the North Carolina Local Government Budget and Fiscal Control Act;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. Ordinance No. 52-2018, the City's Job Ready Shell Building No. 3 Project, is hereby amended as follows to provide for Budget Amendment No. 1 for said project:

Job Ready Shell Building No. 3 Project

(1) The following Economic Dev. Fund Cap. Project Revenues are amended by the City:

Proceeds from Financing	23109000-38001-SHL#3	\$167,050
Cleveland County Grant	23109000-33500-SHL#3	\$167,050

(2) The following Economic Dev. Fund Cap. Project Expenditures are amended by the City:

Engineering	231590-42004-SHL#3	\$334,100
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Section 2. That the revenues, expenditures and amendments set forth in Section 1 of this ordinance are hereby summarized as follows:

Job Ready Shell Building No. 3 Project

	<u>Current Budget</u>	<u>Amendment No. 1</u>
Revenues		
Cleveland County Grant	\$ 100,000	\$ 267,050
Proceeds from Financing	\$ 100,000	\$ 267,050
Expenditures		
Engineering	\$ 200,000	\$ 534,100

Ordinance No. 70-2019
October 7, 2019
Page 2

Section 3. Copies of this Budget Ordinance Amendment shall be furnished to the City Manager as Budget Officer and to the Finance Director to be kept on file by them for their direction in the collection and disbursement of funds. Said officials are hereby authorized to receive and expend funds as herein set forth in accordance with the Shelby City Code, the General Statutes of North Carolina, and the provisions of the original budget ordinance; inclusive of GS 159-28 governing budgetary accounting of appropriations.

Section 4. This ordinance shall become effective upon its adoption and approval.

Adopted and approved this the 7th day of October 2019.

O. Stanhope Anthony, III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-9

- 9) Adoption of an ordinance authorizing demolition of a dwelling (800 Gardner Street):
Ordinance No. 71-2019

Consent Agenda Item: (Walter Scharer, Planning Director)

Summary of Available Information:

- Memorandum dated September 24, 2019 from Walter Scharer, Planning Director to Rick Howell, City Manager
- Photo of property
- Location Map
- Tax Card for 2019
- Ordinance No. 71-2019

City Manager's Recommendation / Comments

Please note that the Building Inspector has duly conducted enforcement of the minimum housing code in accordance with the NC General Statutes and City Code. I do want to emphasize that it is the common practice of the City to err on the side of the property owner in most all cases giving them the benefit of the doubt when action is initiated. A thorough and fair due process is followed in all cases. Demolition of these homes is always the last resort after efforts to persuade a property owner to make these minimum standards have failed. As you all know once this ordinance is passed the City is empowered to enter onto the property to demolish the building. All associated demolition costs and administrative costs are then filed by the City Attorney as a lien against the property. This lien is normally only satisfied to the City's benefit upon the sale of the property.

Excerpt from Strategic Growth Plan

4. Community Appearance & Image

POLICY 4.4: Vacant and abandoned sites and buildings shall be properly cared for or removed, thereby preventing a blighting impact on the area in which they are located.

Action 4.4.1: Examine and implement standards for maintaining undeveloped or vacant lots and for repairing or removing abandoned structures and sites.

It is my recommendation Ordinance No. 71-2019 be adopted and approved by City Council at this time via the Consent Agenda.



Memorandum

To: Rick Howell - City Manager
From: Walter Scharer – Planning & Development Director
Date: September 24, 2019
Subject: **Demolition of Structure at 800 Gardner St.**

Executive Summary of issue – Background

The dwelling associated with this proposed demolition action is in a dilapidated condition and should be removed for the safety of the citizens of Shelby. Initial complaints came from residents, the Shelby Police Department and City Code Enforcement. The property owner has been given due process and has failed to comply with the City's Minimum Housing Code.

Review and Comments

Due to dilapidation this dwelling is unfit for human habitation and has the potential of increasing the hazards of fire, accident, and other calamities; it is dangerous and detrimental to the health, safety, and welfare of the citizens of the City of Shelby. The estimated cost of demolition and removal is approximately \$5,000.00. Budgeted minimum housing funds will be used for this demotion.

Removal of this structure is in compliance with the City of Shelby Minimum Housing Code pursuant to N.C.G.S. 160A-441.

Removal of this structure is supported by the following Strategic Growth Plan Policies and Actions:

POLICY 4.4: Vacant and abandoned sites and buildings shall be properly cared for or removed, thereby preventing a blighting impact on the area in which they are located.

Action 4.4.1: Examine and implement standards for maintaining undeveloped or vacant lots and for repairing or removing abandoned structures and sites.

POLICY 9.2: Consistent, reliable enforcement of well written housing and nuisance abatement codes shall be employed to eliminate instances of unlawful activity and urban blight within the planning area of Shelby.

Recommendation

Please place this item on the consent agenda for the next City Council meeting on October 7, 2019. Staff recommends this minimum housing action.

Attachments: Photo of Structure, Location Map, Tax Card and Ordinance





Location Map

800 Gardner Street

Map Information:
Datum: NAD 1983
Coordinate: State Plane
North Carolina (Meter)
Projection: Lambert Conformal Conic
US National Grid
Grid Zone Designation (GZD): 17S
100,000m Square ID: MV/MU



Date: 9/24/2019



Scale 1:3,000 1 inch = 250 feet

DATE 7/25/19
 TIME 11:12:45
 USER MAYES

CLEVELAND COUNTY
 PROPERTY CARD
 FOR YEAR 2019

PAGE 1
 PROG# AS2006

THAPA BISHWA JUNG PARCEL ID.. 19455 PIN... S24 5 26
 LOCATION... 800 GARDNER ST SHELBY
 814 OLD WYND COURT DEED YEAR/BOOK/PAGE.. 2003 1398 1382 ASSESSMENT NONE
 PLAT BOOK/PAGE.. OWNER ID.. 1204950
 LEGAL DESC:#18BLK GPB3-1 YOUNG PROP DISTRICT.. 6 CITY OF SHELBY
 TOWNSHIP... 6 SHELBY
 SPARTANBURG SC 29301- NBRHOOD... 232 S MAPS 06
 DESCRIPTION RESIDENTIAL
 MAINTAINED.. 7/17/2018 BY MAYES VALUED.. 7/02/2019 BY MAYES
 VISITED..... 5/01/1998 BY ROUTING#..
 PARCEL STATUS... ACTIVE CATEGORY.. GROUP 100

----- SALES HISTORY -----
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DEED BK/PAGE	SALE DATE	SALES INSTRUMENT	DISQUALIFIED	SALE AMOUNT	STAMP AMOUNT	DEED NAME
1398 1382	12/09/2003	QUIT CLAIM DEE	FAMILY TRANSACT			THAPA BISHWA JUNG
1184 1819	8/19/1996	DEED	ADDITION PARCEL	25,000		BISHWA JUNG THAPA &
W/BRIDGETT						
1093 0776	12/01/1990	SALE	QUALIFIED		8.50	

----- LAND SEGMENTS -----
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LND #	ZONE	STRAT CODE	LAND TYPE/CODE	LAND QTY	LAND RATE	DPT%	SHP%	LOC%	SIZ%	OTH%	TOT ADJ
1		02	FF F	75.000	50.00	103.00	.00	60.00	.00	.00	61.80
2,317											
			DEPTH..	157			OTHER ADJ...	.00	.00	.00	.00
2,317		TOTAL ACRES..		.000							TOTAL LAND FMV..

----- IMPROVEMENT # 1 MAJOR IMPR-M -----

MAIN FIN AREA.. 1,062.00 ACT/EFF YR/AGE.. 1950 1971 45 VISITED.. BY
 STRAT..... 02 DESCRIPT... SINGLE FAMILY DWELLING-WF MAINTAINED.. 7/17/2018 BY MAYES
 MAIN PERIM..... 144.00 MAIN GROUND SF.... 1,062.000
 LOCATION #..... GARDNER ST 800

COMPONENT	TYPE/CODE/DESC	PCT	UNITS	RATE	STR#	STR%	SIZ%	HGT%	PER%	CDS%	COST
AC 06	COVERED PORCH	100	16.00	13.19				145.00			
306											
AC 20	MASONRY STOOP	100	40.00	7.29				134.00			
390											
MA 37W	SINGLE FAMILY DWELLI	100	1062.00	62.11	1.00		100.00			100	
65,960											
EW 08	ALUMINUM/VINYL	100	144.00	.00							
0											
UB 0600	UNFIN BASEMENT-SIZE	50	531.00	10.25							
5,442											
- FD 04	PERIMETER FOOTING	100	1062.00	.00							
0											
- HC 02	FLOOR/WALL FURNACE	100	1062.00	1.03-							
1,093-											
- PL R	RES PLUMB-EXTRA FIXT	100	5.00	717.00							
0											

RCN... PCT COMPLETE 100 x
 71,005
 QUAL.. QG D3 D+- 85.00 x
 60,354
 DEPR.. D6 45 YEARS OLD 78.00 - 47,076
 LOCA.. LOD LOCATIONAL OBS DEP 25.00 - 3,319
 50,395 T

6,970
 DATE 7/25/19
 TIME 11:12:45
 USER MAYES

--FMV... MA 232 232 MARKET ADJ
 CLEVELAND COUNTY
 PROPERTY CARD
 FOR YEAR 2019

70.00 x

PAGE 2
 PROG# AS2006

THAPA BISHWA JUNG

PARCEL ID.. 19455

PIN... S24 5 26

----- IMPROVEMENT # 1 MAJOR IMPR-M -----

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4 :
8 :
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+4: :
1 C :
0 B :
+4+-----24-----+
  
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----- AC 06 COVERED PORCH ----- TRAVERSE -----
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M U 48.00 M R 16.00 D U 4.00 D L 4.00 D D 4.00 D R
4.00

----- AC 20 MASONRY STOOP ----- TRAVERSE -----
--
D U 10.00 D L 4.00 D D 10.00 D R 4.00

----- MA 37W SINGLE FAMILY DWELLI FLOOR: 1.00 ----- TRAVERSE -----
--
D U 48.00 D R 18.00 D D 15.00 D R 6.00 D D 33.00 D L
24.00
  
```

TOTAL PARCEL VALUES----	LAND /	OVR	IMPROVEMENTS /	OVR	TOTAL LAND/IMPROVE	2018
VALUE	FMV.....	2,317	6,970	9,287		
9,287	APV.....	2,317	6,970	9,287		
9,287						

ORDINANCE NO. 71-2019

AN ORDINANCE AUTHORIZING DEMOLITION OF A DWELLING

WHEREAS, pursuant to the provisions of Chapter 160A, Article 19, Part 6, of the North Carolina General Statutes, the single family dwelling located at **800 GARDNER STREET**, Shelby, North Carolina, has been inspected and found to be unfit for human habitation and to otherwise constitute a danger to persons and a threat to the health and welfare of the citizens within the City; and,

WHEREAS, according to the procedure provided by law, the owner(s) of said property, **BISHWA JUNG THAPA** has or have been given notice of the aforesaid inspection, determination, and orders to bring said property into compliance with the housing standards of the City of Shelby by appropriate repair or removal of said dwelling; and,

WHEREAS, no action of any kind has been taken or initiated by the owner(s), or any party on behalf of said owner(s), to achieve compliance with said ordinances within the periods allowed by law; and,

WHEREAS, the said dwellings remain at this time unfit for human habitation, dilapidated, and a danger to the health and safety of the citizens of the City of Shelby, and should be removed by demolition in order to prevent and alleviate such continuing danger and dilapidated conditions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. The dwellings on the property known as **800 GARDNER STREET** Shelby, and described in the Cleveland County records as Tax Parcel No. **19455** be demolished forthwith, the remnants thereof disposed, and a lien for the costs of such demolition and removal, less any credits due the owner(s), be filed against the property and collected pursuant to the provisions of North Carolina General Statutes § 160A-443, et seq.; and,

Section 2. Said lien bear interest until paid, as allowed in Article 10 of Chapter 160A of the N.C. General Statutes, at the rate of eight percent (8.0%) per annum.

Adopted and approved this 7th day of October 2019.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-10

10) Adoption of an ordinance authorizing demolition of a dwelling (308 East Sumter Street): Ordinance No. 72-2019

Consent Agenda Item: (Walter Scharer, Planning Director)

Summary of Available Information:

- Memorandum dated September 17, 2019 from Walter Scharer, Planning Director to Rick Howell, City Manager
- Photo of property
- Location Map
- Tax Card for 2019
- Ordinance No. 72-2019

City Manager's Recommendation / Comments

Please note that the Building Inspector has duly conducted enforcement of the minimum housing code in accordance with the NC General Statutes and City Code. I do want to emphasize that it is the common practice of the City to err on the side of the property owner in most all cases giving them the benefit of the doubt when action is initiated. A thorough and fair due process is followed in all cases. Demolition of these homes is always the last resort after efforts to persuade a property owner to make these minimum standards have failed. As you all know once this ordinance is passed the City is empowered to enter onto the property to demolish the building. All associated demolition costs and administrative costs are then filed by the City Attorney as a lien against the property. This lien is normally only satisfied to the City's benefit upon the sale of the property.

Excerpt from Strategic Growth Plan

4. Community Appearance & Image

POLICY 4.4: Vacant and abandoned sites and buildings shall be properly cared for or removed, thereby preventing a blighting impact on the area in which they are located.

Action 4.4.1: Examine and implement standards for maintaining undeveloped or vacant lots and for repairing or removing abandoned structures and sites.

It is my recommendation Ordinance No. 72-2019 be adopted and approved by City Council at this time via the Consent Agenda.



Memorandum

To: Rick Howell - City Manager
From: Walter Scharer – Planning & Development Director
Date: September 17, 2019
Subject: Demolition of Structure at 308 E. Sumter St.

Executive Summary of issue – Background

The dwelling associated with this proposed demolition action is in a dilapidated condition and should be removed for the safety of the citizens of Shelby. Initial complaints came from residents, the Shelby Police Department and City Code Enforcement. The property owner has been given due process and has failed to comply with the City’s Minimum Housing Code.

Review and Comments

Due to dilapidation this dwelling is unfit for human habitation and has the potential of increasing the hazards of fire, accident, and other calamities; it is dangerous and detrimental to the health, safety, and welfare of the citizens of the City of Shelby. The estimated cost of demolition and removal is approximately \$5,000.00. Budgeted minimum housing funds will be used for this demotion.

Removal of this structure is in compliance with the City of Shelby Minimum Housing Code pursuant to N.C.G.S. 160A-441.

Removal of this structure is supported by the following Strategic Growth Plan Policies and Actions:

POLICY 4.4: Vacant and abandoned sites and buildings shall be properly cared for or removed, thereby preventing a blighting impact on the area in which they are located.

Action 4.4.1: Examine and implement standards for maintaining undeveloped or vacant lots and for repairing or removing abandoned structures and sites.

POLICY 9.2: Consistent, reliable enforcement of well written housing and nuisance abatement codes shall be employed to eliminate instances of unlawful activity and urban blight within the planning area of Shelby.

Recommendation

Please place this item on the consent agenda for the next City Council meeting on October 7th, 2019. Staff recommends this minimum housing action.

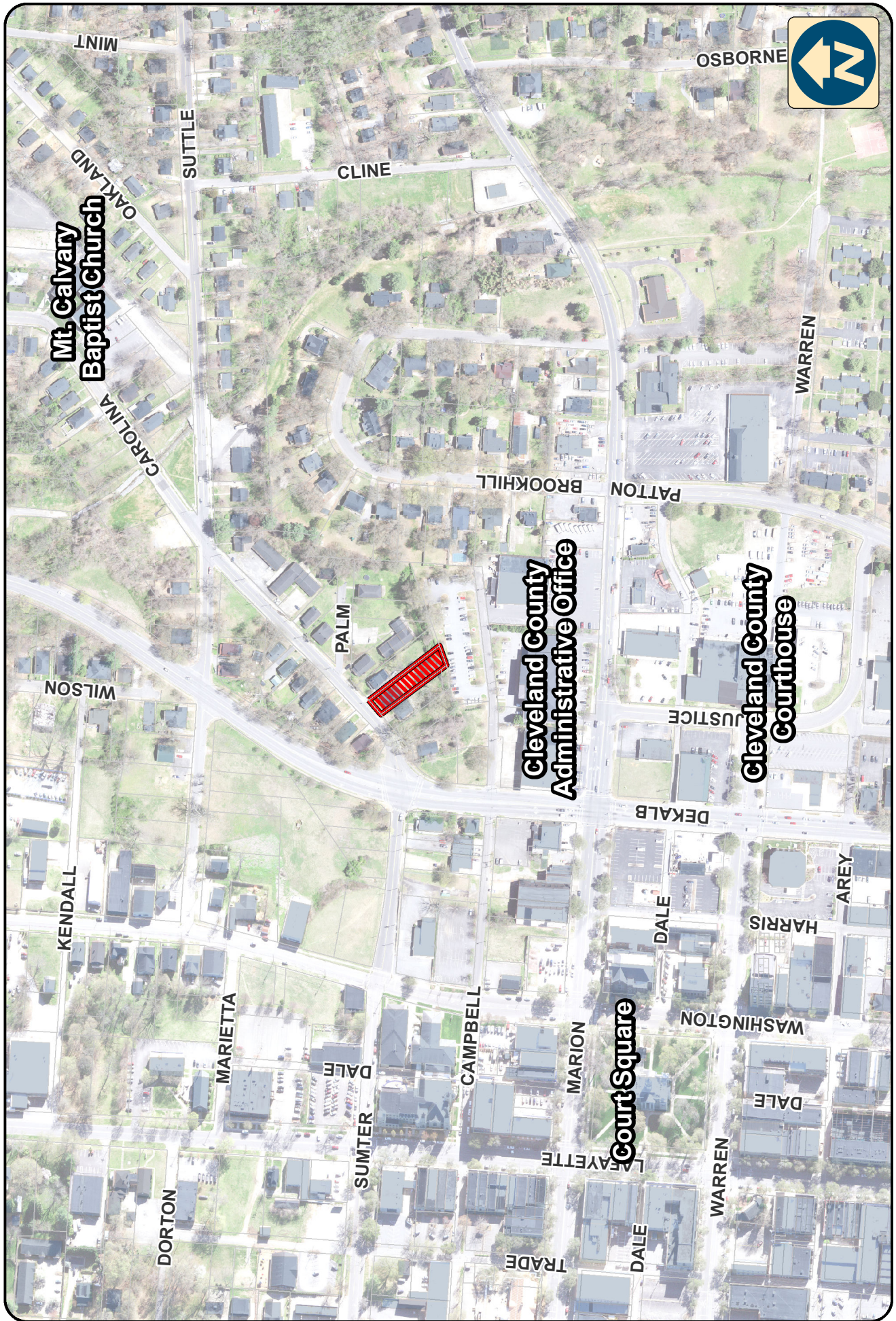
Attachments: Photo of Structure, Location Map, Tax Card and Ordinance.





308 East Sumter Street Location Map

Map Information:
 Datum: NAD 1983
 Coordinate: State Plane
 North Carolina (Meter)
 Projection: Lambert Conformal Conic
 US National Grid
 Grid Zone Designation: (GZD): 17S
 100,000m Square ID: MV/MU



Scale 1:4,000 1 inch = 333 feet



Date: 9/16/2019

DATE 7/25/19
 TIME 11:12:45
 USER MAYES

CLEVELAND COUNTY
 PROPERTY CARD
 FOR YEAR 2019

PAGE 1
 PROG# AS2006

FOSTER JEANIO CANSLER PARCEL ID.. 17280 FIN... S 4 2 9
 LOCATION... 308 E SUMTER ST SHELBY
 DEED YEAR/BOOK/PAGE.. 2011 0120 0118 ASSESSMENT RECY
 100 REDROCK DR APT #0 PLAT BOOK/PAGE.. OWNER ID.. 1277463
 LEGAL DESC:308 SUMTER ST DISTRICT.. 6 CITY OF SHELBY
 TOWNSHIP... 6 SHELBY
 CHERRYVILLE NC 28021-9313 NBRHOOD... 272 S MAPS #6
 DESCRIPTION RESIDENTIAL
 MAINTAINED.. 7/17/2018 BY MAYES VALUED.. 7/02/2019 BY MAYES
 VISITED..... 5/01/1998 BY ROUTING#..
 PARCEL STATUS... ACTIVE CATEGORY.. GROUP 100

----- SALES HISTORY -----

DEED BK/PAGE	SALE DATE	SALES INSTRUMENT	DISQUALIFIED	SALE AMOUNT	STAMP AMOUNT	DEED NAME
0120 0118	11/01/2011	WILL				FOSTER JEANIO CANSLER
120 118	6/07/2001	WILL				FOSTER BESSIE HEIRS
120 118	1/01/1968	SALE				

----- LAND SEGMENTS -----

LND #	ZONE	STRAT CODE	LAND TYPE/CODE	LAND QTY	LAND RATE	DPT%	SHP%	LOC%	SIZ%	OTH%	TOP%	TOT ADJ
1		02	FF F	50.000	60.00	112.00	.00	100.00	.00	.00	.00	112.00
3,360			DPH..	218			OTHER ADJ...	.00	.00	.00	.00	
3,360			TOTAL ACRES..	.000								TOTAL LAND FMV..

----- IMPROVEMENT # 1 MAJOR IMPR-M -----

MAIN FIN AREA.. 1,008.00 ACT/EFF YR/AGE.. 1930 1973 43 VISITED.. BY
 STRAT..... 02 DESCRIPT.... SINGLE FAMILY DWELLING-WF MAINTAINED.. 7/17/2018 BY MAYES
 MAIN PERIM..... 128.00 MAIN GROUND SF.... 1,008.000
 LOCATION #..... SUMTER ST 308

COMPONENT	TYPE/CODE/DESC	PCT	UNITS	RATE	STR#	STR%	SIZ%	HGT%	PER%	CDS%	COST
AC 05	CARPORT	100	180.00	8.93				106.00			
1,703											
AC 06	COVERED PORCH	100	192.00	13.19				107.00			
2,709											
AC 08	ENCLOSED FRAME PORCH	100	84.00	19.66				152.00			
2,510											
MA 37W	SINGLE FAMILY DWELLI	100	1008.00	62.11	1.00			100.00		100	
62,606											
EW 06	WOOD SIDING	100	128.00	.00							
0											
- FD 04	PERIMETER FOOTING	100	1008.00	.00							
0											
- HC 07	PACKAGED HEAT/COOL	100	1008.00	1.79							
1,804											
- PL R	RES PLUMB-EXTRA FIXT	100	5.00	717.00							
0											

71,333	RCN...		PCT COMPLETE				100	x			
60,633	QUAL.. QG D3	D+-					85.00	x			
	DEPR.. D4	43 YEARS OLD					65.00	-		39,410	
	ECON.. EOD	ECONOMIC OB DEP					35.00	-		7,428	
	LOCA.. LOD	LOCATIONAL OBS DEP					25.00	-		3,448	
50,286 T											
7,759	--FMV... MA 272	272 MARKET ADJ					75.00	x			

DATE 7/25/19
 TIME 11:12:45
 USER MAYES

CLEVELAND COUNTY
 PROPERTY CARD
 FOR YEAR 2019

PAGE 2
 PROG# AS2006

FOSTER JEANIO CANSLER

PARCEL ID.. 17280

PIN... S 4 2 9

----- IMPROVEMENT # 1 MAJOR IMPR-M -----

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    +--14--+
+---+--28-----+
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:           :
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3           3
6           6
:           :
:           +-10-+
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D           :   :
+-----28-----+ 1
:           B   8
8           8   :
+-----24-----+A10-+
  
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----- AC 05 CARPORT ----- TRAVERSE -----
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M R 28.00 M D 8.00 D R 10.00 D U 18.00 D L 10.00 D D
 18.00

----- AC 06 COVERED PORCH ----- TRAVERSE -----
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M R 28.00 D D 8.00 D L 24.00 D U 8.00 D R 24.00

----- AC 08 ENCLOSED FRAME PORCH ----- TRAVERSE -----
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M U 36.00 M R 6.00 D U 6.00 D R 14.00 D D 6.00 D L
 14.00

----- MA 37W SINGLE FAMILY DWELLI FLOOR: 1.00 ----- TRAVERSE -----
 --

D U 36.00 D R 28.00 D D 36.00 D L 28.00

TOTAL PARCEL VALUES----	LAND /	OVR	IMPROVEMENTS /	OVR	TOTAL LAND/IMPROVE	2018
VALUE	FMV.....	3,360	7,759	11,119		
11,119	APV.....	3,360	7,759	11,119		
11,119						

ORDINANCE NO. 72-2019

AN ORDINANCE AUTHORIZING DEMOLITION OF A DWELLING

WHEREAS, pursuant to the provisions of Chapter 160A, Article 19, Part 6, of the North Carolina General Statutes, the single family dwelling located at **308 EAST SUMTER STREET**, Shelby, North Carolina, has been inspected and found to be unfit for human habitation and to otherwise constitute a danger to persons and a threat to the health and welfare of the citizens within the City; and,

WHEREAS, according to the procedure provided by law, the owner(s) of said property, **JEANIO C. FOSTER** has or have been given notice of the aforesaid inspection, determination, and orders to bring said property into compliance with the housing standards of the City of Shelby by appropriate repair or removal of said dwelling; and,

WHEREAS, no action of any kind has been taken or initiated by the owner(s), or any party on behalf of said owner(s), to achieve compliance with said ordinances within the periods allowed by law; and,

WHEREAS, the said dwellings remain at this time unfit for human habitation, dilapidated, and a danger to the health and safety of the citizens of the City of Shelby, and should be removed by demolition in order to prevent and alleviate such continuing danger and dilapidated conditions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. The dwellings on the property known as **308 EAST SUMTER STREET**, Shelby, and described in the Cleveland County records as **Tax Parcel No. 17280** be demolished forthwith, the remnants thereof disposed, and a lien for the costs of such demolition and removal, less any credits due the owner(s), be filed against the property and collected pursuant to the provisions of North Carolina General Statutes § 160A-443, et seq.; and,

Section 2. Said lien bear interest until paid, as allowed in Article 10 of Chapter 160A of the N.C. General Statutes, at the rate of eight percent (8.0%) per annum.

Adopted and approved this 7th day of October, 2019.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

APPROVED AS TO FORM:

Robert W. Yelton
City Attorney

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: C-11

- 11) Approval of a resolution recognizing the Shelby Natural Gas Department as a recipient of the American Public Gas Association's System Operational Achievement Recognition (SOAR) Award – Bronze Level: Resolution No. 64-2019

Consent Agenda Item: (Julie McMurry, Energy Services Director)

Summary of Available Information:

- Memorandum dated September 30, 2019 from Julie McMurry, Energy Services Director to Rick Howell, City Manager
- Resolution No. 64-2019

City Manager's Recommendation / Comments

Resolution No. 64-2019 is presented for City Council consideration at this time. If approved this resolution would recognize the achievements of the City Natural Gas department and the Bronze award received from through the American Public Gas Association (APGA) SOAR program. As noted in Ms. McMurry's memo the System Operational Achievement Program evaluates 1) System Integrity, 2) System Improvement, 3) Employee safety and 4) Workforce Development and assigns a score based upon objective criteria. Our staff has worked extremely hard to improve our overall system with an emphasis on safety and operational efficiency. All of these areas are important as we continue to deliver a high level of safe and efficient service to our customers. Please join me in congratulating Ms. McMurry and the entire natural gas department for this achievement.

It is my recommendation Resolution No. 64-2019 be adopted and approved by City Council at this time via the Consent Agenda.



Memorandum

To: Rick Howell, City Manager

Cc: Justin Merritt, Assistant City Manager

From: Julie McMurry, Energy Services Director *JRM*

RE: **APGA SOAR recipient**

Date: September 30, 2019

Executive Summary of Issue – Background

APGA member systems take great pride in their ability to deliver natural gas safely and efficiently to over 5 million customers in 37 states. APGA began the System Operational Achievement Recognition (SOAR) program in 2016 to honor those public natural gas systems that have achieved excellence in the operation of their natural gas utility.

SOAR honors natural gas distribution utilities that demonstrate commitment to excellence in four areas:

- System integrity
- System improvement
- Employee safety
- Workforce development

Applications are reviewed by a team of experts from the APGA Operations & Safety Committee and awarded a rating based on a total cumulative score of points achieved from the program criteria in each of the four areas. Utilities can receive one of three SOAR recognition levels:

- Bronze (80-89% of possible points)
- Silver (90-96% of possible points)
- Gold (97-100% of possible points).

SOAR continues for three years, at which point the utility may apply again to maintain recognition.

Review and comments

On July 28, 2019 at the 2019, APGA Annual Conference, the Natural Gas Department recognized along with 17 other SOAR recipients. We received a score of 174 (86%) earning the Bronze level award. This is our 2nd time participating. We are looking at areas to improve and hope to earn Silver or Gold next time around.

Recommendation

City Staff would like to recognize the employees in the gas department and supporting staff for the great job they do on a daily basis maintaining our system integrity, implementing system improvements, continued develop in the natural gas industry and working safely.

RESOLUTION NO. 64-2019

A RESOLUTION RECOGNIZING THE SHELBY NATURAL GAS DEPARTMENT
AS A RECIPIENT OF THE AMERICAN PUBLIC GAS ASSOCIATION'S SYSTEM
OPERATIONAL ACHIEVEMENT RECOGNITION (SOAR) AWARD – BRONZE LEVEL

WHEREAS, the American Public Gas Association (APGA) recognized the City of Shelby Natural Gas Department at its 2019 Annual Conference in Stowe, Vermont on July 28, 2019, for excellence in operating its natural gas utility; and,

WHEREAS, the City of Shelby Natural Gas Department was highly rated in all four areas that are required for SOAR (System Operational Achievement Recognition), System integrity, system improvement, employee safety and workforce development; and,

WHEREAS, APGA has over 750 members and the City of Shelby Natural Gas Department was one of eighteen (18) SOAR recipients recognized this year, joining the previous 35 SOAR award recipients; and,

WHEREAS, it is the desire of the Shelby City Council to recognize the City of Shelby Natural Gas Department for receiving the prestigious APGA System Operational Achievement Recognition (SOAR).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. This resolution shall become effective upon its adoption and approval.

Adopted and approved this the 7th day of October 2019.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

D. Unfinished Business

None

E. New Business

Agenda Item E-1

- 1) Consideration of a resolution authorizing selection of TGS Engineers based on qualifications for engineering design services for the City of Shelby portion of the Rail Trail: Resolution No. 65-2019

New Business Item: (Staff Resource, Rick Howell, City Manager and Engineering Services Director Ben Yarboro)

Summary of Available Information:

- Memorandum dated September 30, 2019 from Ben Yarboro, Engineering Services Director to Rick Howell, City Manager and Justin Merritt, Assistant City Manager/Finance Director
- Rail Trail Design Phases
- RFQ
- Resolution No. 65-2019

City Manager's Recommendation / Comments

Resolution No. 65-2019 is presented for your consideration at this time. If approved this resolution would authorize the selection of TGS Engineers of Shelby as the consulting engineer for engineering and design services for the phase I and II of the Rail Trail project. The RFQ process is in keeping with City policy and the NC General Statutes. Based upon a well thought out staff review process a Request for Qualifications was sent out with 5 qualified firms responding. A review committee determined that TGS Engineers best met the qualifications the City was looking for in designing these phases of the Rail Trail. The staff committee believes they have put together the best overall team to meet the needs of this project. I have reviewed their recommendation and believe the process has been carried out with fairness and the best interest of the City in mind.

It is my recommendation that Resolution No. 65-2019 be adopted and approved by City Council at this time.



Memorandum

To: Rick Howell, City Manager
Justin Merritt, Assistant City Manager/Finance Director

From: Ben Yarboro, Engineering Services Director *BY*

RE: City of Shelby Rail Trail – Engineering Design firm selection

Date: September 30, 2019

Background

The City of Shelby plans to begin design of the City of Shelby portion of the Cleveland County Rail Trail in the fall of 2019. The portion of trail within the city limits has been split into two phases. Phase I of the trail will begin behind the Sunset Cemetery at Grover Street and follow the Norfolk Southern rail line to the intersection of Lafayette Street and Broad Street and measures approximately 1.67 miles. Phase II of the City of Shelby portion begin at the Lafayette Street crossing near Broad Street and extends to S. Dekalb Street and measures approximately 0.8 miles. A map depicting these two construction phases is attached for reference. The City will obtain expert professional, technical, and advisory services for the design of these two phases of the rail trail.

In addition to working with City staff and other stakeholders to develop a final design, the selected engineering design firm will prepare construction/bidding documents, prepare a detailed cost estimate for all civil work, obtain all associated governmental and environmental permits required, and provide construction administration and inspection, if requested. As outlined in the Request for Qualifications (attached for reference), the selection criteria were:

- Project Approach and Understanding of Goals for Design Plans
- Creativity and Vision for Overall Project
- Familiarity with and Understanding the Nature and Challenges of the Region and Stakeholders
- Qualifications and Availability of Staff Assigned to the Project
- Relevant Project Experience
- Location/Proximity of the Firm Relative to Shelby

Review

On August 9, 2019, the City of Shelby advertised a Request for Qualifications for the engineering design services related to the City of Shelby Portion of the Cleveland County Rail Trail. The City received five (5) responses to this advertisement prior to the September 4, 2019 deadline. Responses were received from the following firms (listed in alphabetical order):

- Kimley-Horn (Charlotte, NC)
- Land Design (Charlotte, NC)
- McGill Associates (Asheville, NC)
- TGS Engineers (Shelby, NC)
- Toole Design (Raleigh, NC)

A review committee consisting of five (5) City staff was established to complete independent reviews and scoring of the five (5) responses that were received. After scoring was completed, the review committee discussed the results and determined that TGS Engineers was the most qualified firm to perform the Engineering Design Services for the portion of the Rail Trail located within the Shelby city limits.

TGS Engineers proposes to utilize the following professional firms as subconsultants on this project:

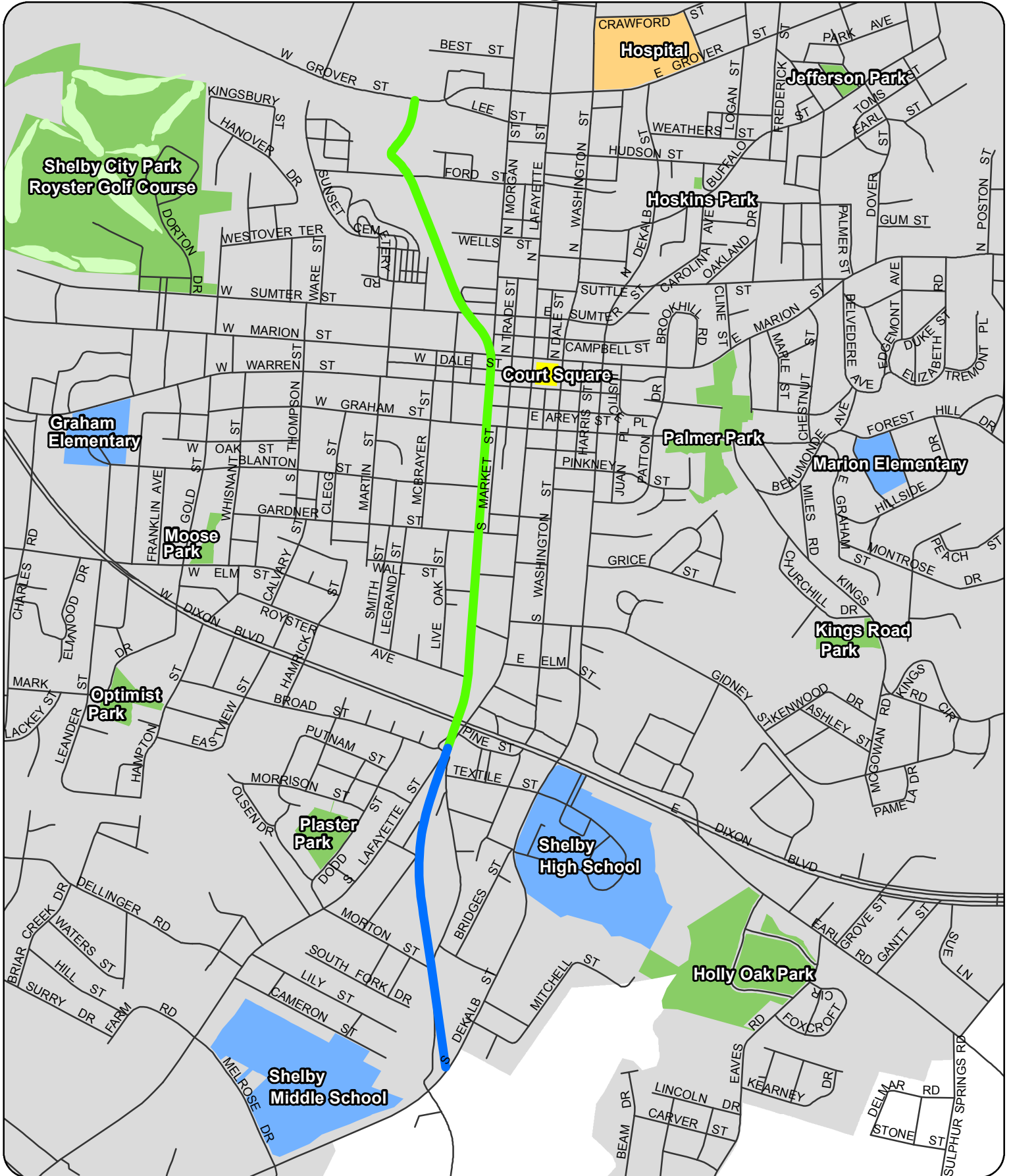
- The Dodd Studio (Streetscape / Landscape Design)
- Destination by Design (Branding, Wayfinding, Public Involvement)
- WithersRavenel (Landscape Design Support, Funding Support)

Recommendation

City Staff recommends that the Shelby City Council approve the resolution selecting TGS Engineers as the firm to perform the Engineering Design Services for City of Shelby Rail Trail from Grover Street to Dekalb Street. This resolution will authorize the City Manager to negotiate and execute an agreement that establishes the scope of work and fees associated with the professional services that are to be completed.

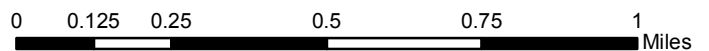
Please advise if you have any questions or need additional information.

Rail Trail Design Phases



Legend

- █ Phase 1 (1.67 Miles)
- █ Phase 2 (0.8 Miles)
- Streets
- Shelby City Limits



The City of Shelby makes no representations, warranties or guarantees as to the accuracy and completeness of the enclosed information and data, and the City is not responsible for any errors or omissions concerning the content and positional accuracy of such information and data.

Request for Qualifications

Engineering Design

for City of Shelby portion of the Cleveland County Rail Trail

824 West Grover Street
Shelby, North Carolina 28150
Phone: (704) 484-6840 • Fax: (704) 484-6808
Website: www.cityofshelby.com



Advertisement Date: August 9, 2019

Overview

The City of Shelby is requesting statements of qualifications from qualified professional Civil Engineering firms for the design, bidding, and construction oversight of a portion of the Cleveland County Rail Trail from behind the Sunset Cemetery at Grover Street and following the Norfolk Southern rail line to the intersection of Lafayette Street and Broad Street.

The history of this small section of rail line dates back to the 1830s, when representatives from multiple southern states developed a plan for a rail connector between the Ohio River and the Atlantic seaboard.

In 1886, the plan finally launched with the establishment of the Charleston, Cincinnati & Chicago Railroad Company. This railroad, which was also known as the 3-Cs or Triple Cs line, would connect coal and iron ore mines in Virginia and North Carolina from Ashland, Kentucky to Charleston, South Carolina. Construction began at Rutherfordton, North Carolina, and the Cleveland County section was completed by 1888.

The Panic of 1890 created financial trouble for the Triple Cs railroad, which was reorganized as the Ohio River & Charleston Railroad in 1893. Then, in 1898, the Cleveland County section was sold to the South Carolina & Georgia Extension Railroad Company. In 1899, Southern Railway expanded control over the line, and in 1902, gained a 999-year lease on it. In 1982, Southern Railway became Norfolk Southern, which maintains ownership over the rail line to this day.

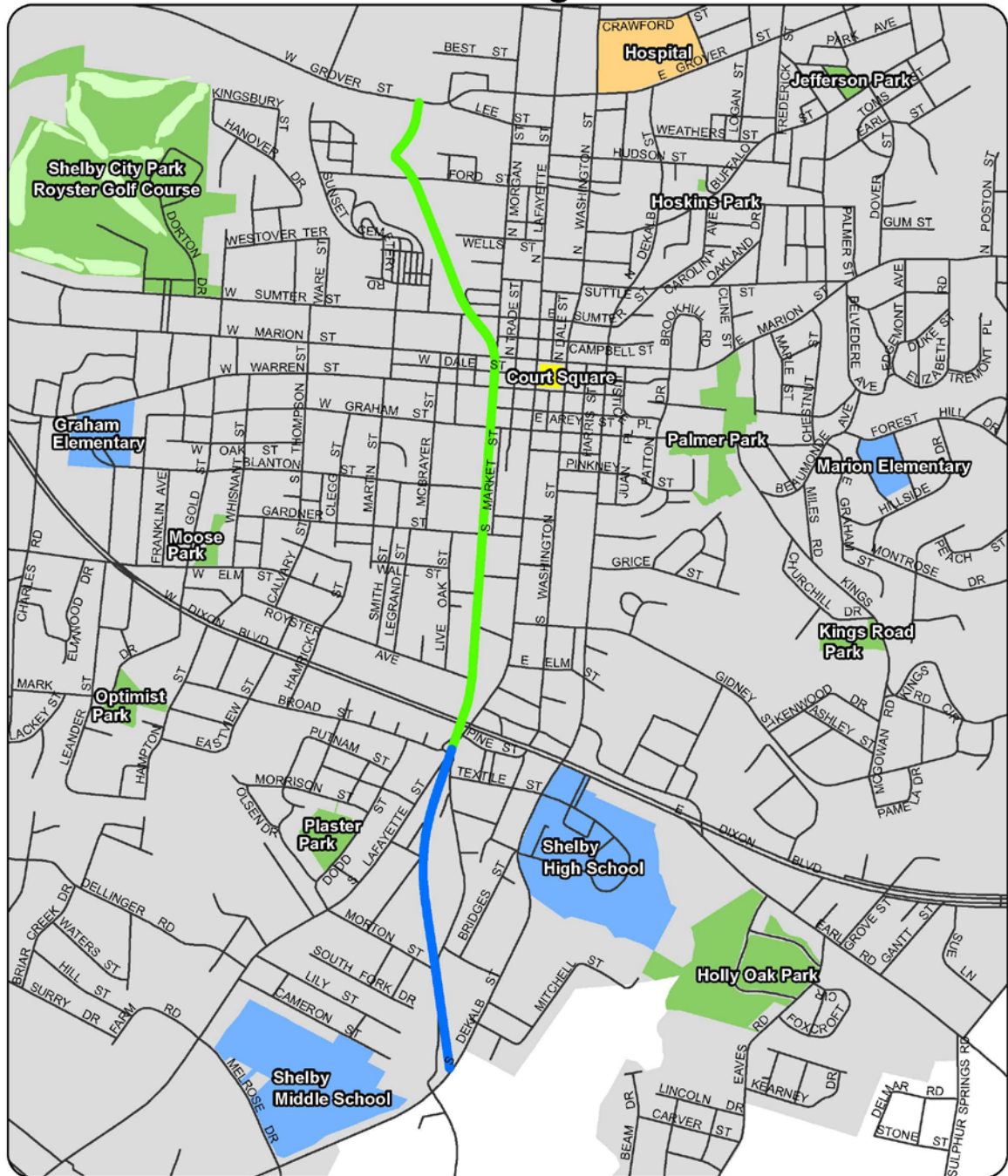
With an overall length of 11.85 miles, this potential rail trail corridor can connect to an existing multi-use path along W. Grover Street and continue southward along the existing rail line towards Blacksburg, South Carolina. This corridor can also connect the City of Shelby to the Towns of Patterson Springs and Earl as well as numerous neighborhoods, schools, commercial districts, and other destinations within Cleveland County.

Description of Services Requested

I. Scope of Work

This portion of the rail trail design and construction project consists of two separate phases by the City of Shelby. Phase I extends from W. Grover St. to the Lafayette St. (near Broad St.). This section measures 1.67 miles. Phase II extends from Lafayette St. to S. Dekalb St. and measures 0.8 miles.

Rail Trail Design Phases



Legend

- █ Phase 1 (1.67 Miles)
- █ Phase 2 (0.8 Miles)
- Streets
- ▭ Shelby City Limits

0 0.125 0.25 0.5 0.75 1 Miles



The City of Shelby makes no representations, warranties or guarantees as to the accuracy and completeness of the enclosed information and data, and the City is not responsible for any errors or omissions concerning the content and positional accuracy of such information and data.

Phase I of the project shall be fully designed construction plans and Phase II of the project shall be approximately a 20% design. The required services may include, but are not limited to, the following:

- a. Preparing a base map showing contours, and property lines of the general area of the specified phases of the project.
- b. Preparation of field topographic surveys suitable for plans preparation for trail construction. Gather property information and prepare a concept plan showing the proposed route with any future easements that may be required for the trail.
- c. Performing all project management and quality control/quality assurance duties for the survey, design, bidding, and construction oversight (if applicable) as well as coordinating with jurisdictional agencies, utilities, and obtaining all necessary permits and approvals.
- d. The project involves developing and implementing the most cost effective plan for the construction of non-motorized mode of transportation improvements that include sidewalk reconstruction, curb, ramps, striping, signing, Rail Trail, and ancillary work. While the functionality of the design is critical, utilizing creative design and aesthetically interesting features is important.
- e. Prepare drawings that identify and locate all existing utilities and their impact on the project.
- f. Prepare drawings that adequately address stormwater drainage along the corridor.
- g. Prepare sealed engineering specifications and construction documents for the rail trail that comply with all applicable codes, standards, and specifications.
- h. Prepare detailed cost estimates for review by the City of Shelby.
- i. Prepare all necessary applications to secure required permits and approvals for construction of the trail by NCDOT or any other necessary permitting agencies.
- j. Provide assistance during the construction bidding process to include participation in the pre-bid conference, replying to Requests for Information, preparing a certified bid tabulation, and preparing a formal recommendation for award.
- k. Construction Administration (if utilized by City) shall include conducting a pre-construction conference, review of project progress, review of shop drawings and submittals, certification of contractor requests for payment, preparation of pre-final and final punch lists and project close out. Conduct a one-year warranty inspection.

Proposal Instructions

I. Deadline

- a. Proposals must be received by 5:00pm eastern time on September 4, 2019.

II. Submittal Instructions

- a. Four hard copies of the proposal should be mailed or delivered to:

City of Shelby – Engineering Services
Attn: Ben Yarboro
824 W. Grover St.
Shelby, NC 28150

III. RFQ Contact

- a. The contact regarding this RFQ process is Bryant Nodine, Business Manager for the City of Shelby Utilities. Prospective applicants may make inquiries to obtain clarification of the requirements contained in this Request for Qualifications (RFQ). All inquiries must be submitted in writing by email to the following address: bryant.nodine@cityofshelby.com. All inquiries must be received by 5:00pm on August 23, 2019.
- b. A copy of the Cleveland County Rail Trail Master Plan is included with this RFQ for reference.

IV. Proposal Format

- a. Proposals should be limited to 20 numbered pages. Please include a cover letter that identifies a contact person and all call information. The following format is not required but is encouraged to provide consistency between proposals, aiding in evaluation and comparison. If the format is modified, please include the following information at a minimum:
 - i. **Project Approach:** Describe your team's approach to successfully delivering the project. Provide details on how each task will be completed. Include any recommendations for maximizing effectiveness and efficiency.
 - ii. **Relevant Project Experience:** Provide a summary of your experience with similar projects, including location and client contact information. Specify the services provided, the office location from which the work was performed, and staff members' responsibilities. Web links to recent plans and past work, if available, may be included in addition to project summaries.
 - iii. **Project Team:** Provide an organizational chart identifying all staff assigned to the project, including any sub-contractors, defining roles, responsibilities, and task assignments of each member for the duration of the project.
 - iv. **Qualifications of Personnel:** Provide relevant experience and qualifications of all personnel assigned to the project.
 - v. **Scope of Work:** Provide an outline for keeping the project on schedule and within budget. Include projected workloads and staff

availability, as well as a projected schedule for completion of significant milestones and the draft and final Design Plans.

- vi. **References:** Provide contact information for at least three references for clients familiar with your work.

Evaluation Criteria

Proposals should address all aspects of the RFQ and clearly express an understanding of the requirements and qualifications to conduct these services in a thorough and efficient manner. Evaluation of proposals will be performed by the City of Shelby. Proposals will be evaluated on the firm's ability to meet the requirements of this RFQ. Some evaluation criteria, among other factors, will include:

- I. Project approach and demonstrated understanding of the goals for the Design Plans;
- II. Creativity and vision for overall project;
- III. Familiarity with and understanding the nature and challenges of the region and stakeholders;
- IV. Qualifications and availability of staff assigned to the project;
- V. Relevant project experience;
- VI. References.

Candidate firms may be asked to present their proposal to City staff before the final selection is made. Final selection and contracting will be subject to approval by the City of Shelby.

Design Schedule

It is anticipated that the design associated with this Rail Trail project begin in Fall 2019.

Administrative Information

- a. All proposals become the property of the City of Shelby upon submission and will only be returned at the City's option. Any restrictions on the use of the data contained within must be clearly stated in the Proposal itself.
- b. The cost of preparing, submitting and presenting a Proposal is the sole expense of the consultant. The City of Shelby is not liable for any costs prior to issuance of a signed contract.
- c. The City of Shelby reserves the right to reject any and all Proposals, to consider alternatives, to waive irregularities and to re-solicit a Request for Proposals.
- d. The City of Shelby reserves the right to cancel the RFQ in part or in its entirety. This solicitation of Proposals in no way obligates the City to award a contract.
- e. The City of Shelby makes no guarantees to any proposing firm until such time the City approves the negotiated contract.
- f. The City of Shelby will provide information and assistance in this project where available.

Nondiscrimination

The City of Shelby complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination in programs and activities receiving federal and state financial assistance. Therefore, the City of Shelby does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in the admission, access to and treatment in the City's programs and activities.



September 4, 2019

Mr. Ben Yarboro
City of Shelby – Engineering Services
824 W. Grover Street
Shelby, North Carolina 28150

RE: Engineering Design for the City of Shelby portion of the Cleveland County Rail Trail

Dear Mr. Yarboro:

TGS Engineers (Thompson Gordon Shook Engineers, Inc.) is very interested in providing the requested professional consulting engineering services as outlined in the Request for Qualifications advertised by the City on August 9, 2019. This letter will highlight some examples of our rail trail and multi-use trail project experience.

After walking the proposed trail recently, TGS Engineers is excited about this project and the impact it will have for the City of Shelby and Cleveland County. TGS is a North Carolina firm initially established to focus on transportation design projects over 41 years ago. Our team is strong and positioned well to deliver what the City desires on this high-profile project.

We feel strongly that our partnership with The Dodd Studio and Destination by Design will further enhance the design and final product. These partners will fulfill a broader scope than that of a regular trail. We believe it will be important to brand the trail, tie the trail to the new streetscape design as well as provide design for safe street crossings. Additionally, we have also included WithersRavenel to assist with the funding process if needed.

TGS Engineers is owned and operated by North Carolina Registered Professional Engineers and Surveyors and is properly registered with the North Carolina Board of Examiners for Engineers and Land Surveyors [License Number C-0275]. The date of our most recent private engineering firm prequalification approval is dated April 30, 2019. TGS Engineers is properly registered as a corporation with the North Carolina Secretary of State's Office.

I will serve as the point of contact and can be reached via lfletcher@tgsengineers.com or 704.476.0003 or 804-C N. Lafayette Street, Shelby, NC 28150.

We sincerely appreciate your consideration of TGS Engineers for this project.

Warmest Regards,

Leonard G. Fletcher, PE, PLS
President

RESOLUTION NO. 65-2019

**A RESOLUTION AUTHORIZING SELECTION OF TGS ENGINEERS
BASED ON QUALIFICATIONS FOR ENGINEERING DESIGN SERVICES
FOR THE CITY OF SHELBY PORTION OF THE RAIL TRAIL**

WHEREAS, the City of Shelby desires to design a project entitled the City of Shelby Portion of the Rail Trail with the primary objectives being to complement ongoing and future community and economic development efforts in the City of Shelby; and,

WHEREAS, this project would consist of design of a rail trail that would begin behind the Sunset Cemetery at Grover Street and follow the Norfolk Southern rail line to the intersection of the rail corridor with Dekalb Street; and,

WHEREAS, the City of Shelby must contract with an engineering design firm to provide the Engineering Design Services needed for the design of the City of Shelby Rail Trail Portion of the Rail Trail; and,

WHEREAS, City staff issued a Request for Qualifications to professional engineering firms interested in providing Engineering Design Services related to this project; and,

WHEREAS, five (5) proposals were received from engineering design firms interested in performing the work associated with this project; and,

WHEREAS, a City staff selection committee was formed and reviewed the proposals and determined that TGS Engineers is the most qualified firm to perform and provide the services as outlined in the advertised Request for Qualifications.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHELBY, NORTH CAROLINA:

Section 1. The City Council of the City of Shelby hereby desires for the City Manager to enter into negotiations with TGS Engineers to negotiate a contract for the above referenced project.

Section 2. If a fair and reasonable fee cannot be negotiated with the best qualified firm, negotiations will be terminated and initiated with the next best qualified firm.

Section 3. The City Manager is hereby authorized to execute a contract with a firm after successful negotiations.

Resolution No. 65-2019
October 7, 2019
Page 2

Section 4. This resolution shall become effective upon its adoption and approval.

Adopted and approved this the 7th day of October 2019.

O. Stanhope Anthony III
Mayor

ATTEST:

Bernadette A. Parduski, NC-CMC, IIMC-MMC
City Clerk

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

Agenda Item: F

City Manager's Report

I have provided a summary report of various ongoing issues. I will touch on some of them on Monday evening.

Agenda Item: G

Council Announcements and Remarks

City of Shelby
Agenda Item Summary
October 7, 2019
City Hall Council Chamber

H. Closed Session:

- 1) To establish or instruct staff concerning the position to be taken by or on behalf of City Council in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease pursuant to North Carolina General Statute 143-318.11(a) (5)

I. Adjournment:

To adjourn a meeting of City Council, a majority of the Council members must vote for a motion to adjourn.

- 1) Motion to adjourn