

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: June 5, 2006

SUBJECT: Agreement for Professional Services with Benchmark CMR, Inc.

ATTACHMENTS: Proposed Agreement

SUMMARY OF REQUEST:

Attached is a proposed agreement between the County and Benchmark CMR, Inc. for professional services to be performed in association with activities associated with the development of a Land Development Code. The County Attorney has reviewed this agreement and is comfortable with its provisions.

COUNTY MANAGER'S RECOMMENDATION:

Recommend approval of agreement between the County and Benchmark CMR, Inc.

STATE OF North Carolina
COUNTY OF Henderson

**AGREEMENT FOR SERVICES
WITH LOCAL GOVERNMENT
"FEE BASIS" CONTRACT**

THIS AGREEMENT, made and entered into this 5th day of June, 2006 by and between Henderson County, herein and after referred to as the Local Government and Benchmark CMR, Inc., a North Carolina Company located in Kannapolis, North Carolina.

WITNESSETH:

WHEREAS, Benchmark CMR, Inc. has expertise in response to the request pertaining to same; and

WHEREAS, the Local Government and Benchmark CMR, Inc. desire to memorialize Benchmark CMR, Inc.'s proposal and award of the contract,

NOW THEREFORE, the Local Government and Benchmark CMR, Inc. agree as follows:

1. **SCOPE OF SERVICES:** Benchmark CMR, Inc. agrees to provide and perform for the Local Government all of those services stipulated in the Scope of Services attached to this contract and which is hereby incorporated as a part of this contract as if fully set forth herein.
2. **COMPENSATION FOR SERVICES:** In the provision of the aforementioned services, Benchmark CMR, Inc. shall receive compensation in the form of a predetermined fee in the amount of \$24,853. This fee shall be paid to Benchmark CMR, Inc. in accordance with Section 3 below. Any different or additional Scope of Services approved and authorized by the Local Government in advance shall be compensated when authorized in accordance with the terms agreed to by both parties in a formally executed Contract Addendum.
3. **METHOD OF PAYMENT:** By the fourth (4th) day of each four week billing cycle, Benchmark CMR, Inc. shall prepare and submit to the Local Government a prorated invoice statement of the fee stated in Section 2 above over a period of six (6) months. The Local Government shall compensate Benchmark CMR, Inc. for services performed within fourteen (14) days of the date of said invoice statement
4. **TERMINATION OF CONTRACT FOR CAUSE:** If Benchmark CMR, Inc. shall fail to fulfill in a timely, professional and proper manner all obligations under this contract, or should Benchmark CMR, Inc. violate any of the covenants, agreements, or stipulations of this contract, the Local Government shall have the right to terminate this contract immediately by giving written notice to Benchmark CMR, Inc. of such termination and specifying the effective date thereof. In a like manner, Benchmark CMR, Inc. shall have the right to terminate this contract immediately by giving written notice to thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CMR Services under this contract shall, at the option of the Local Government, become the property of the Local Government, and Benchmark CMR, Inc. shall be entitled to receive just and equitable compensation

for any work satisfactorily completed pursuant to this contract. However, the Local Government shall not be obligated to pay any remaining charges for work satisfactorily completed where there exists a right in favor of the Local Government for refund, reimbursement or offset in connection with any obligations arising from Benchmark CMR, Inc. to the Local Government.

5. **LEGAL REMEDIES:** Benchmark CMR, Inc. shall not be relieved of any liability to the Local Government for damages sustained by the Local Government by virtue of any breach of this contract by Benchmark CMR, Inc. It is specifically understood that the Local Government may withhold any payments to Benchmark CMR, Inc. for the purpose of offset until such time as the exact amount of damages due the Local Government from Benchmark CMR, Inc. is determined. The Local Government otherwise reserves all legal remedies as may be provided by law.

6. **CHANGES:** The Local Government may, from time to time, request changes in the Scope of Services of Benchmark CMR, Inc. to be performed hereunder. Such changes, including any increase or decrease in the amount of Benchmark CMR, Inc.'s compensation which may be mutually agreed upon between the Local Government and Benchmark CMR, Inc. shall be incorporated in written amendments to this contract after appropriate authorization as called for in Section 2 of this contract.

7. **EQUAL EMPLOYMENT OPPORTUNITY:** Benchmark CMR, Inc. shall not discriminate against any employee or applicant for employment on account of race, color, religion, sex, national origin, age, because of handicapping condition, or Vietnam Era Veteran status. Benchmark CMR, Inc. shall take affirmative action to ensure equal employment opportunity with respect to all of its employment practices.

8. **FEDERAL AND STATE COMPLIANCE:** Benchmark CMR, Inc. acknowledges responsibility for compliance with any and all applicable corporate, partnership or individual taxation laws. Benchmark CMR, Inc. shall pay all applicable taxes and insurance premiums stipulated by applicable law and shall hold harmless the Local Government for the payment thereof. Benchmark CMR, Inc. acknowledges exemption from withholding of applicable taxes or other deductions from compensation agreed to in Section 2 of this contract. Benchmark CMR, Inc. agrees to furnish Federal Form W-9, upon execution of this contract and prior to issuance of any compensation from the Local Government.

9. **ENTIRE AGREEMENT:** This is the entire agreement between the parties and there are no terms, conditions, representations or warranties relating to the work to be performed hereunder which are not specifically set forth herein.

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

ATTEST

THE LOCAL GOVERNMENT

Signature

BY: _____
Signature

Print or Type name

Title

This instrument has been pre-audited in a manner required by applicable law.

Finance Officer

ATTEST

BENCHMARK CMR, INC.

Signature

BY: _____
Signature

Date

Date

Name

Name

Title

Title

Scope of Services Henderson County

The following is a scope of services for the adoption and implementation of new zoning provisions for the zoning portion of the existing Land Development Code in Henderson County. The scope for this project is broken into the following categories and a plan for each component is detailed in the following sections:

1. Review of previous/existing and the more recently proposed Zoning Ordinances;
 2. Public interaction, meeting facilitation, and public hearings;
 3. Briefings to Planning Board, Subcommittee, and county staff;
 4. Development of Zoning Ordinance, revisions to Zoning Map if process necessitates, and review overall Land Development Code for succinctness and flow with rewritten Zoning Ordinance and other sections as edited by county staff ; and,
 5. Overall project timeline
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1. Review of previous/existing and the more recently proposed Zoning Ordinances

The Team will assess the county's existing and proposed Zoning Ordinance. It is our understanding that there is a previously approved Zoning Ordinance and a more recently proposed Zoning Ordinance. The primary impetus for our involvement is the determination that the most recently proposed Zoning Ordinance, written as Articles III and IV of the proposed Land Development Code, should be rewritten.

We will assess these ordinances and use them as a guide in the process of writing an ordinance that will be tailored to the realistic needs of the community.

2. Public Interaction, Meetings, and Public Hearings

The following process would be followed to obtain public input, update the staff and Subcommittee, and present the final product to the Planning Board.

- A. Meet with the Subcommittee to determine needs and objectives of the County in this process,
- B. Meetings
 1. Initial meeting with Subcommittee
 2. Initial meeting with staff
 3. Initial meeting with Planning Board
 4. Initial public input meeting to gather feedback about concerns of aforementioned previous ordinances
 5. Subcommittee meeting to discuss the results of the public input meeting and the direction of the rewrite, and to discuss remaining portion of project
 6. Subcommittee discussion with Planning Board regarding the status of the ordinance

7. Public input meeting(s) to present draft concepts and zoning map (if needed), and to gather input
8. Subcommittee meeting to discuss comments from the public meeting and gain a recommendation to take to the Board of Commissioners
9. Subcommittee presentation (public hearing) to the Board of County Commissioners

3. Briefings to Planning Board, subcommittee, and county staff

A. Updates

1. The Project Manager would be responsible for monthly updates via email to the Planning Director and members of the Subcommittee
2. The Project Manager will set up an email list of interested parties, including the public, in which monthly updates will be distributed
3. Information will be posted on the Benchmark website (www.benchmarkplanning.com) concerning this project
4. Subcommittee minutes will be distributed to the staff, which may then be forwarded to the Board of Commissioners
5. At approximately the half way point in the process the Project Manager will be available to give a briefing to the Board of Commissioners

4. Development of Zoning Ordinance and revisions to Zoning Map if process necessitates, and review overall Land Development Code for succinctness and flow with rewritten Zoning Ordinance and other sections as edited by county staff

Benchmark staff will utilize input from the public, the Subcommittee, and county staff to help in the development of the Zoning Ordinance. County staff will review and amend all other sections of the Land Development Code. Benchmark will examine the overall Land Development Code to assure that the new Zoning Ordinance and the newly edited sections are consistent and easily to follow in the document as a whole. In addition to the previous and the most recently proposed Zoning Ordinances, other ordinances and regulations developed by our firm, or those recommended by the staff or the Subcommittee may be used to help develop the proposed ordinance. In determining land use categorizations, our staff will also consult with local policies or adopted regulations, local municipalities, and the North American Industrial Classification System (NAICS).