

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 16, 2022

SUBJECT: Proposed Utility Easement with City of Henderson on Blue Ridge Community College Property

PRESENTER: Christopher Todd, Business and Community Development Director

ATTACHMENTS: 1. Proposed Deed of Dedication and Associated Easements

SUMMARY OF REQUEST:

The City of Hendersonville has submitted the attached Deed of Dedication for Board approval on Blue Ridge Community College property adjacent to the Patton Building. The City is also seeking permission from Blue Ridge Community College.

As reported by the City of Hendersonville, the purpose of the easement is to allow for the operation and maintenance of water and sewer infrastructure which serves the Blue Ridge Community College facilitates.

Staff has reviewed the proposed easement, visited the site and recommend approval.

BOARD ACTION REQUESTED:

Approve the proposed utility easement with the City of Hendersonville for the maintenance and operation of water and sewer infrastructure on the campus of Blue Ridge Community College

Suggested Motion:

I move the Board approve the proposed utility easement with the City of Hendersonville for the maintenance and operation of water and sewer infrastructure on the campus of Blue Ridge Community College.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

Prepared by and Return to: Angela S. Beeker, City Attorney for the City of Hendersonville, City box

DEED OF DEDICATION AND CONVEYANCE WITH ASSOCIATED EASEMENTS

THIS DEED OF DEDICATION AND CONVEYANCE WITH ASSOCIATED EASEMENTS, hereinafter "Deed of Dedication," made this _____ day of _____ 2021, by and between Board of Trustees of Blue Ridge Community College (hereinafter sometimes "Trustees") and Henderson County (hereinafter sometimes "County"), a body politic and corporate, hereafter sometimes collectively referred to as "Grantor", and the City of Hendersonville, a North Carolina municipal corporation, hereafter referred to as "Grantee" (the designations Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns and shall include singular, plural, masculine, feminine and neuter as required by context).

WITNESSETH:

THAT WHEREAS, the Trustees are the owner in fee simple of that property more particularly described in those deeds recorded in Deed Book 491 at page 569 and Deed book 490 at Page 373, said property having a PIN of 9578-84-9073, both of the Henderson County Registry, hereinafter "Property of the Trustees"; and

WHEREAS, the County is the owner in fee simple of that property more particularly described in those deeds recorded in Deed Book 3421 at page 574 of the Henderson County Registry, said property also being shown on that plat recorded in Book 2021 at Page 12145 of the Henderson County Registry, having a PIN of 9578-84-1661, hereinafter "Property of the County"; and

WHEREAS, Grantor owns or has constructed, or caused to be constructed, utility infrastructure, consisting of water and/or sewer lines, and related appurtenances and accessories across the Property of the Trustees and the Property of the County consisting of the following:

Being and consisting of: 1) Water main consisting of +/- 485 lineal feet of 6" ductile iron pipe and appurtenances running between the pond and Patton buildings from the existing 8" water main in College Dr; and 2) and a Sanitary main extension consisting of +/- 510 lineal feet of 8" PVC and +/- 92 lineal feet of 8" ductile iron gravity pipe running between the pond and Patton buildings to the existing 8" sewer main near College Dr, including all manholes and other appurtenances, 1) and 2) above being more particularly shown and described on those construction plans and specifications, sealed January 15, 2021, as amended through July 27, 2021, bearing a job no of CN5199-L, prepared by WGLA Engineering, PLLC, a Civil Engineering firm, hereinafter "Plans," said Plans being incorporated herein by reference. 1) and 2) collectively are collectively hereinafter referred to as the "New Infrastructure." As used herein, New Infrastructure shall be deemed to include changes to the New Infrastructure made pursuant to amendments to the Plans which have been approved by the City, collectively hereinafter "New Infrastructure" and

WHEREAS, Grantor and Grantee have previously entered into a Utility Extension Agreement dated November 4, 2021 to govern the terms of construction of the New Infrastructure and conveyance and acceptance of the New Infrastructure to and by the Grantee, hereinafter "Utility Extension Agreement"; and

WHEREAS, the Utility Extension Agreement required that Grantor convey to the Grantee all of Grantor's right, title and interest in the New Infrastructure, and all on-site and off-site easements, rights-of-way, and real property required for access to and perpetual maintenance and operation of the New Infrastructure and its appurtenances, together with all associated permits, licenses, and permissions, hereinafter "Required Conveyances"; and

WHEREAS, Grantor now desires to convey to the Grantee the Required Conveyances, and Grantor is willing to accept the same; and

WHEREAS, the Grantee has requested that the Grantor grant and convey to the Grantee a permanent easement over, under, upon, across and through a portion of the Property of the Trustees and Property of the County for purpose of constructing, operating, maintaining, repairing, inspecting, enlarging, replacing and reconstructing water and/or sewer lines, and related appurtenances and accessories, in addition to the New Infrastructure, all of the foregoing collectively hereinafter referred to as "Utility Infrastructure," and the Grantor has agreed to do so.

NOW, THEREFORE, the Grantor, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, has given, granted and conveyed, and by these presents does hereby dedicate, give, grant and convey unto the Grantee, its successors and assigns, all right, title and interest in and to the Required Conveyances as more particularly described hereinbelow:

A. **THE NEW INFRASTRUCTURE:** All right, title and interest in and to the New Infrastructure, and its related appurtenances and accessories, **together with**

B. **PERMANENT EASEMENTS:** Permanent and perpetual, non-exclusive, and irrevocable right, privilege and easements to operate, maintain, repair, inspect, enlarge, replace, construct and reconstruct Utility Infrastructure, over, upon, across, under and through the above-referenced Property of the Trustees and Property of the County; said permanent easements being described as follows:

Being non-exclusive permanent easements shown and described on that Plat recorded in Book 2021 at Page 13757 of the Henderson County Registry described as being: 1) 20' SEWER EASEMENT #1 (10' EACH SIDE OF EXISTING SEWER MAIN); 2) 20' SEWER EASEMENT #2 (10' EACH SIDE OF EXISTING SEWER MAIN); 3) 20' WATER EASEMENT (10' EACH SIDE OF EXISTING WATER MAIN); and 4) 30' UTILITY EASEMENT FOR SANTIARY SEWER AND WATER; those non-exclusive permanent easements numbered 1) through 4) being collectively hereinafter referred to as "the "Permanent Easements," **together with**

C. **THE FOLLOWING DESCRIBED CONSTRUCTION EASEMENT.** A non-exclusive construction easement, hereinafter "Construction Easement," further defined as being forty (40) feet in width, sharing the same centerline as the Permanent Easements, to be used by Grantee as reasonably necessary to install, construct, replace, enlarge or repair any of all of the Utility Infrastructure within the Permanent Easements. The Grantee's right to use of the Construction Easement shall be limited to the purposes as stated in this paragraph (not for operation or maintenance of the Utility Infrastructure), and shall only be exercised during such times as the installation, construction, replacement, enlargement or repair of Utility Infrastructure, hereinafter "Construction Activities," is occurring, including a reasonable time before the start of any Construction Activities for setup and a reasonable time after completion of any Construction Activities for cleanup and for performance of warranty items, if any, by Grantee's contractor(s), **together with**

D. **OTHER EASEMENTS, ...AS FOLLOWS:**

1. A perpetual easement and full right of access for purposes of ingress and egress to and from said Permanent Easements over and across the Property of the Trustees and Property of the County and over and across any real property owned by the Grantor lying between the Permanent Easements and the nearest public road;

IT IS UNDERSTOOD AND AGREED BETWEEN THE GRANTOR AND THE GRANTEE:

1. With the execution of this Deed of Dedication it is Grantor's intent that all of Grantor's right, title and interest in and to the New Infrastructure be conveyed to Grantee, free from all liens and encumbrances, and that from and after the date of this Deed of Dedication, all right, title and interest in and to any and all Utility Infrastructure placed within the Permanent Easements shall at all times be in Grantee, or Grantee's successors or assigns. From and after the date of this Deed of Dedication, neither Grantor, nor Grantor's heirs, successors, or assigns, shall have any right, title or interest whatsoever in or to any Utility Infrastructure placed within the Permanent Easements. For the avoidance of doubt, Grantor and Grantor's heirs, successor's or assigns shall not have any authority, nor any right, title or interest in the Utility Infrastructure sufficient to subject the Utility Infrastructure to any liens or encumbrances whatsoever, whether by operation of law, or otherwise. Grantee, and Grantee's successors or assigns, shall have the sole right to remove Utility Infrastructure from the Permanent Easements in whole or in part; however any removal(s) shall not terminate any easements granted by this Deed of Dedication, nor be construed as an abandonment of the rights granted to Grantee by this Deed of Dedication.
2. That, notwithstanding paragraph 1, Grantee agrees to acquire such release deeds or waivers for the Permanent Easements, Construction Easement or any Utility Infrastructure as the Grantee may reasonably request from any lender, vendor, or other third party, having a lien or purporting to have a lien or security interest in and to the Permanent Easements, the Construction Easement or the Utility Infrastructure.
3. That the Grantee shall have the right, but not the obligation, to clear the Permanent Easements described above and the right but not the obligation to keep the Permanent Easements clear at all times, and the right but not the obligation to remove from the Permanent Easements all brush, shrubs, trees, and other obstructions of any kind, and to go upon said Permanent Easements whenever necessary for the purpose of clearing the same and removing therefrom all brush, shrubs, trees and other obstructions of any kind.
4. That the Grantor shall have the right to use said Permanent Easements and Construction Easement, in the same manner as has been heretofore done, provided such use shall in no manner interfere with or be inconsistent with the use thereof by Grantee as provided herein. Grantee shall have the right to interrupt Grantor's use of the Permanent Easements and Construction Easement while active construction, installation, repair, replacements, or other permitted actions of the Grantee are occurring within the Permanent Easements or Construction Easement. Prohibited uses of the Permanent Easements and Construction Easement by the Grantor include, but not are not limited to, the following: the erection of a shed, building, structure or other obstruction within the Permanent Easements by the Grantor; the planting of trees within the Permanent Easements, the placement of additional fill within the Permanent Easements; and the placement of, or allowing the placement of, other utility lines, including but not limited to, electric, gas, telephone, or cable lines, within the Permanent Easements. Grantee may waive, in writing, any of these prohibitions; however such waiver shall be narrowly construed to allow only the specific allowances stated in the written waiver.
5. Grantee shall have the right, but not the obligation, to remove or abate any uses of, or structures placed on, the Permanent Easements and Construction Easement in violation of this Deed of Dedication, and Grantee shall not be liable to the Grantor for such removal or abatement. Grantor shall reimburse to the Grantee the reasonable costs of such removal or abatement.
6. Upon completion of the installation, repair, replacement, enlargement, or addition to any of the Utility Infrastructure, Grantee shall restore the premises to condition as near the pre-construction condition as practicable, including the original topography, and shall repair all existing driveways and walkways damaged by Grantee or its agents to their pre-construction condition, provided that Grantee shall have no obligation to replace any pre-existing vegetation within the Permanent Easements which Grantee reasonably determines would be intrusive or damaging to the pipe line(s), conduits and

accessories being installed. With regards to paved roads crossing the Permanent Easements or Construction Easement, the Grantee shall only be responsible for re-graveling, tamping and patching the portion of said paved roads disturbed by such work. As to non-paved roads, the Grantee shall only be responsible for re-graveling and tamping in connection with any repairs or maintenance.

7. That the Grantor shall have the right to pass over and upon said Permanent Easements with appropriate roadways for the full use of their property, provided, however, that the construction, maintenance and use of said roadways shall in no way interfere with the utility lines and accessories constructed within said Permanent Easements. As to paved roads, the Grantee, in future repairs or maintenance of said utility lines and accessories, shall only be responsible for re-graveling, tamping and patching the portion of said paved roads disturbed by such work. As to non-paved roads, the Grantee shall only be responsible for re-graveling and tamping in connection with any repairs or maintenance.

8. Grantee, its officers, agents, employees and contractors, shall have the right to go to and from the Permanent Easements and the Construction Easement from the nearest public road across other portions of the Property of the Trustees and Property of the County, and across any other real property owned by Grantor lying between the Permanent Easements/Construction Easement and the nearest public road. However the Grantee will endeavor to make use of existing roads, paths, or drives to minimize the interference with Grantor's use and enjoyment of the Property of the Trustees and Property of the County lying outside of the easement and other real property owned by the Grantor.

9. This Easement is assignable by the Grantee to any purchaser or future owner of any Utility Infrastructure placed within the Permanent Easements.

10. By accepting and recording this Deed of Dedication, the Grantee accepts the conveyance, grant, and dedication of the easements described above.

11. Failure of either party to enforce any terms of this Deed of Dedication shall not be deemed a waiver, in whole or in part, to enforcing any of its terms against the other party, unless such waiver is delivered to the other party in writing. Failure of either party to exercise the rights granted by this Deed of Dedication shall not be deemed a waiver or abandonment of such rights unless such waiver or abandonment be delivered in writing to the other party.

TO HAVE AND TO HOLD said the New Infrastructure, Permanent Easements, Construction Easement, and all other easements and Required Conveyances described hereinabove, unto said Grantee, its successors and assigns, upon the terms set forth above. The Grantor covenants to and with the Grantee, its successors and assigns, that the Grantor is lawfully seized in fee simple of said New Infrastructure, Permanent Easements, Construction Easement, and all other easements and Required Conveyances described hereinabove and has full right and power to convey the New Infrastructure, Permanent Easements, Construction Easement, and all other easements and Required Conveyances described hereinabove, to the Grantee, and that Grantor will, and Grantor's successors and assigns shall, forever warrant and defend the title to said New Infrastructure, Permanent Easements, Construction Easement, and all other easements and Required Conveyances described hereinabove unto the Grantee, its successors and/or assigns, against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has hereunto set their hands and seals, or it corporate, have caused this document to be executed by its duly authorized officers and its seal to be hereunto affixed, in multiple counterparts, each of which is an original and all of which constitute but one and the same instrument, as of the day and year first above written.

HENDERSON COUNTY

BY: _____ **(SEAL)**
(signature)

Printed name: _____

Title: _____

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day, and being duly sworn, stated that they are the _____(title) for Henderson County, a body politic and corporate, and that they executed and acknowledged the foregoing instrument on behalf of Henderson County.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

THE CITY OF HENDERSONVILLE

BY: _____ **(SEAL)**

John Connet, City Manager

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON

I, _____, (printed name of notary) a Notary Public in and for the State and County aforesaid, do hereby certify that John Connet, personally appeared before me and, being duly sworn, stated that he is City Manager of the City of Hendersonville, North Carolina, and that he executed and acknowledged the foregoing instrument on behalf of the City of Hendersonville.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)

BLUE RIDGE COMMUNITY COLLEGE BOARD OF TRUSTEES

BY: _____ **(SEAL)**
(signature)

Printed name: _____

Title: _____

STATE OF _____ COUNTY OF _____

I, _____, (printed name of notary) a Notary Public of said County and State, do hereby certify that _____, personally appeared before me this day, and being duly sworn, stated that they are the _____(title) for the Blue Ridge Community College Board of Trustees, and that they executed and acknowledged the foregoing instrument on behalf of the Blue Ridge Community College Board of Trustees.

WITNESS my hand and official seal, this _____ day of _____, 20____

My commission expires _____

Notary Public Signature

(OFFICIAL SEAL)
