

CITY OF HIGH POINT

AGENDA ITEM



Title: Reimbursement Agreement for Elm Street Plaza/Appling Way and addition to Capital Improvement Plan

From: Greg Ferguson, Deputy City Manager

Meeting Date: February 7, 2022

Public Hearing: n/a

**Advertising Date /
Advertised By:** n/a

Attachments: Resolution
Agreement

PURPOSE:

Reimbursement of Plaza and Appling Way construction costs as part of the 275 N. Elm construction and addition of the project to the Capital Improvement Plan (CIP).

BACKGROUND:

Elliott Sidewalk Communities (ESC) is constructing a multi-parcel development project in the City's downtown area, adjacent to the City's multi-use stadium Elm Street entry plaza ("Plaza") and the Appling Way streetscape.

The City of High Point and ESC believe it is in their best interests to jointly provide infrastructure including design and construction of the Plaza and the Appling Way streetscape, more specifically identified on the map attached hereto and incorporated herein as Exhibit A, and a list of the improvements and projected costs for the Project is attached hereto and incorporated herein as Exhibit B.

The coordination required for these two projects is best delivered by ESC's construction firm who is still on site. The project delivery and project costs are both favorable to the City under this agreement. City staff has reviewed the project costs and find them to be reasonable.

The Appling Way improvements will provide a connection to parking for employees of Key Risk when they occupy the building

BUDGET IMPACT:

Maximum of \$1,099,739 to be funded with Guilford County funds and remaining stadium project funds.

RECOMMENDATION / ACTION REQUESTED:

City Council approval of 1. Addition of the project to the CIP and 2. Approval of the resolution and agreement.

**RESOLUTION TO AUTHORIZE A REIMBURSEMENT AGREEMENT WITH
ELLIOTT SIDEWALK COMMUNITIES OF HIGH POINT, LLC**

WHEREAS, NCGS § 160A-499 authorizes the City to enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the City’s Capital Improvement Plan and serves the developer or property owner; and

WHEREAS, NCGS § 160A-320 authorizes the City to contract with a developer or property owner, or with a private party under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project; and

WHEREAS, pursuant to NCGS §§ 160A-320 and 160A-499, the City adopted Title 6, Article E, Section 6-1-101 of the City Ordinances setting forth the authority and procedures and terms under which the City Manager may negotiate reimbursement agreements; and

WHEREAS, Elliott Sidewalk Communities of High Point, LLC (“ESC”) will install infrastructure including design and construction of the Plaza and the Applying Way streetscape, more specifically identified on the map attached hereto and incorporated herein as **Exhibit A** (“Project”); and

WHEREAS, the success of the Project requires expansion of City infrastructure, and it is in the best interest of the City and ESC to jointly provide related improvements, which will serve not only the Project but future development in the area as well; and

WHEREAS, the cost to the City for these Improvements will not exceed the estimated cost of providing for the municipal infrastructure through either eligible force account qualified labor or through a public contract let pursuant to Article 8, Chapter 143 of the North Carolina General Statutes, or the coordination of separately constructed municipal infrastructure with the associated private development would be impracticable.

NOW, THEREFORE, BE IT RESOLVED: THE CITY COUNCIL OF THE CITY OF HIGH POINT approves the reimbursement agreement with ESC in an amount not to exceed \$1,099,739 and authorizes the City Manager or her designee to execute the same.

Adopted this the 7th day of February, 2022.

Mayor Jay W. Wagner

ATTEST:

Lisa B. Vierling
City Clerk

SEALS:

NOT FOR CONSTRUCTION

PROJECT:

HIGH POINT STADIUM ELM STREET ENTRY PLAZA

HIGH POINT, NORTH CAROLINA

CLIENT:
 ELLIOTT SIDEWALK
 COMMUNITIES
 909 RIDGEBROOK ROAD,
 SUITE 216
 SPARKS, MARYLAND 21152
 1-443-391-8420

DATE: 6-16-2021
 REVISIONS:

DRAWN: JMT
 JOB NO: 21-071

PRICING PLAN EXHIBIT

SCALE: 1" = 10'
 SHEET NO.:

C-0.00

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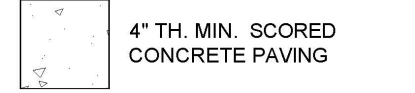

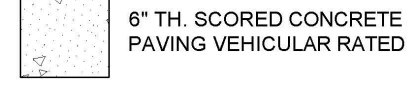
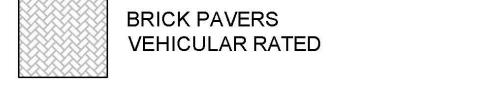
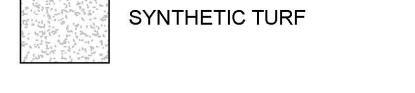
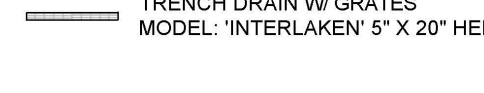
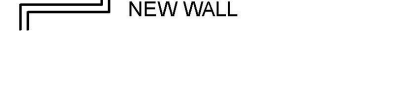

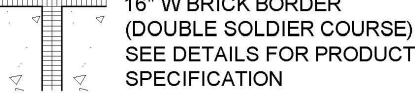


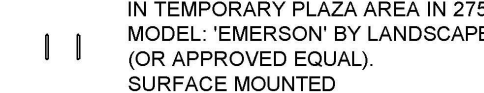
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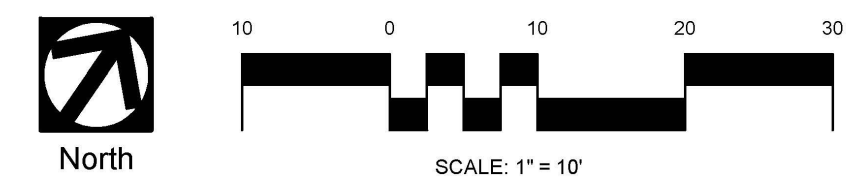
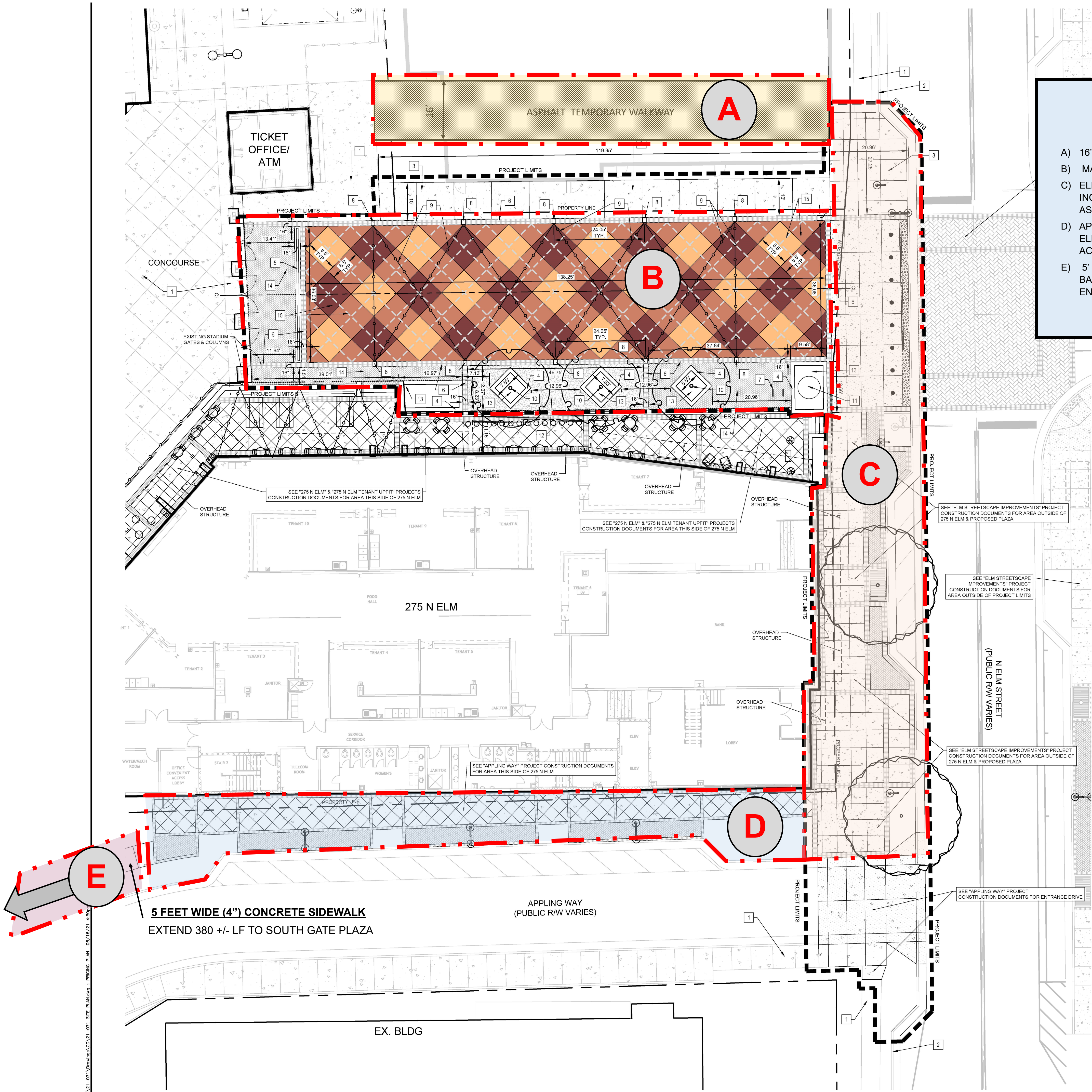
- A) 16' TEMPORARY ASPHALT WALKWAY
- B) MAIN STADIUM PLAZA
- C) ELM STREET STREETSCAPE— TO AND INCLUDING NEW CURB LINE AND ASPHALT STREET PATCHING
- D) APPLING WAY STREETSCAPE FROM ELM STREET SIDEWALK TO REAR ACCESS LOBBY.
- E) 5' CONCRETE (4") SIDEWALK FROM BACK OF CURB. 380 +/- LF TO SOUTH ENTRY PLAZA

SITE LAYOUT REFERENCE NOTES

- 1 EXISTING CONCRETE TO REMAIN
- 2 EXISTING CURB & GUTTER TO REMAIN
- 3 TEMPORARY PAVING & ACCESS TO STADIUM DURING PLAZA AND FUTURE BUILDING CONSTRUCTION; TO BE 4" TH. MIN. SCORED CONCRETE PAVING; SPACE SCORED/CONTROL JOINTS AS SHOWN ON PLAN, TYP.
- 4 ELEVATED PLANTER W/ BRICK VENEER & CAST STONE CAPS (MATCH STADIUM CAPS)
- 5 6" TRENCH DRAIN W/ "INTERLAKEN" TYPE GRATE BY IRON AGE DESIGNS IN 18" W. CONCRETE BAND; VEHICULAR RATED & HEEL PROOF GRATE
- 6 16" W. DOUBLE SOLDIER COURSE BRICK PAVER BORDER; VEHICULAR RATED (TO MATCH 275 N ELM SITE DESIGN & N ELM STREETSCAPE DESIGN)
- 7 (2) REQUIRED BIKE RACKS ASSOCIATED WITH 275 N ELM BUILDING
- 8 CUSTOM LIGHT POLES (TABLE LEG DESIGN)
- 9 ORNAMENTAL STRING LIGHTS (ATTACHED AT LIGHT POLES)
- 10 MEDIUM SIZE CANOPY TREE
- 11 METAL BASEBALL SCULPTURE LOCATION
- 12 SYNTHETIC TURF
- 13 LANDSCAPING IN PLANTERS
- 14 BRICK PAVING; VEHICULAR RATED
- 15 COLORED CONCRETE PAVERS W/ ARGYLE DESIGN; VEHICULAR RATED

SITE LAYOUT SYMBOL LEGEND

	4" TH. MIN. SCORED CONCRETE PAVING		EXISTING CONCRETE OR FUTURE CONCRETE NOT IN PROJECT LIMITS
	6" TH. SCORED CONCRETE PAVING VEHICULAR RATED		BRICK PAVERS VEHICULAR RATED
	SYNTHETIC TURF		TRENCH DRAIN W/ GRATES MODEL: "INTERLAKEN" 5" X 20" HEEL-PROOF BY IRON AGE DESIGNS
	NEW WALL		COLORED CONCRETE PAVERS W/ ARGYLE DESIGN; VEHICULAR RATED
	16" W BRICK BORDER (DOUBLE SOLDIER COURSE) SEE DETAILS FOR PRODUCT SPECIFICATION		REQUIRED 275 N ELM BLDG BIKE RACKS (ORIGINALLY LOCATED IN TEMPORARY PLAZA AREA IN 275 N ELM DESIGN) MODEL: "EMERSON" BY LANDSCAPE FORMS, INC (OR APPROVED EQUAL) SURFACE MOUNTED COLOR: MATTE BLACK
	CUSTOM LIGHT POLES (TABLE LEG DESIGN)		ORNAMENTAL STRING LIGHTS



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Projected Costs Subject to Reimbursement Agreement
Plaza and Appling Way Streetscape
Prepared by: Elliott Sidewalk
1/14/2022

	Total Projected Costs
Engineering, structural & environmental	
Civil engineering - Stimmel	\$60,000
Structural engineering - Morabito	\$3,000
Environmental - ESC & Geosyntec	\$17,000
Permits & Approvals - Guilford County	\$450
Hard Costs:	
General contractor - Kirkland:	
Plaza Proposal	\$798,600
North Elm Sidewalk (completed)	\$31,400
Seeding and curbcut apron	\$6,189
	\$836,189
Other Structures:	
Claw and Ball sculpture	\$98,100
Elliott Sidewalk services:	
Design & design coordination	\$15,000
Construction management and reimbursement accounting	\$20,000
	\$35,000
Contingency	\$50,000
Total Estimated Costs	\$1,099,739

NORTH CAROLINA

REIMBURSEMENT AGREEMENT

GUILFORD COUNTY

THIS REIMBURSEMENT AGREEMENT (“Agreement”), entered into this the ____ day of February, 2022, by and between the **CITY OF HIGH POINT**, a North Carolina municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina, 27260 (“City”), and **ELLIOTT SIDEWALK COMMUNITIES LLC**, a Maryland limited liability company, located at 909 Ridgebrook Road Suite 216, Sparks, Maryland, 21152 (“Developer”) (referred to individually as “Party” and collectively as “Parties”).

WITNESSETH:

WHEREAS, North Carolina General Statutes (“NCGS”) § 160A-499 authorizes the City to enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the City’s Capital Improvement Plan and serves the developer or property owner; and

WHEREAS, NCGS § 160A-320 authorizes the City to contract with a developer or property owner, or with a private party under contract with the developer or property owner, for public enterprise improvements that are adjacent or ancillary to a private land development project; and

WHEREAS, pursuant to NCGS §§ 160A-499 and 160A-320, the City adopted Title 6, Article E, Section 6-1-101 of the City Ordinances setting forth the authority, procedures, and terms under which the City Manager may negotiate reimbursement agreements; and

WHEREAS, the City Code of Ordinances Title 6, Article E, Section 6-1-101 allows the City to enter into reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the City’s capital improvement plan including water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, greenways, trails, and other associated facilities; and

WHEREAS, Developer is pursuing a multi-parcel development project in the City’s downtown area, adjacent to the City’s multi-use stadium Elm Street entry plaza (“Plaza”) and the Appling Way streetscape; and

WHEREAS, City and Developer believe it is in their best interests to jointly provide infrastructure including design and construction of the Plaza and the Appling Way streetscape, (“Project”), more specifically identified on the map attached hereto and incorporated herein as **Exhibit A**, and a list of the improvements and projected costs for the Project is attached hereto and incorporated herein as **Exhibit B** (“Improvements”); and

WHEREAS, the City has reviewed the Developer’s projected costs to construct the proposed Improvements and found them to be reasonable; and

WHEREAS, the Improvements are in the public interest and will benefit the goals of the City in furthering the development of High Point's downtown; and

WHEREAS, the cost to the City for these Improvements will not exceed the estimated cost of providing for the municipal infrastructure through either eligible force account qualified labor, or through a public contract let pursuant to NCGS Article 8, Chapter 143, or the coordination of separately constructed municipal infrastructure with the associated private development would be impracticable; and

WHEREAS, on Monday, February 7, 2022, the High Point City Council adopted a Resolution authorizing the City Manager to enter into a reimbursement agreement pursuant to NCGS § 160A-499, NCGS § 160A-320, and City Code of Ordinances Title 6, Article E, Section 6-1-101.

NOW THEREFORE, in consideration of the recitals above and the mutual covenants contained herein by and between each of the Parties hereto, it is hereby agreed that:

1. The above recitals are hereby incorporated into this Agreement.
2. Developer agrees to design and have constructed the Improvements in accordance with this Agreement and all ordinances, policies and regulations of the City and all applicable federal and state laws.
3. The City agrees to reimburse Developer for costs associated with the Improvements in an amount not to exceed one million ninety-nine thousand seven hundred thirty-nine dollars (\$1,099,739.00). Such payment shall be made upon the City's receipt and approval of invoices detailing expenses.
4. All materials used in the installation of the Improvements shall become and remain property of the City.
5. Developer's obligations to qualify for reimbursement shall be that:
 - a. Developer shall manage, administer and construct the Improvements according to the plans and specifications approved by the City and shall obtain all necessary certifications.
 - b. Developer shall obtain the City's prior written approval before (i) purchasing the claw and ball sculpture and (ii) using the contingency funds, both as described on **Exhibit A** attached hereto.
 - c. All work, plans, specifications, and designs related to this Project are subject to review by the City and shall be in a form acceptable to it.
 - d. Developer shall permit the City to inspect and approve the construction of the Project.

- e. Developer has complied with all City contracting and reporting requirements.
6. Developer agrees to obtain all necessary permits, licenses, and approvals and to meet all governmental regulatory requirements, environmental and otherwise. Developer agrees to comply with all Federal, State, and local regulations with regards to the Improvements. All permitting costs shall be considered a cost of the Project and as such are reimbursable expenses.
7. Developer agrees to indemnify and hold and save the City, its employees, agents, and representatives harmless from any damage or injury to third persons or property resulting from DEVELOPER 's acts or omissions or from claims for inverse condemnation as a result of the construction and agrees to indemnify the City against any loss resulting from claims of such damage, injury, or taking including, but not limited to court costs, attorney's fees, and environmental cleanup or damage.
8. Developer is an independent contractor, and the City shall not be responsible for Developer's acts or omissions.
9. Developer assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether State or Federal, as to all employees engaged in the performance of work under this Agreement. In addition, Developer agrees to pay any and all gross receipts, compensation, transaction, sales, use, or other taxes and assessments of whatever nature and kind levied or assessed as a consequence of the work performed or on the compensation paid under this Agreement.
10. During the performance of the services under this Agreement, Developer and its contractors and engineers shall maintain the following insurance, to the extent applicable:
 - a. General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate.
 - b. Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers using in connection with this Project. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/aggregate.
 - c. Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each

occurrence. In case any work is subcontracted under this Agreement, Developer shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work.

Developer shall furnish certificates of insurance for all of the insurance coverages described herein within ten (10) days after this Agreement is executed and certified copies of any amendments and/or renewals to the policies which occur thereafter. At least thirty (30) days written notice shall be given to the City prior to any cancellation, modification or non-renewal of any insurance required under this Agreement.

All Project contractors, including Developer, performing work subject to reimbursement hereunder shall be required to include the City and Developer as additional insureds on their General Liability insurance policies.

11. The commitment of the City of High Point to expend the described funds on the Improvements is based on the factors recited herein by which the Project will provide a public benefit to the City and its citizens.
12. Should Developer fail to comply with the terms of this Agreement, Developer, upon actual or constructive notice of the default, shall have thirty (30) days to remedy the default. Should Developer fail to remedy the default, the Agreement may be terminated by the City immediately upon the expiration of the thirty (30) days provided the City shall reimburse Developer for the value of the partial completion of the Improvements. Furthermore, this Agreement may be terminated by mutual consent of both Parties.
13. This Agreement shall be binding on the permitted assignees and successors in interest of the Parties hereto.
14. Alterations, deletions, and/or additions to the terms and conditions of this Agreement may only be made by the mutual written consent of the Parties.
15. This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of North Carolina. Venue for any legal action resulting from this Agreement shall lie in Guilford County.
16. This Agreement is intended by the Parties hereto to be the final expression of their agreements regarding the matters addressed in this Agreement, and it constitutes the full and entire understanding between the Parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.
17. Any failure by either Party to enforce any of the provisions of the Agreement or to require compliance with any of its terms at any time during the term of the Agreement shall in no way affect the validity of the Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any such provision.

18. If any paragraph or part of this Agreement is found void or unenforceable, the remainder of this Agreement shall continue in full force and effect. Any invalid and unenforceable provisions will be deemed, without further action on the part of the Parties to be modified, amended, and limited to the extent necessary to become valid and enforceable to the maximum extent permitted by law.
19. Developer certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the NCGS, and that at all times during the term of this Agreement, it will continue to comply with these requirements. Developer also certifies that it will require all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the NCGS. Violation of this section shall be deemed a material breach of this Agreement.
20. Developer shall not discriminate against any member of the public in the use of City facilities or in the delivery of City programs, services or activities on the basis of sex, race, gender, color, ethnicity, national origin, age, familial status, marital status, military status, political affiliation, religion, physical or mental disability, genetic information, sexual orientation, gender expression, or gender identity.
21. All notices and other communications pursuant to this Agreement shall be in writing and shall be delivered by hand, fax or mail as follows:

To Developer

Brian Rogers

Elliott Sidewalk Communities LLC

909 Ridgebrook Road Suite 216

Sparks, Maryland 21152

With a Copy to: Michael Sawicki, Esq. at the address listed above

To the City

Greg Ferguson

City of High Point

P.O. Box 230

High Point, NC 27261

With a Copy to: Meghan Maguire, Esq. at the address listed above

22. This Agreement may be signed in any number of counterparts, and each counterpart shall represent a fully executed original as if signed by each of the Parties. Facsimile and electronic signatures shall be deemed as effective as original signatures.

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

[Separate signature pages to follow]

**ELLIOTT SIDEWALK COMMUNITIES HIGH
POINT LLC**

a North Carolina limited liability company

By: _____ (SEAL)

Name: Brian Rogers

Title: Managing Partner

CITY OF HIGH POINT
a North Carolina municipal corporation

By: _____ (SEAL)

Name: Greg Ferguson

Title: Deputy City Manager

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

Finance Officer

Approved as to form:

City Attorney