

CITY OF HIGH POINT

AGENDA ITEM



Title: Budget Amendment and Construction and Access Agreement (MOU) for Courtesy Road Sidewalk Improvements

From: Eric Olmedo, Budget Director

Meeting Date: May 15, 2017

Public Hearing: N/A

Advertising Date: N/A

Advertised By: N/A

Attachments: Budget ordinance
Construction and Access Agreement

PURPOSE:

A Budget Amendment is needed to appropriate donated funds received for replacement of sidewalks on Courtesy Street adjacent to the Thomas Built Bus facility and approve a Construction and Access Agreement (MOU) for the project improvements to the Thomas Built Bus property.

BACKGROUND:

The City of High Point, in partnership with Thomas Built Bus, is replacing sidewalks adjacent to the Thomas Built Bus facility on Courtesy Road. Thomas Built Bus has pledged to pay up to \$454,270 for the improvements.

BUDGET IMPACT:

A budget amendment in the amount of \$454,270 is needed to recognize the portion of funds from Thomas Built Bus.

RECOMMENDATION / ACTION REQUESTED:

The Budget Department recommends and asks the Council to approve the budget amendment and the Construction and Access Agreement (MOU).

“AN ORDINANCE AMENDING THE 2016-2017 BUDGET ORDINANCE
OF THE CITY OF HIGH POINT, NORTH CAROLINA
TO RECOGNIZE DONATED FUNDS FOR REPLACEMENT OF SIDEWALKS ON COURTESY ROAD

Be it ordained by the City Council of the City of High Point, North Carolina, as follows:

Section 1. The City of High Point is partnering with Thomas Built Bus to replace sidewalks on Courtesy Road adjacent to the Thomas Built Bus facility, and Thomas Built Bus has committed to pay up to \$454,270 of the total cost.

Section 2. In order to recognize and appropriate these funds, the 2016-2017 Budget Ordinance of the City of High Point, should be amended as follows:

(A) That General Capital Projects Fund - Transportation revenues be amended as follows:
Donation Revenue \$454,270

(B) That General Capital Projects Fund – Transportation expenditures be amended as follows:
Construction \$454,270

Section 3. That all ordinances, or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 4. That this ordinance shall be effective from and after its passage."

Adopted May 15, 2017

STATE OF NORTH CAROLINA

**CONSTRUCTION AND ACCESS
AGREEMENT**

COUNTY OF GUILFORD

THIS CONSTRUCTION AND ACCESS AGREEMENT (“the Agreement”) is entered into this _____ day of _____, 2017, by and between the **CITY OF HIGH POINT**, a North Carolina municipal corporation with a mailing address of P.O. Box 230, High Point, North Carolina 27261 (“the City”), and **THOMAS BUILT BUSES, INC.**, a business corporation authorized to do business in the State of North Carolina, with its principal office at 1408 Courtesy Road, High Point, NC 27260 (“Owner”).

RECITALS:

WHEREAS, the City is scheduled to make sidewalk and other associated improvements along Courtesy Road, between Prospect Street and Tryon Avenue, consistent with the provisions of Bid # 51-051017 (“Bid”); and

WHEREAS, a portion of the work under the Bid shall be done on and around Owner’s business property located at 1408 Courtesy Road, High Point, NC 27260 (“Property”); and

WHEREAS, work on and around the Property shall include construction and/or repair of sidewalks, curb and gutter, driveways, American with Disabilities Act compliance access ramps, radius improvements, adjustments in utilities including relocations of facilities if necessary, resurfacing of streets if needed, installation of pavement markings, pedestrian crosswalks, and signage as needed, as well as any provisions specific to the Property and City rights-of way adjacent to the Property as set forth in the Bid. (“Project”); and

WHEREAS, the Project will provide a public benefit to the residents of High Point and the Owner will benefit directly from the Project improvements on their Property and as such has agreed to pay the costs of the Project improvements on their Property; and

NOW THEREFORE, the City and Owner, in consideration of their mutual covenants, agree as follows:

1. City and Owner’s Responsibility. The City shall complete all Project improvements set forth in the recitals above and incorporated into the Agreement here by reference. Owner shall, at their expense, remove and/or relocate existing fencing, guardrails, gates, private signs, and any other of Owner’s facilities on the Property or that are encroaching on public right-of-way that might hinder the Project construction or other work to be done under the Bid. Owner shall also be responsible for and bear all costs associated with any landscaping measures that they may desire on their Property. Any landscaping measures performed by Owner must not encroach up on the improvements to be made by the City or limit or restrict the visibility of motorists and pedestrians.

2. Owner's Project Cost. The Owner's cost of the Project shall be a reimbursed amount for improvements to the Property not to exceed \$454,269.39 and Owner shall not be responsible for any amounts invoiced greater than \$454,269.39. Payment by the Owner shall be made directly to the City of High Point, Accounts Payable and may be paid at any time after the execution of this Agreement, but shall be paid no later than July 31, 2017.

3. Term. The scheduled term of the Project work on the Property shall begin July 1, 2017 and end on July 8, 2017. The City shall work in good faith with its contractors, employees, or other agents to have the Project completed by July 8, 2017. Should access to the Property be needed after the July 8, 2017 date, the Owner shall allow City, their contractors, employees, or other agent's ability to complete the Project. City shall work to ensure that the Business operations of Owner are not unreasonably impeded if work is needed on or around the Property after the July 8, 2017 date.

4. Ownership and Maintenance. Upon completion of the Project, Owner shall take full control of improvements made to the Property. Any necessary measures, including but not limited to, maintenance, repair, and replacement, of the Project improvements made to any portion of the Property shall be the sole responsibility of the Owner.

5. Limitation of Liability. The Owner grants the City, its contractors, employees, and agents, the right to enter onto the Property for the purposes set forth in this Agreement. The Owner hereby waives any liability that may be attributed to the City by their presence on the Property or work on the Project and agrees to indemnify and hold harmless the City from any claims arising from the Project improvements to the Property and City's presence on the Property. The Owner's responsibility to indemnify and hold harmless the City for the Project improvements shall survive any term or termination provisions of this Agreement.

6. Notice. Any notice given pursuant to the Agreement shall be in writing and signed by a representative of the party giving such notice. Written notice may be: (a) hand-delivered; (b) sent by facsimile transmission; or (c) sent by overnight courier, messenger or registered or certified U.S. mail, postage prepaid, return receipt requested. Written notice shall be delivered to the City and the Owner at the following addresses:

Notice to the City:

The City of High Point
Engineering Department
211 South Hamilton Street
P.O. Box 230
High Point, NC 27261

Notice to the Owner:

Thomas Built Buses
c/o Registered Agent, CT Corporation System
160 Mine Lake Court, Suite 200
Raleigh, NC 27615-6417

7. Governing Law and Venue. The Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina (without giving effect to the principles thereof relating to conflicts of law). Any dispute or claim regarding this Agreement shall be brought exclusively in a Federal or State Court in Guilford County, North Carolina. Each Party hereby consents to personal jurisdiction in any legal action brought in any State or Federal court in Guilford County, North Carolina. Each Party further consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified U.S. mail, postage prepaid, to the Party at its notice address specified in this Agreement, or by such other method complying with the rules of procedures of such courts.

8. Successors and Assigns. The Agreement shall be binding upon the parties, their successors and permitted assigns. Neither the City nor the Owner shall assign, sublet or transfer any interest in the Agreement without the prior written consent of the other party, which shall not be unreasonably withheld.

9. Conflict. In case of a conflict between the provisions of the Agreement and the provisions of any attachment or other document referenced by or incorporated into the Agreement, the provisions of the Agreement shall prevail. Any terms and conditions or similar provisions submitted by the Owner shall not be part of the Agreement unless agreed upon in writing by the City. If such terms and conditions or other provisions are submitted by the Owner and agreed upon by the City, the provisions of the Agreement shall prevail in the event of a conflict between the provisions of the Agreement and the terms and conditions or other provisions submitted by the Owner.

10. Captions. The captions contained in the Agreement are for convenience and reference only, and do not define, describe, extend or limit the scope or intent of the Agreement or the scope or intent of any provision contained herein.

11. Severability. The invalidity of one or more phrases, sentences, clauses or sections in the Agreement shall not affect the validity of the remaining portions of the Agreement, so long as the material purpose of the Agreement can be determined and effectuated.

12. No Waiver. 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.

13. Counterparts. The 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 signatures shall be deemed as effective as original signatures.

14. Complete Agreement. This Agreement represent the complete agreement of the parties. Any change, modification, or amendments to the terms of this Agreement shall be set forth in writing, signed by both parties.

15. Iran Divestment Act. All persons, groups, business entities, and government organizations conducting business with the City of High Point acknowledge and affirm that they are not listed and will not utilize a subcontractor listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147, Article 6E, Iran Divestment Act Certification.

IN WITNESS WHEREOF, the City and the Owner have caused this Agreement to be executed on the date first written above by their duly authorized representatives.

Signatures appear on following pages

OWNER

Thomas Built Buses, Inc.

BY: _____

TITLE: PRESIDENT/VICE PRESIDENT

ATTEST

In witness whereof, said corporation has caused this instrument to be executed by its President or Vice President and attested by its Secretary or Asst. Secretary this the _____ day of _____, 2017.

THOMAS BUILT BUSES, INC.
Corporate Name

(SEAL)

Attest: _____
Secretary/Asst. Secretary (Signature)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he/she is the Secretary/Asst. Secretary of THOMAS BUILT BUSES, INC., a business corporation authorized to do business in the state of North Carolina, and that by authority duly give and as the act of the company, the foregoing instrument was signed in its name.

Witness my hand and official seal, this the _____ day of _____, 2017.

_____ (Notary Public)

My Commission Expires _____

CITY
City of High Point

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he/she is the Deputy/Assistant City Manager of the City of High Point, a municipal corporation within the state of North Carolina, and that by authority duly give and as the act of the City, the foregoing instrument was signed in its name.

Witness my hand and official seal, this the ____ day of _____, 2017.

_____ (Notary Public)

My Commission Expires _____.