

**NORTH CAROLINA**

**REIMBURSEMENT AGREEMENT**

**GUILFORD COUNTY**

**THIS REIMBURSEMENT AGREEMENT** ("Agreement"), entered into this the 18<sup>th</sup> day of September, 2017, between the **CITY OF HIGH POINT**, ("City") a North Carolina municipal corporation, located at 211 South Hamilton Street, High Point, North Carolina, 27260, and **BSC HOLDINGS, INC.** ("BSC"), a North Carolina corporation, located at 3929 Tinsley Drive, High Point, North Carolina, 27265.

**WITNESSETH:**

**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-499 and 160A-320, 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**, BSC plans to develop a 400-unit mixed residential development on an approximately seventy-one (71) acre tract of land located between Johnson Street/Sandy Ridge Road and Kendal Road ("Project"); and

**WHEREAS**, City and BSC believe it is in their best interests to jointly provide infrastructure including design and construction of a sewer outfall line from an existing 15" sewer outfall line, approximately 3,680 linear feet to a point just inside the Project located on/near Johnson, Sandy Ridge, and Kendall Roads. This new 8" sewer outfall line will be constructed by BSC to be later acquired by the City. These improvements will allow for the development of the remainder of that basin, serve the Project and provide services planned for future development within the City's Capital Improvement Plan ("Improvements"). A survey of the improvements is attached hereto and incorporated herein as **Exhibit A**; and

**WHEREAS**, City of High Point 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**, on Monday, September 18, 2017, the High Point City Council adopted a Resolution authorizing the City Manager to enter into a reimbursement agreement pursuant to North Carolina General Statutes § 160A-499, § 160A-320 and Title 6, Article E, Section 6-1-101 of the City Ordinances; 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; and

**WHEREAS**, BSC shall comply with the requirements of North Carolina General Statutes § 143-129 and § 143-128 et seq. relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the City; and

**WHEREAS**, the costs to the City for the Improvements will not exceed the estimated costs 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 impractical; and

**WHEREAS**, the City will review and approve the estimate of BSC's cost to build the proposed Improvements, and will enter into this Agreement upon finding these costs 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 northern geographical area.

**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. BSC agrees to design and have constructed the Improvements in accordance with this Agreement and all ordinances, policies and regulations of the City of High Point and all applicable federal and state laws.
3. The City agrees to reimburse BSC for costs associated with the Improvements in an amount not to exceed \$358,300 upon submission and of invoices detailing expenses.
4. All materials used in the installation of the Improvements shall become and remain property of the City.

5. BSC's obligations to qualify for reimbursement shall be that:
  - a. BSC shall manage, administer and construct the Improvements according to the plans and specifications approved by the City and shall obtain all necessary certifications.
  - b. 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.
  - c. BSC shall permit the City to inspect and approve the construction of the Project.
  - d. BSC has complied with all City contracting and reporting requirements.
6. The City will reimburse BSC for actual engineering, surveying and stakeout costs, excluding insurance and attorneys fees, for the Improvements in an amount not to exceed \$358,300. Said payment shall be made upon the City's receipt and approval of an invoice submitted to the City by BSC for reimbursement.
7. City agrees any acquisition of easements necessary for the service of the extension will be done by the City.
8. BSC agrees to obtain all necessary permits, licenses, and approvals and to meet all governmental regulatory requirements, environmental and otherwise. BSC 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.
9. BSC 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 BSC'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.
10. BSC is an independent contractor and the City shall not be responsible for BSC's acts or omissions.
11. BSC 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, BSC 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.
12. During the performance of the services under this Agreement, BSC 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, BSC 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.

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

13. 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.
14. This Agreement shall be binding on the assignees and successors in interest of the parties hereto.
15. 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.
16. Should BSC fail to comply with the terms of this Agreement, BSC, upon actual or constructive notice of the default, shall have thirty (30) days to remedy the default. Should BSC 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

BSC for the value of the partial completion of the Improvements. Furthermore, this Agreement may be terminated by mutual consent of both parties.

17. Should any part of this Agreement be declared unenforceable, all remaining sections remain in force.
18. 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.
19. 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.
20. BSC certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. Consultant also certifies that it will require that 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 North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.
21. BSC 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.
22. 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 BSC Holdings, Inc.  
Barry Siegal, President  
3929 Tinsley Drive, Suite 104  
High Point, NC 27265

To the City  
City Manager's Office  
City of High Point  
211 South Hamilton Street  
P.O. Box 230  
High Point, NC 27261

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

ATTEST:

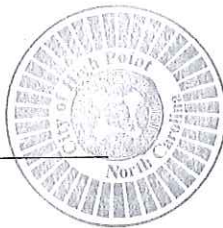
Kelly M Hill  
Title: Asst Secretary

BSC HOLDINGS, INC.

Barry Siegal  
Barry Siegal, President

ATTEST:

Lyn A. Varling  
City Clerk



CITY OF HIGH POINT

Randy E. McCaslin  
Randy McCaslin, Deputy City Manager

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

James M. ... 9/20/2017  
Finance Officer

Approved as to form:

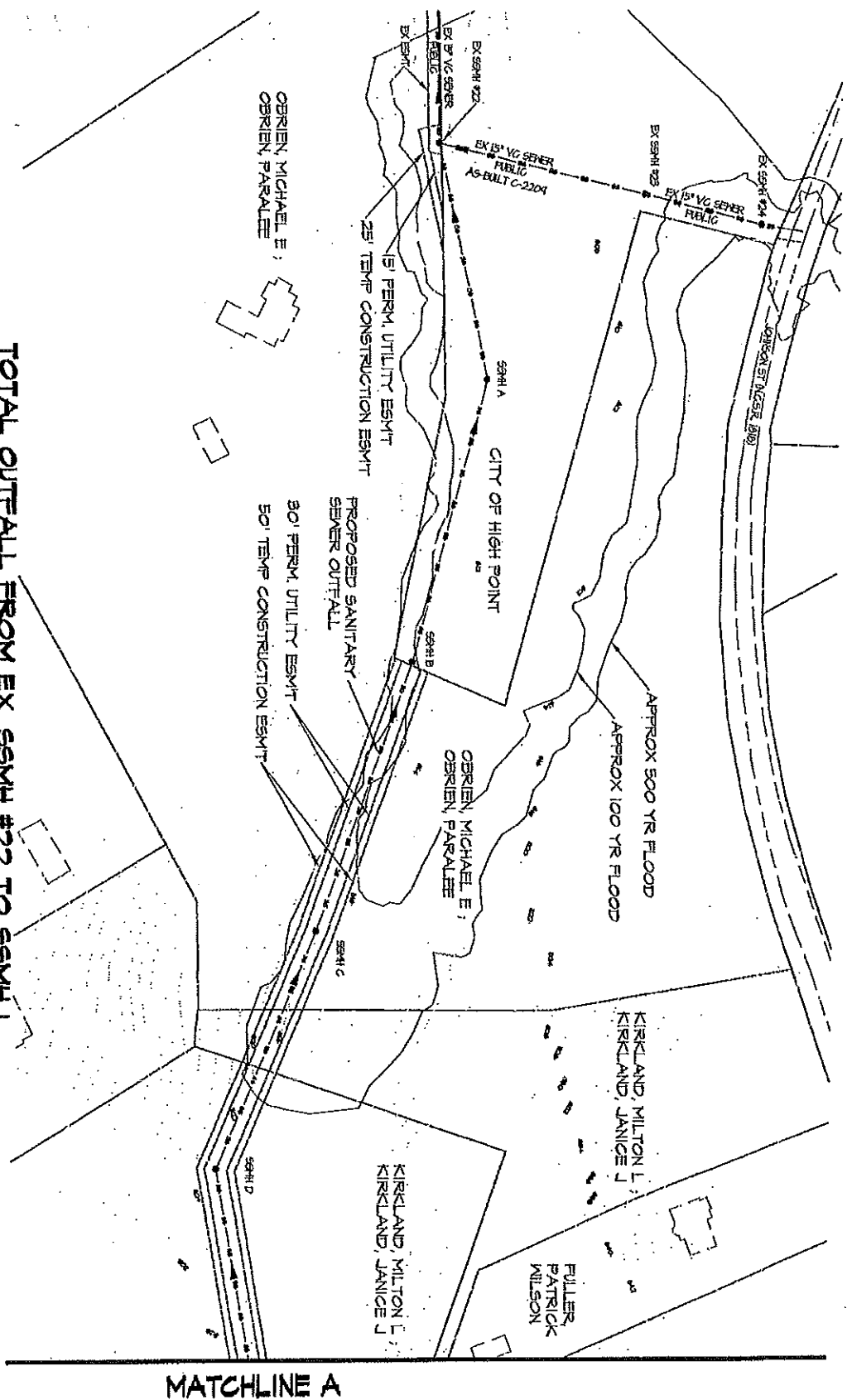
Robert C. ...  
City Attorney

**ENGINEERING AND SURVEYING, INC.**  
 LAND DEVELOPMENT CONSULTING  
 CORPORATE LICENSE NUMBER C-1375.  
 4400 TUNING STREET  
 HIGH POINT, NORTH CAROLINA 27265  
 PHONE: (336) 812-8800 ~ FAX: (336) 812-8780

**SANDY RIDGE, JOHNSON ST, & KENDALE ST**  
**SANITARY SEWER OUTFALL EXHIBIT**  
 HIGH POINT, NC  
 SCALE: 1"=200'  
 DATE: 8-17-2017  
**SHEET 1 OF 2**



**TOTAL OUTFALL FROM EX. SSMH #22 TO SSMH L**  
**IS APPROXIMATELY 3,626 L.F.**



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 LAND DEVELOPMENT CONSULTING  
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