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Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Council Member Amy R. Stanton
DATE: August 9, 2016



SUBJECT: New Business 11a-Giver consideration to adopting the State's Policy for public Information requests. (Council Member Stanton)

The Town has received numerous Public Information request requiring extensive clerical and information technology resources. After reviewing NCGS 132-6.2 and the NC Public Records request Policy, I submitted my proposal for council to adopt the NC Public Records request Policy for the Town of Indian Trail.

Thank you

Sincerely,

Amy R. Stanton
Town of Indian Trail, Councilwoman

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§ 132-6.2. Provisions for copies of public records; fees.

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, "actual cost" is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium. (1995, c. 388, s. 3; 2004-129, s. 38.)

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PUBLIC RECORDS REQUEST POLICY

Public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. It is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. The purpose of this memorandum is to provide a policy to be followed by the Office of the Governor and cabinet agencies in managing these requests and in levying a reasonable special service charge in qualifying cases.

I. Initial Request

1. Public records requests shall be directed to a department public information officer ("PIO"). Agencies may ask requestors to submit their requests in writing, on or in accordance with a request form provided by the agency.¹ Agency request forms shall request the following information:
 - a. Date of the request
 - b. Name of the requestor (first and last)
 - c. Phone number of the requestor
 - d. Mailing address of the requestor
 - e. Email address of the requestor (if available)
 - f. A description of the records with sufficient detail to enable the agency to identify the records requested. This may include the following information:
 - i. Custodian of the record
 - ii. Name or title of the record
 - iii. Date or date range of the record(s)
 - g. Whether the requestor is seeking a copy or seeking to inspect the record
 - h. If the requestor is seeking a copy, in what medium and/or format. Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency keeps them. The available formats may be limited for records that require redaction. An agency must ensure that the records are redacted in a manner that ensures the requestor cannot determine the confidential information through image manipulation or removal of field protections.
2. An agency shall acknowledge receipt of the request within three (3) business days of receiving the request.
3. To the extent the agency PIO finds the request to be ambiguous, overly broad, or likely to require more than four (4) hours of staff time to fulfill, the PIO shall contact the requestor and attempt to clarify, narrow or revise the request. A narrow request limits the expenditure of agency resources, may help to avoid a special service charge, and permits the agency to respond to the request in a shorter timeframe. In these discussions, it is not permissible to ask the reason the request is being made.

¹ An agency may ask, but cannot require, a requestor to submit their records request in writing.

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4. In making an initial response to a public records request, it is important a PIO understand and communicate the following as need be:
 - a. An agency is not required to create a new record in order to fulfill a public records request.
 - b. An agency is not required to provide records in a format they do not currently have.
 - c. Agency employees are not required to work on requests past normal working hours. N.C.G.S. § 132-6(a) requires agencies to respond "as promptly as possible" in providing copies of public records. Response time should be determined based on the size and scope of the request.
5. If the request is not revised, the PIO shall contact the requestor with an estimate of how long the request will take to fill and how much the request will cost. Before beginning to fulfill the request, the PIO shall confirm acceptance of the fees. If the total estimated charge is greater than \$25 the PIO shall ask the requestor to pay 50% of the estimated charges before the agency begins to fill the requestor. Location and production shall not begin until the deposit is received. The requestor shall pay the remaining balance prior to the agency releasing the records. If for any reason the final charge is less than the amount of the deposit, the agency shall return the remainder to the requestor.

II. Special Service and Copying Fees

1. By statute, an agency may charge a special service charge for any request that requires extensive use of information technology or extensive clerical or supervisory assistance by personnel of the agency. If a request takes more than four (4) hours of clerical or supervisory assistance to fill, the agency may assess a special service charge for the amount of staff time spent over four (4) hours. Staff time spent searching for, locating, collecting, sorting, copying and preparing the records to be produced will count towards the four (4) hour threshold. The special service charge shall be in addition to any copying fees.
2. All public employees involved in fulfilling a public records request shall keep a detailed record of the time spent (accounted for in 15 minute increments) searching for, locating, collecting, sorting, copying and preparing the records to be produced. This record shall be provided to the requestor upon request.
3. The special service charge for clerical or supervisory assistance shall approximate the hourly rate of pay plus benefits for the position of permanent, full-time Administrative Assistant I in the agency's pay schedule. This is estimated to currently result in a rate of \$18 per hour.
4. Special service charges shall be not greater than the actual costs incurred.
5. Time spent separating confidential from non-confidential information shall not be considered in calculating the time it takes to respond to a request. This is a cost that the department must absorb pursuant to N.C.G.S. § 132-6(c). The time spent separating

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confidential from nonconfidential information shall be noted by employees in recording time spent on a given request.

6. Multiple requests regarding the same issue made within a short period of time (1-2 weeks) from the same individual or organization shall be considered a single request for purposes of determining whether a special service charge will be levied.
7. An agency shall charge 5 cents for printed copies as this is the reasonable estimate of the actual cost to the public agency in making the copy.
8. In order to minimize costs and time spent on records requests for emails, agencies shall make use of email archives, and when applicable, authorized e-discovery tools to search for, locate and copy email records.
9. Electronic records shall be sent via email when possible. Otherwise, electronic records shall be produced on a flash drive or CD provided by the agency. The agency shall charge the actual cost of the flash drive or CD, no matter the amount of data stored on it. An agency shall only charge the cost of multiple flash drives or CDs if the total gigabytes of the requested files exceed the maximum gigabytes on a single flash drive or CD.
10. Once all documents have been collected, a PIO should prepare an invoice based on the actual time the holders of records report.

III. Agency Follow Up

1. If anyone requesting public records from any public agency is charged a fee that the requestor believes to be unfair or unreasonable, the requestor may ask the State CIO or his designee to mediate the dispute.
2. Agency legal counsel should be made aware of any extensive records request and should assist in reviewing documents, or portions of documents, as needed in order to ensure compliance with both the disclosure and confidentiality provisions of Chapter 132. Legal counsel should consider N.C.G.S. § 132-1.1 when identifying documents or information which are not public records. Agency legal counsel should also remain aware of and consider whether other statutory provisions in and beyond Chapter 132 may also restrict disclosure of documents requested. For examples, see appendix A.
3. Agencies are encouraged to keep a log to track all public records requests, the status of the response, the date the documents are produced, and the charges and payments associated with production. This log can serve as a tool to assist the agency in better managing requests and expending agency resources efficiently.

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IV. Items to be aware of in managing public records

1. An agency must follow the document retention policy found in the General Schedule for State Agency Records produced by the Department of Cultural Resources, as well as any department specific schedules.
2. Public records should only be disposed of by an agency in accordance with these records schedules.
3. Governor McCrory's Executive Order 12 requires email retention for five years and orders all executive branch employees to treat e-mail messages which they send or receive in connection with the transaction of public business as public records.
4. Any time a personal e-mail account is used to conduct State business, the e-mail must be retained. Even if it is contained in a personal e-mail account, any e-mail related to the transaction of State business is a public record. It is recommended you either: (A) forward the e-mail from your personal e-mail account to your State e-mail account so it may be captured in the email archive, or (B) print the e-mail and keep it in a separate file. If printed, that printed record will need to be searched in response to any public records request for e-mails.

The recommendations presented in this document are intended to improve upon and streamline the process for responding to public records requests. This policy is meant to serve as general guidelines. We recognize that circumstances vary and encourage you evaluate each request on a case-by-case basis and consult with legal staff as needed.

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Appendix A

Statutory provisions restricting disclosure of information or documents:

- a. N.C.G.S. § 132-1.1(a). Confidential legal communications.
- b. N.C.G.S. § 132-1.1(c). Public enterprise billing information.
- c. N.C.G.S. § 132-1.2. Confidential information – including trade secrets, account numbers, and electronic signatures.
- d. N.C.G.S. § 132-1.3(b). Certain settlements made by or on behalf of public agencies, officials or employees.
- e. N.C.G.S. § 132-1.4. Criminal investigation and criminal intelligence information.
- f. N.C.G.S. § 132-1.6. Emergency response plans.
- g. N.C.G.S. § 132-1.7. Sensitive public security information.
- h. N.C.G.S. § 132-1.9 Trial preparation materials.
- i. N.C.G.S. § 132-1.10. Social security numbers and other personal identifying information.
- j. N.C.G.S. § 132-1.11. Cost-benefit analyses and similar assessments with respect to economic development incentives.
- k. N.C.G.S. § 132-6(d). Records relating to the proposed expansion or location of specific business or industrial projects.
- l. N.C.G.S. § 143B-431. Financial statements submitted to the Department of Commerce.
- m. N.C.G.S. § 70-18. Information concerning the nature and location of any archaeological resource.
- n. N.C.G.S. § 133-33. If the agency has promulgated confidentiality rules, the agency's cost estimates for any public contract prior to bidding, and the identity of contractors who have obtained proposals for bid purposes for a public contract.
- o. N.C.G.S. § 143-129.8. Information technology bids and proposals.
- p. N.C.G.S. § 143-129(h). Public transportation bids and proposals.
- q. N.C.G.S. § 20-43.1/18 U.S.C. § 2721. Personal information from DMV records.
- r. N.C.G.S. § 105-259(b). Tax information.
- s. N.C.G.S. § 126-22. Personnel files of State employees.
- t. N.C.G.S. § 143-318.10(e). Minutes or general accounts of closed sessions.
- u. N.C.G.S. § 143-318.11(a)(3). Settlements discussed in closed sessions.
- v. N.C.G.S. § 7B-3001. Law enforcement records relating to juveniles.
- w. N.C.G.S. § 143B-431. Financial statements submitted to the Department of Commerce by a private company or individual seeking assistance from the Department.
- x. N.C.G.S. § 143B-426.39B. State Controller compliance review work papers and other supportive material.
- y. N.C.G.S. § 53C-2-7. Certain official records of the Office of the Commission of Banks.
- z. N.C.G.S. § 108A-80. List of names or other information concerning persons applying for or receiving public assistance or social services when the information comes from records of the department of social services.
- aa. N.C.G.S. § 8-53. Communications between a physician and a patient.

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- bb. N.C.G.S. § 90-113.74. Prescription information submitted to the Department of Health and Human Services.
- cc. N.C.G.S. § 122C-3(9). Confidential information relating to an individual served by a facility for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.
- dd. N.C.G.S. § 122C-52(a). Confidential information acquired from attending or treating a client in an area mental health, developmental disabilities, or substance abuse authority.
- ee. N.C.G.S. § 130A-12. Health department patient medical and financial records.
- ff. N.C.G.S. § 130A-45.8. Public health authority patient medical and financial records.
- gg. N.C.G.S. § 130A-93, and 102. Certain information in birth certificates, including medical information.
- hh. N.C.G.S. § 130A-143. Information and records on individuals with communicable diseases.
- ii. N.C.G.S. § 130A-212. Records and reports of individual patients with cancer.
- jj. N.C.G.S. § 131E-97. Medical records compiled and maintained by health care facilities in connection with the admission, treatment, and discharge of patients.
- kk. N.C.G.S. § 143-518. EMS client records.
- ll. N.C.G.S. § 143B-139.6. Privileged patient medical records in the possession of the Department of Health and Human Services.
- mm. N.C.G.S. § 163-82.10(a). Certain information in a voter registration record.

This represents North Carolina statutory provisions identified during the production of this document; the list may not be exhaustive. Please be aware that federal laws and regulations may impose additional confidentiality requirements.

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Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Kelley Southward, Town Clerk
DATE: August 9, 2016



SUBJECT: New Business 11b-Council to appoint one of their own membership to be Indian Trail's representative on the Charlotte Regional Transportation Planning Organization (CRTPO).

Indian Trail is part of the Charlotte Regional Transportation Planning Organization (CRTPO). All municipalities that are in the CRTPO are asked to appoint a member of their Governing Body to the MPO (Metropolitan Planning Organization) which is a part of CRTPO. Staff members are appointed to the TCC (Technical Coordinating Committee); Mr. Kaufhold is our appointed member to this committee. Council Member Stanton was our CRTPO but has regrettably had to resign (see attached resignation) due to a conflicting work schedule.

Please select a member of Council to appoint to the MPO of CRTPO to represent the Town of Indian Trail. MPO meetings are held regularly on the 3rd Wednesday of each month at 6PM at the Charlotte-Mecklenburg Government Center.

11b.

Kelley Southward

From: Amy Stanton
Sent: Tuesday, July 19, 2016 9:39 AM
To: Michael Alvarez
Cc: Amy Stanton; Scott Kaufhold; All Users in Council and Mayor; Kelley Southward
Subject: CRTPO

Dear Mayor and Council,

I am sorry to inform you that circumstances dictate I must resign from my position as CRTPO representative after the July meeting.

I have taken a position within my company that looking ahead will continue to keep me from meetings, I thought after the conversion of the two companies it would slow down but with this new opportunity I don't see this happening.

Please understand when I accepted the seat as CRTPO representative I did not know that the company I was working for at the time would be bought out and dynamics would change, even though they have all been in my favor within the company.

Thank you for your understanding,

Amy R. Stanton

Town of Indian Trail Councilwoman

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Town of Indian Trail

Memo

TO: Mayor and Town Council

FROM: Patrick N. Sadek, P.E., Director of Engineering and Public Works

DATE: August 03, 2016

SUBJECT: S&ME Stormwater System Mapping Services



General Information:

In August of 2015 the Town contracted with S&ME, a Consulting Engineering firm, to 1) locate, identify, and assess the condition of all closed storm drain system components, 2) locate, identify, and assess the condition of all open roadway culverts with a diameter greater than 24 inches, and 3) locate, identify, and assess the condition of all permitted water quantity (detention) and water quality facilities within Town limits.

Over the past year Town staff has been working diligently with S&ME to complete these inventories. Once completed this work will create a user friendly database & accompanying map book to assist in developing a storm water maintenance program and to aid in responding more rapidly and efficiently to stormwater service requests with the goal of improving overall water quality. The inventories will provide staff with a comprehensive GIS database inventory of all storm water infrastructure along with a condition assessment that can be used for repair & maintenance purposes. Also, the inventories will allow staff and S&ME to cross check existing as-builts.

Several residential and commercial developments have been constructed since the last inventory (2010). Thus adding stormwater detention and water quality facilities to the Towns system. In order to complete the inventories of all facilities additional funds are needed.

Staff recommends approval of the Storm Water System Inventory & Mapping Task Order Agreement in the amount of \$45,400.

Required Action:

Approval

Attachment:

Storm Water System Mapping Task Order Agreement

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March 14, 2016

Town of Indian Trail – Engineering Services
130 Blythe Drive
Indian Trail, NC 28079

Attention: Mr. Todd Huntsinger

Reference: **STORM WATER SYSTEM MAPPING SERVICES PROPOSAL
Addendum #1**
Town of Indian Trail
Indian Trail, North Carolina
S&ME Proposal No. 73-1500063 – Addendum #1

Dear Mr. Huntsinger:

S&ME, Inc. (S&ME) appreciates the opportunity to submit this proposal to provide additional storm water system mapping services for the Town of Indian Trail (Indian Trail). In this proposal we summarize our understanding of the project, a proposed scope of services, deliverables, excluded services, client responsibilities, project costs, schedule, and authorization.

PROJECT UNDERSTANDING

We prepared this proposal addendum in response to a request made by Mr. Todd Huntsinger of Indian Trail during multiple email and verbal interactions between February, 2016 and the present time. Further information for this proposal addendum was provided via email by Mr. Huntsinger during February and March of 2016.

S&ME previously provided Indian Trail with storm water mapping services between September, 2015 and February, 2016. During these efforts 107 stormwater control measures (SCMs), 514 closed-system storm water structures, and 190 open-channel culverts were located using Global Positioning Systems (GPS), visually assessed, and mapped using Geographic Information Systems (GIS). S&ME has previously provided Indian Trail with a .kmz file depicting these features and additionally provided observation reports for each SCM.

Indian Trail has provided S&ME with a series of drawings depicting approximately 18 known locations or areas where an undetermined number of additional “closed” storm water system structures have been added since 2009 and were not gathered during our initial 2015/2016 fieldwork. According to Indian Trail, additional areas may need to be included. The “closed” system includes the contiguous piped system linking storm water structures and does not include driveway culverts, road culverts, or open ditches and channels. S&ME understands that Indian Trail wishes to update the previously provided shapefiles and map book by mapping and visually assessing storm water structures within these areas. Based on this information and prior experience in mapping Indian Trail’s storm water system, S&ME is estimating that approximately 600 storm water structures will require mapping.

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S&ME further understands that Indian Trail is requesting that S&ME locate, map, and conduct visual observations of currently unmapped storm water control measures (SCMs) generally including, but not limited to, detention ponds/basins, wet ponds, sand filters, engineered below-grade storm structures, and bio-retention areas. Based on information provided by Indian Trail (including a series of .kmz files), available aerial imagery, and past experience mapping SCMs in Indian Trail, approximately 60 additional SCMs are assumed to be present within the Town.

SCOPE OF SERVICES

Task 1 – “Closed” Storm Water System Mapping Updates

Sub-Task 1.1 – GPS Fieldwork

GPS surveys of the “closed” storm water system will be conducted at locations or areas provided to S&ME by Indian Trail. This work will be performed under the supervision of a Professional Land Surveyor (PLS). S&ME will sub-contract with Lawrence Associates, a licensed survey firm, to conduct the GPS survey of the “closed” storm water structures. Lawrence Associates personnel will be accompanied by an S&ME employee who will be conducting field observations at the same time (see “Field Observations”). A Lawrence Associates surveyor will follow storm water lines upstream from each outfall and gather GPS locations on storm point features such as manholes, catch basins, and drop inlets along the way. Lawrence Associates personnel will obtain GPS coordinates of features within drainage easements on public and private property and road rights-of-way. Features will be assigned a unique identifier and a feature type (i.e., catch basin, storm manhole, etc.) and location method. A unique identifier corresponding with the GIS database will be placed on each structure by using a high-visibility pen marker, or similar marking instrument. Features that are GPS located will receive a value of “GPS” in the location method field.

GPS point feature data will be collected by taking observations with a survey-grade GPS unit and field GPS data will be exported into a text file by Lawrence Associates for conversion into a GIS shapefile by S&ME. Please note that the horizontal X and Y coordinate accuracy can be affected by topography, vegetative cover, or man-made obstructions. Vertical elevations and inverts will not be provided. GPS data will be tied to the North Carolina State Plane Coordinate System, North American Datum of 1983/2001 (NAD 83) and the features located with the GPS data will meet, or exceed, the Standards of Practice for Land Surveying in North Carolina Rule 21-56.1608 Classification Land Information Systems/Geographic Information System surveys for urban and suburban LIS/GIS Surveys (Class A). The relative accuracy shall be equal to, or less than, 0.5 meters (1.64 feet).

Features that cannot be GPS located due to unavailable satellite signals (e.g., obstructions, dense vegetative canopy, etc.), steep/dangerous topography, dangerous traffic conditions (to be determined by S&ME and Indian Trail), or lack of access due to private property concerns (e.g., fences, pets, etc) will be digitized (manually placed) using GIS in their approximate location as per a field sketch and receive a value of “DIGITIZED” in the location method field. Features owned by the North Carolina Department of Transportation along US 74 are not included in the scope of this proposal.

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Based on previous conversations and past protocols set by Indian Trail, S&ME and Lawrence Associates personnel will wear brightly colored safety vests, carry credentials identifying them as Town Contractors and will drive marked company vehicles. S&ME also understands that we must provide our own traffic control measures as appropriate. S&ME has the option of digitizing features or using “as-built” or design drawings to locate features where road conditions make GPS acquisition a safety hazard or field conditions prevent the collection of GPS data.

Sub-Task 1.2 – Field Observations

S&ME will use a customized application to collect data during field observations. S&ME personnel will conduct field observations of each storm water feature at the same time Lawrence Associates personnel are performing the GPS survey. The application will generate a database and graphical schematic of each feature. Attributes pertaining to each feature such as unique identifier, type, condition, pipe material (in), pipe material (out), and general notes will be gathered with the application. This information will match what was previously provided during our 2008/2009 and 2015/2016 mapping efforts.

Sub-Task 1.3 – Incorporate Existing Drawings & Field Observations

Upon completion of GPS fieldwork and field observations, S&ME personnel will then use paper or digital design or “as-built” drawings provided by Indian Trail to create a storm water line GIS shapefile representing pipes between storm point features. Paper drawings provided by the Town will either be scanned and geo-referenced or digitized. Digital drawings, such as Computer Aided Design (CAD), will be geo-referenced (if needed) and features will be exported into shapefiles before being incorporated into the storm water shapefiles. Attributable data from these drawings (paper or digital) such as pipe diameter, pipe material, flow direction, length, upstream invert, downstream invert, top elevation, invert elevation, and general notes will be entered into the storm point and line GIS databases. Storm point features contained on the “as-built” drawings that were not located in the original GPS mapping effort will be flagged for GPS location at a later time.

Data gathered during field observations will be used to supplement/confirm attributes from existing “as-built” drawings. Where discrepancies between field data and “as-built” drawings exist, an error log and map will be generated flagging that feature for an additional field visit to ascertain which data source is correct. Field data will also be used to generate storm water lines and attribute storm water lines and features in situations where existing “as-builts” do not exist.

Sub-Task 1.4 – Quality Assurance/Quality Control (QA/QC)

S&ME aims to provide a quality product through the use of QA/QC techniques during the mapping process. Creating database rules using S&ME’s storm water observation program provides data that is collected in a standardized manner by field crews. Field observation data provides S&ME with an opportunity to cross-check existing plan drawings with conditions in the field. Discrepancies between field observation data and “as-built” drawings will be entered into an error log and a second field observation will be conducted to ascertain which data source is correct. S&ME will also provide periodic progress reports to keep the Town informed of GPS and GIS mapping efforts and provide the Town with an opportunity to comment on on-going mapping efforts.

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Upon completion of system mapping, S&ME will perform QA/QC verifications to confirm accuracy. S&ME will perform spot field observations or spot checks in the office on up to 5% of point and line features to verify system accuracy (for instance, attributes in the GIS database such as point feature type, flow direction, pipe material, and pipe diameter should match conditions in the field). S&ME will also use GIS tools during and after construction of the GIS shapefiles to verify proper system connectivity (for instance, a pipe in the line features shapefile would not be allowed to show upstream flow), verify unique identifiers, eliminate duplicate features, and remove typographical errors.

Sub-Task 1.5 – Map Book Updates

S&ME will generate two complete map book sets depicting the updated “closed” storm water system, SCMs (see Task 2 below), and previously located open-channel culverts. The map books are anticipated to be approximately 90 pages in length and will be of the same size and format as the map books delivered to Indian Trail in 2009. S&ME will also provide .pdf copies of the map books so that Indian Trail can reproduce additional sets of the map books.

Task 2 – Storm Water Control Measures (SCM) Mapping & Visual Observations

Sub-Task 2.1 – Fieldwork

GPS location and visual observations of SCMs will first be conducted at up to 50 additional locations provided to S&ME by Indian Trail. These SCMs were not visited during our initial 2015/2016 field efforts. Once these locations have been GPS-located and observations have been conducted, S&ME personnel may also conduct a “drive-through” reconnaissance of paved roads within the Town to look for additional SCMs. S&ME can also perform an additional review of the Town limits using the most recent digital aerial photography to attempt to locate additional SCMs prior to conducting the “drive-through” reconnaissance. It is estimated that an additional 10 SCMs may be located during these additional efforts for a total of 60 additional SCMs.

It is our understanding that a Rural LIS/GIS Survey, Class B, will not be required for this task. GPS location of each SCM will include the generation of a polygon outlining above-ground SCM features such as bio-retention areas, sand filters, and wet detention basins. GPS location associated with underground or proprietary SCMs will only include the location of any manholes or other appurtenances used to access the underground structure. Each SCM will be assigned a unique identifier and feature type. Where applicable, the unique identifier corresponding with the GIS database will be placed on each structure by using a high-visibility pen marker, or similar marking instrument.

Based on previous conversations and past protocols set by Indian Trail, S&ME and Lawrence Associates personnel will wear brightly colored safety vests, carry credentials identifying them as Town Contractors and will drive marked company vehicles. S&ME also understand that we must provide our own traffic control measures as appropriate. S&ME has the option of digitizing features or using “as-built” or design drawings to locate features where field conditions make GPS acquisition a safety hazard or prevent the collection of GPS data.

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Sub-Task 2.2 – SCM Visual Observations

Based on discussions with Indian Trail, S&ME is assuming that this will be limited to visual observations with the primary intent of identifying locations, type of SCM, and condition of each SCM and will not need to be certified by a Professional Engineer (PE). S&ME will use a customized computer application to collect data during field observations. S&ME personnel will conduct visual observations of each SCM following GPS location of each feature. The application will generate a database containing attributes pertaining to each feature such as unique identifier, type, condition (“Good”, “Fair” or “Bad”), and general notes. S&ME personnel will also take representative photographs of each SCM as well as any defects noted during the visual observations.

DELIVERABLES

Task 1 – “Closed” Storm Water System Mapping Updates

Upon completion of mapping efforts, S&ME will provide the Town of Indian Trail with draft .kmz and/or ArcGIS shapefiles and paper maps depicting the storm water point and line features for Town comments. After addressing Town comments, S&ME will provide Indian Trail with final versions of the storm water point and line .kmz and/or shapefiles and associated databases. S&ME will also utilize the existing map grid and generate revised pages for the existing map book that depicts the comprehensive storm water system including “closed” storm water structures, open-channel culverts, and SCMs. S&ME will provide the Town with a single full-size copy and two half-size copies of the map book as well as a .pdf version.

Task 2 – Storm Water Control Measures (SCM) Mapping & Visual Observations

Upon completion of this task, S&ME will provide Indian Trail with an observation report in .pdf format for each SCM that was located. The report will include the unique identifier, type of SCM, condition, defects noted, general notes, representative photographs of the SCM, and photographs of defects (if necessary). S&ME will also provide Indian Trail with a copy of the .kmz and/or shapefiles and associated databases containing SCMs. These structures will also be depicted in the map books (see Task 1 deliverables above).

CLIENT RESPONSIBILITIES

Indian Trail shall be responsible for:

- Providing S&ME with additional locations or areas where “closed” storm water system structures have been added since 2009;
- Providing S&ME with locations where additional SCMs are located;
- Providing paper and/or digital copies of existing storm water systems and SCMs (where available); and
- Reviewing draft .kmz and/or GIS shapefiles and paper maps of storm water features and providing comments to S&ME.

11c

PROJECT COSTS & SCHEDULE

S&ME will perform the subject scope of services on a time and materials basis with a “not to exceed” cost of \$45,400. S&ME will continue to utilize the previously agreed upon 2015 Fee Schedule (see attached) as this addendum is a continuation of work started in 2015. Since this scope includes a large percentage of fieldwork, adverse weather conditions could cause completion of this task to be delayed. S&ME will, to the extent practicable, perform Tasks 1 and 2 concurrently in order to expedite this process.

Effort that is outside of the scope presented herein may be performed on a time and materials basis at the Town’s request. S&ME will provide the Town with an estimated cost to perform such effort and will only proceed with Town approval.

Task 1 – “Closed” Storm Water System Mapping Updates

S&ME will perform the “closed” storm water system mapping updates on a time and materials cost basis as per the 2015 Fee Schedule. Our cost estimate is based on mapping and performing visual observations on a maximum of 600 structures. S&ME can begin this work within two weeks of receiving notification to proceed and will complete this work prior to November 18, 2016 assuming we are authorized to proceed by August 15, 2016. The costs outlined below include reproduction costs associated with producing a single full-size and two half-size map books (approximately 90 pages each).

- Estimated Cost for Task 1(Not to Exceed) \$ 28,600

Task 2 – Storm Water Control Measures (SCM) Mapping & Visual Observations

S&ME will perform the SCM mapping and visual observation services on a time and materials cost basis as per the 2015 Fee Schedule. Our cost estimate is based on mapping and performing visual observations on a maximum of 60 SCMs with known locations and then as many additional SCMs as practical within the allotted budget outlined below. S&ME can begin this work within two weeks of receiving notification to proceed and will complete this work prior to November 18, 2016 assuming we are authorized to proceed by August 15, 2016.

- Estimated Cost for Task 2 (Not to Exceed) \$ 16,800

AUTHORIZATION

A revised Agreement for Services (Form Number AS-071), is attached and is incorporated as a part of this proposal addendum. Please indicate your acceptance of our proposal addendum by signing the form and returning it to our office. We will then proceed with the performance of services. If you elect to accept our proposal by issuing a purchase order, then please reference this proposal number and date. Your purchase order will be an acceptance of our Agreement for Services and an authorization to proceed with the performance of our services. The terms and conditions included in any purchase order shall not apply, as our agreement is for services that are not compatible with purchase order agreements.

11c

CLOSING

S&ME appreciates the opportunity to provide this proposal for additional storm water mapping services. Please feel free to contact us if you have questions, or if additional information is required.

Sincerely,

S&ME,



Carl Rogers
Manager – Natural Gas Services (Carolinas)

Senior Reviewed by: Stephen J. Loskota, P.E.
Manager – Civil Engineering (Charlotte)

Attachments:

2015 Fee Schedule
Form Number AS-071

lld (start)

Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Scott J. Kaufhold, P.E., Town Manager
DATE: August 9, 2016
SUBJECT: Proposed Mural and Placement

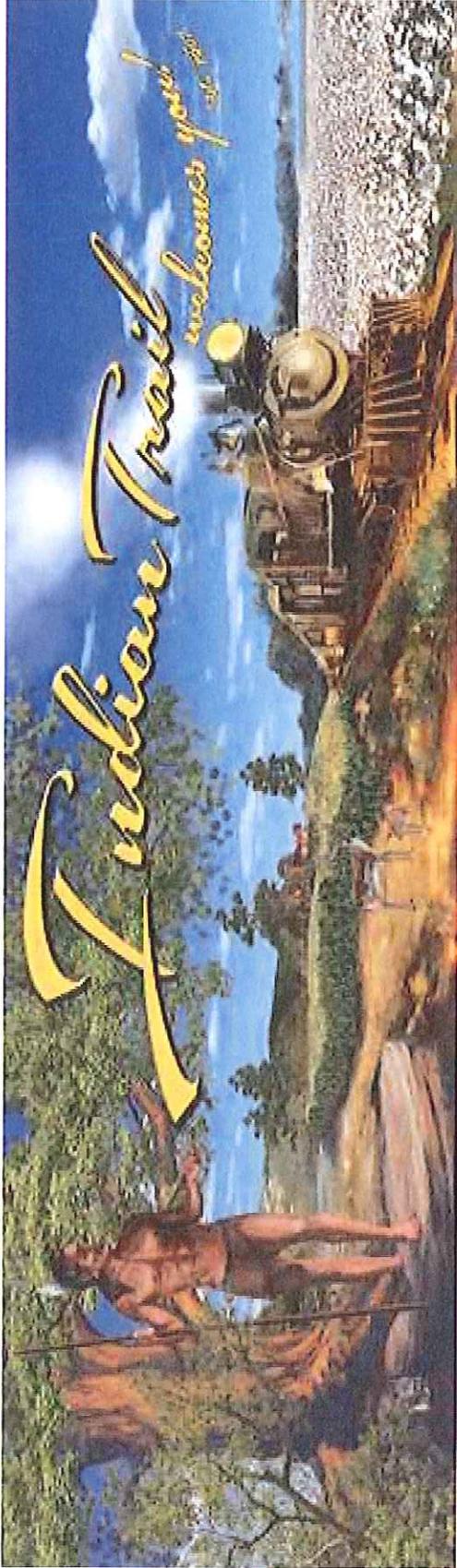


General Information:

The Indian Trail Historical Society has proposed a mural to place on the Carolina Courts building. Since this may fulfill terms in the Town's agreement with Carolina Courts, staff asks for direction from Council.

Attachment:

1. Proposed Mural
2. Carolina Courts Contract



CAROLINA
COURTS

* FINAL AGREEMENT

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE (this "Agreement") is made as of the ____ day of August, 2012 (the "Contract Date") by and between THE TOWN OF INDIAN TRAIL ("Seller") and PARTNERS IN HOOPS, LLC, a North Carolina limited liability company ("Buyer").

For and in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Terms and Definitions:

(a) "Property" shall mean that certain property containing approximately 3 acres, which is a portion of Union County Tax Parcel Number 07105011 and is shown generally on the map attached hereto as Exhibit A, together with all easements, rights, benefits and appurtenances thereto. The exact location and description of the Property will be determined during the Examination Period as described in Section 8 of this Agreement.

(b) "Town Property" shall mean Union County Tax Parcel Number 07105011, less and except the Property.

(c) "Purchase Price" shall mean the sum of Five Thousand and 00/100 Dollars (\$5,000.00), payable as follows:

(i) "Earnest Money" shall mean Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00). Within five (5) days of the Contract Date, the Earnest Money shall be deposited with Seller to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon in Section 12 below. The earnest money may be deposited in a non-interest bearing account.

(ii) Cash at Closing in the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00), as the balance of the Purchase Price.

(d) "Examination Period" shall mean the period beginning on the Contract Date and ending on the date ninety (90) days after the Contract Date.

(e) "Closing" shall occur on the earlier to occur of the following (the "Closing Date"): (i) the date that is thirty (30) days after the end of the Examination Period and (ii) the date of completion of all of the following: the Site Work (as defined in Section 6 (e)), the Rezoning (as defined in Section 6 (f)), and the Plat Approval (as defined in Section 8)).

(f) "Intended Use" shall mean the use of the Property for the following purpose: a basketball, volleyball, and similar court-sports facility offering, among other things, camps, clinics, leagues and tournaments, comprised of an approximately 48,000 square foot building and related parking.

(g) Seller's notice address shall be as follows:

Town of Indian Trail

Attention: Joe Fivas, Town Manager
PO Box 2430
130 Blythe Drive
Indian Trail, NC 28079

except as the same may be changed pursuant to Section 11.

With a required copy to:

George W. Sistrunk III
Hamilton Stephens Steele & Martin, PLLC
201 South College Street, Suite 2020
Charlotte, North Carolina 28244

except as same may be changed pursuant to Section 11.

(h) Buyer's notice address shall be as follows:

except as same may be changed pursuant to Section 11.

With a required copy to:

except as same may be changed pursuant to Section 11.

Section 2. Purchase and Sale of the Property; Use Agreement: Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement, the Property.

In addition, at Closing, Seller and Buyer shall enter into a Use Agreement (the "Use Agreement") that provides for the following:

- (a) A one-time payment from Seller to Buyer at Closing of \$150,000 (the "Use Fee").
- (b) A term of 15 years.
- (c) All Indian Trail residents, at no cost, shall have open court time (the "Open Court Hours") at the Facility (as defined in Section 9(b) below) for at least 10 hours every week during normal business hours and for a total of at least 1,300 hours each calendar year.
- (d) Buyer shall identify and post on the Facility website the Open Court Hours at least 15 days in advance.

(e) Seller may use the Facility for up to 8, one-day Town events per calendar year (such events shall not count toward the Open Court Hours), which events may be held on either week or weekend days, as reasonably determined by Buyer and Seller.

(f) Buyer shall host at least one 5 day camp for disabled or at-risk youths who are residents of the Town of Indian Trail.

(g) Seller, at its cost, may place a flat screen television or other similar device for displaying information about the Town of Indian Trail and its events in a location in the lobby of the Facility that is visible to visitors to the Facility.

(h) Seller, at its cost, may place the Town of Indian Trail logo/seal and/or marketing material related to the Town of Indian Trail on the interior and/or exterior of the Facility in locations to be agreed upon in a reasonable manner by Seller and Buyer.

Seller and Buyer shall attempt to agree on the specific terms of the Use Agreement prior to the end of the Examination Period. If Seller and Buyer fail to agree on all of those terms prior to the end of the Examination Period, either Seller or Buyer may terminate this Agreement by written notice to the other on or before the end of the Examination Period, in which case Buyer shall receive a return of the entire Earnest Money.

Section 3. Payment by Buyer of the Purchase Price: At Closing, Buyer shall pay the Purchase Price in accordance with the terms of this Agreement.

Section 4. Proration and Payment of Costs and Expenses: All real estate taxes, charges, and assessments assessed against the Property shall be prorated on a calendar year basis as of the date of Closing. Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated on a calendar year basis by the parties as of the date of Closing. Seller shall pay the excise tax on the deed and any other conveyance fees or taxes and for the cost of preparing the deed, and Buyer shall pay the deed recording costs and Buyer's own due diligence costs. Seller and Buyer shall pay for their own legal fees.

Section 5. Title and Permitted Exceptions: Seller shall convey to Buyer fee simple marketable title to the Property by special warranty deed, subject only to the Permitted Exceptions (as defined below). Seller represents and warrants to Buyer that Seller is the fee simple, record owner of the Property, and at Closing, Seller shall deliver to Buyer good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions, covenants, conditions and defects of title, other than (i) matters of record affecting the Property as of the Contract Date that Buyer does not object to in accordance with Section 6(a) below or which Seller is otherwise not required to cure or discharge pursuant to Section 6 below, (ii) taxes not yet due and payable, (iii) zoning and other governmental ordinances, regulations, and rules applicable to the Property, (iv) matters that would be revealed by a current and accurate survey of the Property, and (v) the matters described in Sections 9 and 10 ("Permitted Exceptions").

Section 6. Buyer's Conditions: This Agreement and the obligations of Buyer under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer) of the following conditions:

(a) **Title Review and Examination.** Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not good, marketable, fee simple and insurable or shall contain any other defects of title not acceptable to Buyer, in Buyer's sole discretion, then Buyer may notify Seller of all or any such title defects prior to the end of the Examination Period, and Seller, at Seller's option, may elect to cure such defects within thirty (30) days. If Seller notifies Buyer that it is not electing to cure such defects or does not cure such defects within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of the entire Earnest Money (notwithstanding that the Examination Period may have expired). Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Intended Use.** If Buyer determines, prior to the expiration of the Examination Period, that use of the Property for the Intended Use will (or may) violate any private restrictions, zoning ordinances, or other governmental regulations, then Buyer may terminate the Agreement by written notice to Seller prior to the end of the Examination Period and receive a return of the entire Earnest Money (notwithstanding that the Examination Period may have expired).

(c) **Same Condition of the Property.** If, at any time after the Contract Date and until the date of Closing, the Property is not in substantially the same condition as on the Contract Date (excluding any damage caused by Buyer's inspections), then Buyer may terminate this Agreement and receive a return of the entire Earnest Money (notwithstanding that the Examination Period may have expired).

(d) **Buyer's Inspections.** Buyer and Buyer's agents or representatives shall have the right to enter upon and access the Property for the purpose of inspecting, examining, performing soil boring, environmental and other testing, and surveying the Property. Buyer agrees to indemnify and hold Seller harmless from any third party claims filed against Seller directly and solely as a result of any negligent acts of Buyer in connection with such access on the Property by Buyer pursuant to this Section 6(d) and, prior to entering the Property, shall provide Seller with evidence of liability insurance in form and an amount satisfactory to Seller, in its reasonable discretion. If, prior to the expiration of the Examination Period, Buyer determines that the Property is unsuitable (in Buyer's sole discretion), then Buyer may terminate this Agreement by written notice to Seller before the end of the Examination Period, in which case Buyer shall receive a return of the entire Earnest Money. Seller shall deliver to Buyer, within five (5) days of the Contract Date, complete copies of any Seller's title insurance policy and any surveys and environmental reports regarding the Property in Seller's possession.

(e) **Preparation of Building Site.** Before the end of the Examination Period, Seller and Buyer shall attempt to agree upon any necessary grading and/or fill work that needs to be performed in order to prepare the Property for the Intended Use (the "Site Work"). The Site Work shall be performed at Seller's sole cost after the end of the Examination Period and prior to Closing. If Seller and Buyer fail to agree on the Site Work prior to the end of the Examination Period, either Seller or Buyer may terminate this Agreement by written notice to the other before the end of the Examination Period, in which case Buyer shall receive a return of the entire Earnest Money. If Seller and Buyer agree on the Site Work and Seller fails to complete the Site Work prior to the Closing Date, Buyer may terminate this Agreement by written notice to Seller on or before the Closing Date, in which case Buyer shall receive a return of the entire Earnest Money.

(f) **Zoning.** As soon as reasonably possible during the Examination Period, Buyer shall apply for and pursue a rezoning of the Property to a Conditional Zoning District of the Regional Business District (as defined in the Town of Indian Trail Unified Development Ordinance) (the "Conditional District"), with the Intended Use being classified as an Entertainment Sports/Sports & Recreation use under the Ordinance (the "Rezoning"). Seller agrees to sign the Rezoning application (provided, however, that Seller's signature on the Rezoning application shall not constitute an approval of the contents of the application or in any way bind the Town Council of the Town of Indian Trail) and waive the rezoning application/processing fee for the Rezoning, but Buyer will be responsible for any costs associated with the conceptual site plan required for the Rezoning. Buyer acknowledges that various conditions and restrictions may be placed upon the Property as a result of the Rezoning, including, without limitation, restrictions on the use of the Property, such that all permitted uses in the Regional Business District are not authorized uses for the Property under the Conditional District. If (i) Rezoning is not approved prior to the Closing Date or (ii) the conditions and restrictions of the Conditional District are not acceptable to Buyer, in its reasonable discretion, Buyer may terminate this Agreement by written notice to Seller on or before the Closing Date, in which case Buyer shall receive a return of the entire Earnest Money.

(g) **Seller's Performance under this Agreement.** Seller has performed and observed all of the terms, conditions, covenants and obligations under this Agreement on Seller's part to be performed or observed (including, without limitation, executing and delivering to Buyer all of the Closing documents required from Seller pursuant to this Agreement and conveying to Buyer good and marketable fee simple title to the Property in accordance with Section 5 above).

Section 7. Seller's Conditions: This Agreement and the obligations of Seller under this Agreement are hereby made expressly conditioned upon fulfillment of the following conditions prior to Closing:

- (a) The approval of the Town Council of Seller.
- (b) Compliance with the requirements of N.C.G.S. § 158-7.1 and/or § 160A-269.
- (c) Seller's approval, which shall not be unreasonably withheld, of the plans and specifications for the building to be constructed on the Property by Buyer.
- (d) Either (i) Seller fails to complete the Rezoning or (ii) the conditions and restrictions of the Conditional District are not acceptable to Seller, in its reasonable discretion.

If the conditions set forth in subsections (a) and (b) above have not been satisfied prior to the expiration of the Examination Period, either Seller or Buyer may terminate this Agreement by written notice to the other before the end of the Examination Period, in which case Buyer shall receive a return of the entire Earnest Money. If the conditions set forth in subsections (c) and (d) have not been satisfied prior to Closing, either Seller or Buyer may terminate this Agreement by written notice to the other at or prior to Closing, in which case Buyer shall receive a return of the entire Earnest Money.

Section 8. Property Description and Subdivision Plat: As soon as reasonably possible after the Contract Date, Seller and Buyer shall attempt to agree upon the exact location and boundaries of the Property, so that Buyer, at its sole cost, may complete a survey and, if necessary, a subdivision plat of the Property. If Seller and Buyer fail to agree on the exact location and boundaries of the

Property within thirty (30) days after the Contract Date (the "Boundary Determination Period"), either Seller or Buyer may terminate this Agreement by written notice to the other before the end of the Boundary Determination Period, in which case Buyer shall receive a return of the entire Earnest Money. Seller, at its sole cost, shall be responsible for obtaining any required subdivision approvals and for the cost of recording any subdivision plat (the "Plat"). If the Plat is not approved and recorded (the "Plat Approval") at or prior to the Closing Date, either Seller or Buyer may terminate this Agreement by written notice to the other on or before the Closing Date, in which case Buyer shall receive a return of the entire Earnest Money. Buyer acknowledges and agrees that Seller may choose not to begin the subdivision process until the expiration of the Examination Period.

Section 9. Deed Restrictions: In addition to the other matters described in this Agreement, Seller shall convey the Property to Buyer subject to the following matters, which shall be set forth in the deed delivered to Buyer at Closing:

(a) The Property shall only be used as allowed in the Conditional District, unless otherwise approved by the Town Council of the Town of Indian Trail.

(b) Buyer shall construct, at its sole cost and expense, a building of approximately 48,000 square feet containing at least the following amenities: 8 basketball courts and 8 volleyball courts (the "Facility"). Construction shall begin on the Facility within 30 days after Closing and be substantially completed within 150 days after Closing. The Facility shall open to the public on or before December 31, 2013.

(c) Seller has the right to approve any improvements constructed on the Property, which approval shall not be unreasonably withheld.

(d) If for reasons other than those beyond the control of Buyer, such as fire, acts of God, or other similar force majeure events, (i) the Facility is not open to the public on or before December 31, 2013, (ii) the Facility is not operated as allowed under the Conditional District for more than 30 consecutive days or for more than 120 total days in any one calendar year, or (iii) the Property is put to any use other than the uses allowed in the Conditional District, the Property, including the Facility and any other improvements located on the Property, shall automatically revert to the Seller.

Section 10. Declaration of Covenants: Buyer acknowledges that the Town Property will be part of a public park complex to be constructed and operated by Seller (the "Park") and that the Property will be governed by certain covenants, conditions, and restrictions related to the Park. In addition to the other matters described in this Agreement, Seller shall convey the Property to Buyer subject to the following matters, which shall be set forth in a Declaration of Covenants and Easements to be recorded by Seller at or prior to Closing:

(a) Reasonable covenants, conditions, and restrictions on the Town Property and the Property, provided that such covenants, conditions, and restrictions do not unreasonably interfere with the Intended Use.

(b) Seller, at its sole cost, shall construct at least a two-lane public road between Matthews-Indian Trail Road and the northwest property line of the Town Property in the area generally shown on Exhibit B attached hereto and incorporated herein (the "Road"). The Road shall be substantially completed on or before July 1, 2013.

(c) Easements across the Town Parcel for access to the Property in locations to be determined by Seller in its reasonable discretion.

(d) Easements for parking for visitors to the Property in locations to be determined by Seller in its reasonable discretion.

(e) Easements on the Property for parking for visitors to the Town Parcel.

(f) Buyer shall be responsible for all repairs and maintenance on the Property, including the Facility.

(g) Seller shall be responsible for all repairs and maintenance on the Town Property.

(h) Exclusive rights for Buyer to provide food and beverage services during certain events at the Property and restrictions on non-Buyer provided food and beverage services.

Seller and Buyer shall attempt to agree on the specific terms of items (c), (d), (e), and (h) prior to the end of the Examination Period. If Seller and Buyer fail to agree on all of those terms prior to the end of the Examination Period, either Seller or Buyer may terminate this Agreement by written notice to the other on or before the end of the Examination Period, in which case Buyer shall receive a return of the entire Earnest Money.

Section 11. Risk of Loss and Damage/Repairs: Until the Closing, the risk of loss or damage to the Property shall be borne by Seller. If, prior to Closing, either (i) any part of the Property is (or may be) taken by eminent domain or deed in lieu thereof, (ii) any condemnation proceedings are commenced or threatened, or (iii) any portion of the Property is damaged by fire or other casualty, then, in any such event, Buyer shall have the option, by written notice to Seller, to terminate this Agreement and receive an immediate refund of the entire Earnest Money. If Buyer does not terminate this Agreement, then this Agreement shall remain in full force and effect, and Seller shall assign, transfer and set over to Buyer at Closing all of Seller's right, title and interest in and to any condemnation awards or insurance proceeds (as applicable) that may be paid for any such taking or casualty (as applicable), or, if such award or proceeds (as applicable) have already been paid to Seller, then the amount of such paid award or proceeds (as applicable) shall be deducted from the Purchase Price (i.e., Buyer shall receive at Closing a credit against the Purchase Price for the amount of such award or proceeds). Except as to maintaining the Property in its same condition and the Site Work described in Section 6(e) above, Seller shall have no responsibility for making any improvements to the Property.

Section 12. Default and Earnest Money Disbursement: In the event of a breach of this Agreement by Seller and Seller fails to cure such breach within ten (10) days of Seller's receipt of written notice of such breach from Buyer (a "Seller Default"), and provided that Buyer is not then in default hereunder beyond the expiration of the applicable notice and cure period, then Buyer may elect, as its sole and exclusive remedy, to (i) terminate this Agreement, in which case the entire Earnest Money shall be returned to Buyer or (ii) sue Seller for specific performance. If Buyer breaches this Agreement and fails to cure such breach within ten (10) days of Buyer's receipt of written notice of such breach from Seller, and provided that Seller is not then in default hereunder beyond the expiration of the applicable notice and cure period, then Seller may elect, as its sole and exclusive remedy, to (i) terminate this Agreement, in which case the entire Earnest Money shall be paid to Seller or (ii) sue Buyer for specific performance. If either Buyer or Seller elect to terminate

this Agreement and receive the Earnest Money as described above, then Buyer or Seller, as applicable, shall retain the Earnest Money as liquidated damages arising from and not as a penalty for Buyer's or Seller's default and Buyer and Seller acknowledge that because of the difficulty, uncertainty, and inconvenience of ascertaining actual damages, the retention of the Earnest Money as liquidated damages does not constitute a penalty, but represents fair, adequate, and reasonable compensation for the other party's breach.

Section 13. Closing: The Closing shall consist of the execution and delivery by Seller to Buyer of a Special Warranty Deed, the Use Agreement, and other documents customarily executed by a seller in similar transactions, including, without limitation, a closing statement, an owner's affidavit (in form and substance acceptable to Buyer and Buyer's title insurance company), lien waiver forms (in form and substance acceptable to Buyer and Buyer's title insurance company), Seller resolution authorizing the sale of the Property to Buyer (in form and substance acceptable to Buyer), and a non-foreign affidavit, together with the payment of the Use Fee; and the execution and delivery by Buyer to Seller of the Use Agreement and other documents customarily executed by a buyer in similar transactions, including, without limitation, a closing statement, and a Buyer resolution authorizing the purchase of the Property, together with the payment by Buyer to Seller of the Purchase Price in accordance with the terms of this Agreement. At Closing, the Earnest Money shall be applied as part of the Purchase Price or as otherwise provided in this Agreement. The Closing shall be held at the office of Buyer's attorney or at such other place as the parties hereto may mutually agree. Possession shall be delivered to Buyer by Seller at Closing.

Section 14. Notices: All notices and other communications which may be or are required to be given or made by any party to the other in connection with this Agreement shall be in writing and shall be delivered in person or deposited in the United States mail, registered or certified, return receipt requested, or delivered by national overnight deliver service (such as Fed Ex), to the address(es) set forth in Section 1 (g) (as to Seller) and in Section 1 (h) (as to Buyer), or at such other addresses as specified by written notice delivered to the other in accordance with this Agreement. Any notice or other communication shall be deemed delivered upon the earlier of actual delivery or refusal of delivery. Any notice or other communication given by a party may be executed and sent by such party's legal counsel.

Section 15. Seller's Representations and Warranties: Seller represents and warrants to Buyer that (a) there are no condemnation(s) affecting, contemplated or threatened with respect to the Property; (b) there are no actions, suits or proceedings pending or threatened against the Property; (c) there are no changes pending or contemplated in any applicable laws, ordinances or restrictions affecting the Property; (d) there are no governmental or private assessments, either pending or confirmed, affecting the Property; (e) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (f) performance of this Agreement by Seller will not result in a breach of, or constitute a default under, any agreement or instrument to which Seller is a party or by which Seller or the Property is bound or result in the imposition of any lien or encumbrance upon the Property; and (g) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property or Seller, and Seller is not aware of any facts which might result in any such action, suit or other proceeding. Seller shall indemnify, defend and hold harmless Buyer and Buyer's affiliates, agents, employees, officers, members, managers and representatives from and against all losses, costs, expenses (including, without limitation, attorney's fees and court costs), claims, damages and liabilities in

connection with (or arising out of) any of the foregoing representations or warranties or other representations or warranties contained in this Agreement being false or incorrect.

Section 16. As Is Sale: BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT OR IN ANY DOCUMENT DELIVERED BY SELLER AT CLOSING, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY OR ANY MATTER RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR DEVELOPMENT OF THE PROPERTY, AND COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN ANY OF THE DOCUMENTS DELIVERED BY SELLER TO BUYER AT CLOSING, BUYER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS-IS, WHERE IS" CONDITION AND BASIS WITH ALL FAULTS.

Section 17. Applicable Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina.

Section 18. Headings: The paragraph headings are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provision hereof.

Section 19. Severability: The provisions of this Agreement are intended to be independent. If any provision hereof should be declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegality or invalidity shall not affect the remainder of this Agreement.

Section 20. Counterparts; Facsimiles: This Agreement may be executed in multiple counterparts which, when assembled, shall constitute one original. A counterpart executed and delivered by facsimile transmission or electronic mail shall be deemed an original.

Section 21. Business Days: If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Section 22. Time of the Essence: Time is of the essence as to all provisions of this Agreement.

Section 23. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective heirs, successors and assigns.

Section 24. Entire Agreement: This Agreement constitutes the entire agreement of the parties and may not be amended except by written instrument executed by Seller and Buyer.

Section 25. 1031 Exchange: Either party may consummate the purchase or sale of the Property as part of a so-called like kind exchange ("Exchange") pursuant to 1031 of the Internal Revenue Code of 1986, as amended ("Code"), and the other party shall diligently and promptly cooperate with the party performing the Exchange, including, without limitation, promptly executing and delivering to the other party any commercially reasonable Exchange documents.

Section 26. Assignment by Buyer: Buyer may not assign this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion.

Section 27. Broker: Seller represents to Buyer that Seller has not dealt with any real estate broker or agent in connection with this transaction. Buyer represents to Seller that Buyer has not dealt with any real estate broker or agent in connection with this transaction and Buyer shall indemnify and hold the other harmless from any other claim or demand made by any broker or agent with respect to this transaction because of acts or omissions of Buyer.

[Signature Page Follows]

BUYER:

PARTNERS IN HOOPS, LLC,
a North Carolina limited liability company

By: _____

Name: _____

Title: _____

Date: _____

SELLER:

TOWN OF INDIAN TRAIL

By: _____

Name: _____

Title: _____

Date: _____

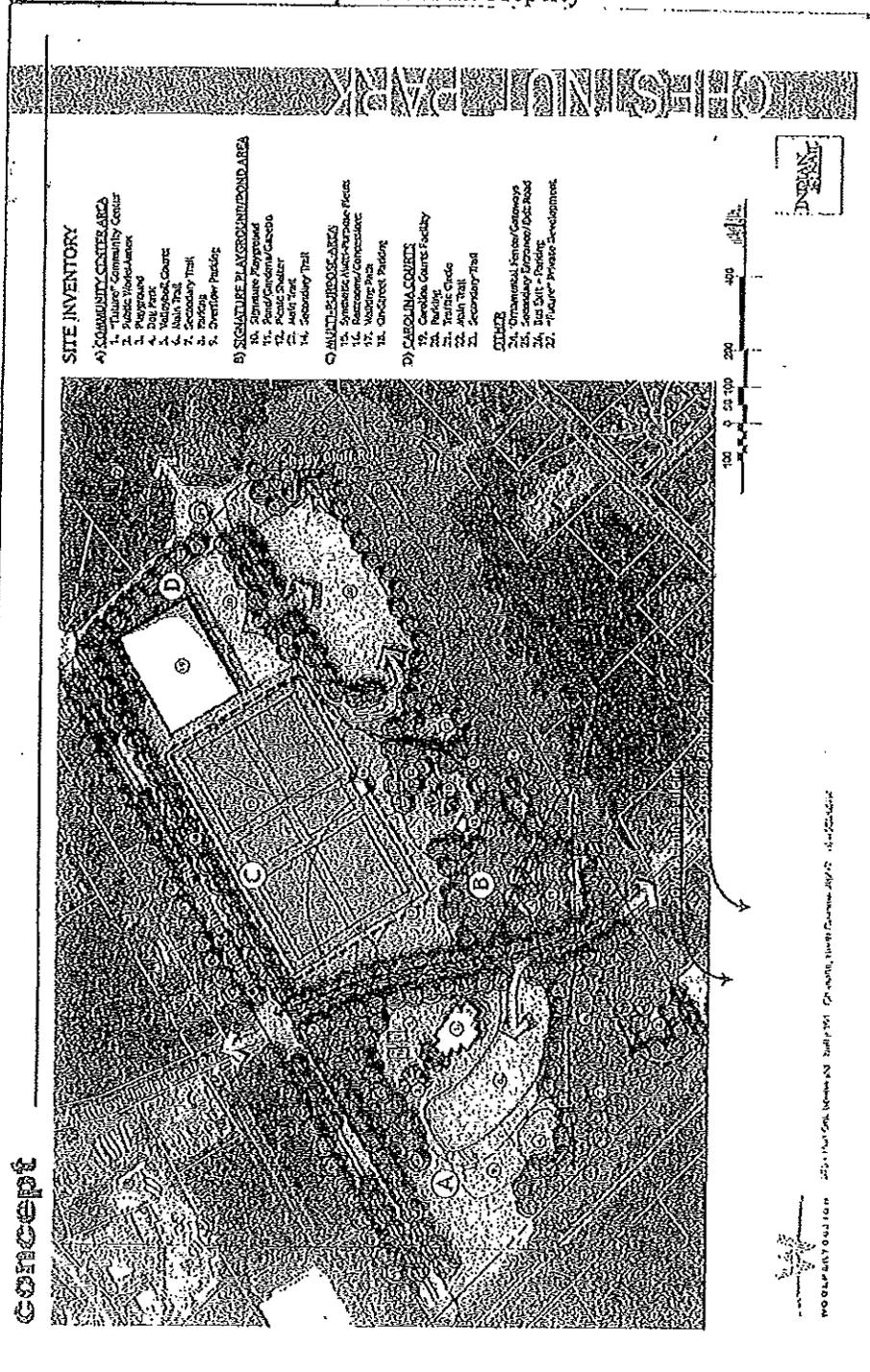
This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

(Signature of finance officer)

11d (end)

EXHIBIT A

Depiction of the Property



He

TOWN OF INDIAN TRAIL AGENDA ITEM REQUEST FORM

This form must be completed and attached to all supporting documentation for items to be included on the Town of Indian Trail Town Council Agenda.

Submitted By: GORDON B. DANIELS Department: TOWN COUNCIL

Contact Phone # (704) 907-1688 Date Submitted Aug. 3, 2016

Date of Town Council Meeting to consider this item: August 9, 2016
Meetings are generally 2nd & 4th Tuesday of each month. Meetings begin @ 6:30 p.m., snacks will be provided at all meetings.

Please indicate how much time you expect this matter to take: 15 MIN.

Description (give short summary of topic; this is how item appears on the Agenda.)
SEE ATTACHED

Who will attend Council meeting able to respond to questions? Give name & title: GORDON B. DANIELS, COUNCIL MEMBER

Where does this item need to appear? Check all that apply:

<input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Schedule Public Hearing**
<input checked="" type="checkbox"/> Presentation/Recognition	<input type="checkbox"/> Closed Session
<input checked="" type="checkbox"/> Business Items	<input type="checkbox"/> Discussion

*Board, commission, or group requesting joint meeting: _____

Supply General Statute or local ordinance that governs this item

Has this item been reviewed by Town Attorney? Yes _____ No X (Attach recommendation.)

What action is requested of the Council? MAKE APPROVE + MOTION

What action is requested of the Manager? NONE

Are Town funds required? Yes (No) \$ _____ Funding Source _____

PLEASE PROVIDE: A copy of all attachments for Council's Agenda to the Clerk no later than 5:00 pm the Tuesday before for above referenced meeting.

** If requesting a Public Hearing, attach a copy or sample Ad to run in newspaper **

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Business Item:

Council to consider directing the Town Attorney to investigate whether there is any discriminatory effect and resident disenfranchisement by some Council Members and some management staff introducing new town policies to limit free speech, limiting access to public information, direct violations of equal protection, and possible direct discrimination and harassment of one Council Member and residents; Including contacting the United States Department of Justice, EEOC, and the North Carolina Attorney General.

Gordon B. Daniels
8/3/16

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Town of Indian Trail

Memo

TO: Mayor and Town Council
FROM: Rox Burhans, Planning Director
DATE: July 29, 2016
SUBJECT: 2016-17 Solid Waste and Recycling RFP Levels of Service



BACKGROUND:

On August 1, 2012 the Town of Indian Trail entered into a contract with Waste Pro of North Carolina for residential solid waste and recycling collection and disposal services. This is a five year contract ending on July 31, 2017 with two potential, two year extensions. Town Council gave staff direction in early 2016 to initiate a request for proposal (RFP) process at the appropriate time to obtain a new service contract upon expiration of the existing contract. Council's stated intent was to ensure the Town is receiving the best possible service and cost for this critical community service. As a means of reference, the Town spent approximately \$1.64M on solid waste and recycling services in the 2015-16 fiscal year.

In order to ensure the most productive results from the RFP process, it is essential for the RFP document to accurately reflect the desired levels of service (LOS) for Indian Trail. When LOS is mentioned in this memo, it referring to the services offered by the town and the frequency of those services such as how often is recycling collected, how often should bulk waste be collected, etc. The following will provide a discussion regarding Indian Trail's current solid waste LOS and any staff recommended changes.

LEVEL OF SERVICE

Attachment 1 provides a snapshot of Indian Trail's solid waste and recycling service levels in comparison to other nearby communities in Union and Mecklenburg Counties. This is meant to illustrate how Indian Trail compares to its neighbors.

1. *Solid Waste/Garbage (i.e. beige can):* Weekly Service
Staff Recommendation: This is consistent with all other municipalities and no change is recommended. Weekly removal of domestic garbage/refuse is essential to maintaining a healthy community.
2. *Recycling (i.e. blue can):* Bi-Weekly Service
Staff Recommendation: All but two municipalities provide bi-weekly recycling service. The two that provide weekly service continue to use smaller bins necessitating the frequent pickups. Recycling participation has grown nationally and staff does receive periodic comments from citizens expressing a desire for weekly recycling service. While the recycling efforts of Indian Trail citizens are laudable, staff is not recommending offering weekly recycling collection service due to the significant costs. For reference, Indian Trail spent approximately \$301,000 on its bi-weekly recycling collection in the 2015-16 fiscal year.
3. *Yard Waste (i.e. green can or bagged curbside placement):* Bi-Weekly
Staff Recommendation: Yard waste is a service the Town generally falls behind in comparison to its neighbors who generally provide weekly service (Stallings being exception). Town staff hasn't received many inquires or complaints requesting more frequent service. This may be attributed to Indian Trail yard waste collection service having started in 2012 and that most of our neighborhoods are relatively new with less mature trees and shrubs. Staff is not recommending any change in the LOS, however, this is a service the Town may consider enhancing in the future as needs warrant. For reference, Indian Trail spent approximately \$211,500 on yard waste services.

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4. Bulk Waste: Three Times Per Year Curbside + One Community Drop Off Event

Staff Recommendation: Bulk waste is defined as large items such as a furniture, televisions, mattresses, and similar large items that cannot fit into the conventional trash receptacle. Curbside bulk waste removal is an important service to our citizens who often times don't have the physical means or time necessary to take bulky items directly to the Union County transfer facility. Bulk waste removal also helps with overall community beautification efforts in light of some homeowners often times storing unneeded bulk items in yards. There is a less consistent pattern when comparing Indian Trail's bulk LOS to other communities. Indian Trail is generally falling slightly behind our neighboring communities by only providing service 3-times per-year.

The community drop off event affords an opportunity to dispose of larger quantities of bulk items as well as a wider range of goods (chemical products, tires, etc.). A significant issue with the drop off event is that there is not an efficient way to determine if participants are actually Indian Trail residents. It's reasonable to assume that a substantive amount of users are not Indian Trail citizens and/or are contractors disposing of bulk waste. Union County also offers a similar drop off event in Monroe that is open to all Union County citizens several weeks after Indian Trail's drop off event.

Staff recommends eliminating the community drop off event and replacing this with a 4th or quarterly curbside bulk collection service within the RFP. As a means of reference, the Town spent approximately \$8,000 on its June 2016 bulk pick up service (pick up and tipping/disposal fees).

In considering the above information, Town Council may wish to seek citizen input on its service levels prior to issuing the RFP to ensure the solid waste and recycling program is consistent with citizen expectations. Yard and bulk waste pick up may be two services that feedback would be particularly useful.

OTHER RFP ELEMENTS

There are other elements to the RFP that staff will be integrating to help create a solid waste and recycling program that is tailored to our current needs. The following will briefly outline these items as presently known.

1. Code Enforcement/Nuisance Pick Up: Staff will be integrating a provision within the RFP for the waste company to pick up nuisance bulk items at the Town's request. There are regularly instances where bulk waste items are left on properties or abandoned along roadways that are difficult for staff to get removed by the property owner or may be in the public right-of-way. This provision would create a partnership between the Town and the waste company to have these items removed more quickly. This would likely be in the form of a draw down account that reflects a set number of pick-ups provided per-year by the waste company.

2. Marketing Graphics: The size of the garbage trucks and the frequency that they drive down every street within Indian Trail creates an opportunity to communicate with our citizens through the use of messaging graphics for community announcements. These temporary graphics would be installed on the side of the truck and could be changed as needed or feasible due to costs. Announcements could include park and recreation events, reminder of town ordinances such as parking regulations and grass height requirements, council or board meeting schedules, and similar items. Above is a photo of a City of Charlotte truck with a similar type messaging graphic. Staff is interested in hearing Council's thoughts on this communication tool.



3. Educational Initiative: The Town's current contract places the burden for solid waste and recycling education on Town staff. Recycling education is of particular importance in light of the credit the Town receives each month based on the tonnage of recycled material. Recycling's environmental benefits are also well documented. It's generally recognized that the more a community promotes recycling the more its citizens actually recycle. Town staff generally does not have sufficient time or the technical expertise to effectively educate our citizens on the importance of recycling. Staff feels that a national solid waste and recycling company would be in a much stronger position to lead this educational program and therefore staff will shifting more of this responsibility to the contractor in the RFP.
4. Yard Waste Carts: The Town presently accepts yard waste for pickup in one of three ways: A) Left at the curb in piles of a standard size, B) Placed in clear plastic bags, and C) Placed in a Town provided yard waste cart. Town yard waste carts are actually the solid waste carts previously used by Town residents prior to the 2012 Waste Pro contract, which resulted in a new receptacle. As part of the 2012 contract, Waste Pro purchased the older cans from Indian Trail and re-distributed them as yard waste carts upon request by residents. An assumption for this RFP is that the Town will continue with the use of its current carts and therefore there will not be a supply of older carts available for yard waste. To compensate for this staff will establish parameters for citizens to use acceptable "private" cans purchased in stores for the storage and collection of their yard waste.

5. Cart Logos: The image below reflects the current garbage and recycling carts used by Indian Trail. These receptacles feature the Town's branding image of a person at the end of a trail. There was been a recent transition to utilize the Town's official seal on town related items. Staff will need direction regarding the graphic to use on new cans and whether or not Council wishes to retrofit existing cans with the Town seal. In light of the number of existing receptacles featuring the Indian Trail branding image (20,000 +/- for garbage/recycling), staff is recommending making no change to existing receptacles and Council making a decision on new receptacles only.



6. Community Services: An element of the contract reflects the provision of garbage and recycling services to support the Town's various parks and recreation events and festivals. Staff is not recommending any change to this element of the contract. One unique aspect of the current contract is the provision of recycling services to all public schools within the Town of Indian Trail. While current staff was not part of the team that developed the contract, Staff suspects one contributing factor for this provision is the contract's requirement of a payment of a recycling credit to the Town for each ton of collected recycling material (at residential curbside, at schools and events).

There is a possible scenario that the Town will not be offered a flat rate recycling credit for each ton of collected material with the new proposals. This is largely related to reduced global demand for recycled material and the corresponding reduction in what recycling facilities are willing to pay for the material (if anything). Proposals may be structured in a manner that provides a more market-based approach that reflects issuing credits when recycled material is valued high, but not offering credits or possibly charging the town for recycling material when prices are low. Staff would like to receive Council feedback on the desire to continue providing recycling service to public schools in light of this potential scenario.

Staff will be discussing the above items at the August 9, 2016 Town Council meeting. Please feel free to contact me at 821-5401 or rburhans@planning.indiantrail.org should you have any questions before the meeting.

Attachments:

1. LOS Comparison

Attachment 1

Solid Waste and Recycling Level of Service Comparison									
	Indian Trail	Charlotte	Matthews	Mint Hill	Monroe	Huntersville	Stallings	Lake Park	Waxhaw
Solid Waste	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Weekly
Recycling	Bi-Weekly	Bi-Weekly	Bi-Weekly	Bi-Weekly	Bi-Weekly	Bi-Weekly	Bi-Weekly	Weekly ⁴	Weekly ³
Yard Waste	Bi-Weekly	Weekly	Weekly	Weekly	Weekly	Weekly	Bi-Weekly	Weekly	Weekly
Bulk	3X/Year	Weekly- by appt	Weekly- by appt	Weekly	Weekly	As needed- w/ fee	N/A	Monthly	2X/Year
Contractor	Waste Pro	All Points	Republic	RCS	Waste Pro	Advanced Disposal	All Points	Waste Pro	Advanced Disposal

1. Research obtained on June 6, 2016
2. Above survey of services is for curbside service only
3. Waxhaw reported they will likely go to every other week recycling service once 96-gallon carts are purchased.
4. Lake Park uses smaller bins versus the larger carts used by most other communities.