



Town of Holly Springs

Town Council Meeting Agenda Form

Town Clerk's Office Use:

Agenda Item #: 9i

Attachment #: 5i

Meeting Date: May 15, 2018

Agenda Placement: Consent Agenda

(Special Recognitions (awards, proclamations), Requests & Communications (reports, information presentations), Public Hearings, Consent Agenda, Unfinished Business, New Business, Closed Session)

Subject Title: Town Hall Commons #14-030- Gas Relocation along Avent Ferry

Presenter Name(s): none

SUBJECT HIGHLIGHTS:

As part of the Town Hall Commons project several "dry utility" relocations are required. A gas line along Avent Ferry Road needs to be moved out of the way so the footers for the parking deck can be installed and to allow clearance in the future for maintenance of the gas line and other utilities. PSNC proposes to perform the work for \$180,239.59

******* This cost was accounted for in the project budget previously approved by Council on April 17, 2018.*****This is for approval of the individual contract.**

Advisory board recommendation, if applicable:

n/a

Staff review results, if applicable:

Approval

Number of Motions with this Item: 1

Suggested motion(s):

Award contract for \$180,239.59 to PSNC for relocation of a gas line in the Town Hall Commons project.

Funds, if applicable, are to be appropriated from account(s) / line item(s):

Funds are currently budgeted for this contract.

Staff Review Record

Are there exhibits for this agenda item? **Yes**

List them in order they should appear in packet: **contract**

Department head initials and comments, if applicable:

Finance director initials and comments, if applicable: mmh

Town attorney initials and comments, if applicable: jps

Town manager initials and / or comments:

Town clerk initials: jp

Town of Holly Springs Budget Amendment Request

BE IT ORDAINED by the Governing Board of the Town of Holly Springs, North Carolina, that the following amendment be made to the annual budget ordinance for the fiscal year ending June 30, _____.

Department: Engineering

Date Submitted: 5/15/2018

Reason for Budget Amendment: Avent Ferry Road at Cass Holt right turn lane extension

(round to nearest \$25, \$50, \$75 or \$100; no cents)

Account Description	Account #	Increase	Decrease
Street Reserves	22.95		180,240
Town Hall Commons 14-030	48 813 90.04	180,240	
Total		180,240	180,240

Department Head Signature

Finance Director Signature

Town Manager Signature (if necessary)

Council Approved/Notified (if necessary)

Budget amendments under \$15,000, between departments, or reallocating funds from Capital Outlay or Salaries/Benefits must be approved by the Town Manager before submitting to Finance. Notified to Town Council at next meeting. Budget amendments that increase the overall budget need the Town Manager's signature and Council approval. Budget amendments \$15,000 and over need the Town Manager's signature and Council approval.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

**PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INCORPORATED
REIMBURSEMENT AGREEMENT**

This Reimbursement Agreement ("Agreement") entered into as of the _____ day of _____ 2018, is by and between **Public Service Company of North Carolina, Incorporated**, a South Carolina corporation, d/b/a PSNC Energy, ("PSNC") and **Town of Holly Springs**, a North Carolina municipal corporation ("Town").

WITNESSETH

Whereas, Town has requested that PSNC relocate certain pipeline by retiring approximately 850 feet of 6 inch steel main and approximately 30 feet of 4 inch plastic main currently located within the right of way for Avent Ferry Road (SR 1115) and installing approximately 930 feet of 6 inch steel main and approximately 50 feet of 4 inch plastic main within the right of way for Avent Ferry Road (SR 1115) as shown on Exhibit A attached hereto and incorporated herein by reference, due to new construction; and

Whereas, Town has agreed to reimburse PSNC for the costs of such relocation; and

Whereas, PSNC has agreed to accept such reimbursement of relocation costs in exchange for the relocation of the pipeline to accommodate Town.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and intending to be legally bound, PSNC and Town agree as follows:

1. Town hereby requests that PSNC relocate its pipeline as agreed and depicted on Exhibit "A" drawing. Town will insure that all appropriate grading has been performed, and will provide written notification to PSNC that the area has been prepared prior to the commencement of PSNC's obligations hereunder ("Commencement Notice"). Town currently anticipates that the Commencement Notice shall be delivered on or about _____.

2. Town shall reimburse PSNC for the "total actual relocation costs," including direct materials, labor and equipment, and overheads, specifically including but not limited to, engineering, supervision, applicable licenses, permits, taxes, surveying, and legal expenses and any and all other costs incurred by PSNC in relation to the relocation of the pipeline. PSNC currently estimates that the total costs of relocation will be approximately **\$180,239.59** ("estimated cost of relocation") although the actual costs may be greater or less than the estimated amount. The parties recognize that PSNC may incur unforeseen construction, legal, regulatory or other costs pursuant to this Agreement and Town agrees and acknowledges that its reimbursement obligation extends to cover all of PSNC's actual costs, specifically including, but not limited to the cost of any and all rock excavation in addition to all other costs.

3. The location of the pipeline as shown on Exhibit "A" will be acceptable to PSNC as long as no project changes by Town, Wake County, North Carolina Department of Transportation ("NCDOT"), or any other regulatory entity, or unforeseen obstructions preclude relocation of the pipeline as designed. Adjustments in the location due to Town, Wake County,

NCDOT or any other regulatory entity's project changes or unforeseen obstructions can be made by written mutual agreement between Town and PSNC prior to installation that shall include a revised drawing and a revised estimated reimbursement amount for the relocation.

4. This Agreement shall become effective on the day first written above. Following the execution of this Agreement, receipt by PSNC of the Commencement Notice as described in Paragraph 1 herein, receipt of any easements deemed necessary by PSNC, and receipt by PSNC of the "estimated cost of relocation", PSNC shall commence relocation of the pipeline as described herein, as soon as is reasonably possible, in PSNC's sole discretion. In the event that PSNC's "total actual relocation costs" are greater than the "estimated cost of relocation," Town agrees to make payment of any balance due (the difference) within thirty (30) days of the date of such invoice. In the event Town fails to make payment, PSNC shall be entitled to collect the amount of such invoice, together with interest at the rate of twelve percent (12%) per annum plus reasonable attorneys' fees and any court costs incurred by PSNC in any collection efforts. Interest shall accrue on any unpaid amount, including unpaid interest compounded daily, beginning on the payment due date of PSNC's invoice and shall terminate when such invoice is paid. If PSNC's "total actual relocation costs" are less than Town's prepayment, then PSNC shall refund the difference.

5. This Agreement may be terminated by PSNC upon the following terms:

- a. Town shall fail to make payment to PSNC of the "total cost of relocation" or to provide any easements deemed necessary by PSNC;
- b. Proceedings are commenced against Town under any bankruptcy or similar law;
- c. A receiver, liquidator, trustee or assignee in bankruptcy or insolvency shall be appointed for Town;
- d. If Town is a corporation, partnership, limited liability company, limited liability partnership or any other entity other than an individual and it dissolves, liquidates or terminates its separate business identity or fails to maintain a registered agent for service in North Carolina;
- e. Project changes by Town, Wake County, NCDOT, or any other regulatory entity or unforeseen obstructions preclude relocation of the pipeline as designed unless an alternative location is provided by Town, Wake County, NCDOT, or such other regulatory entity that is reasonably acceptable to PSNC, including written agreement to make such changes and to adjust the payment amount as necessary.
- f. By mutual agreement of the parties in writing. However, termination of this Agreement shall not relieve either party from any obligation accruing or accrued prior to the date of such termination nor shall such termination deprive a party not in default of any remedy otherwise available to it.

6. The obligations of PSNC hereunder shall be conditioned upon receipt by PSNC of the applicable permits, any licenses, or other governmental or regulatory approvals necessary for the relocation of the pipeline to the new location, the receipt of any and all easements deemed necessary by PSNC, and receipt of the "total cost of relocation".

7. Town shall hold harmless, defend and indemnify PSNC, its parent and affiliated companies and its respective agents, officers, directors, representatives and employees from and against all claims for injury or death of persons or damages to or loss of property arising from or related to the negligence of the Town or the Town's breach of this Agreement. This Indemnification shall specifically include but not be limited to, any costs, claims, fines, or causes of action, including reasonable attorneys' fees and court costs that arise in connection with any environmental condition existing on the original or relocated location, whether such condition is known or unknown as of the date of this agreement. This indemnification shall specifically include, but not be limited to, any claims resulting from a third party from any inability of PSNC to render service obligations to other customers due to a breach by Town hereunder, or damage to PSNC's pipeline which results from Town's negligence or willful misconduct.

8. Any notice or demand which must be given pursuant to this Agreement shall be deemed to have been made if deposited in the United States mail, postage paid and addressed to the parties as follows:

PSNC: PSNC Energy
P. O. Box 1398
Gastonia, NC 28053-1398

For design, engineering and construction matters:

Attention: Josue Alcaraz
Engineering Specialist II – Project Engineering
919-367-2745 [Telephone]
919-367-2737 [Facsimile]
Josue.Alcaraz@scana.com [email]

For all other matters:

Attention: Chris Norcross
Manager-Project Engineering
919-367-2702 [Telephone]
919-367-2737 [Facsimile]
CNORCROSS@scana.com [e-mail]

TOWN: Town of Holly Springs
Attention: Daniel Weeks, Assistant Town Manager
128 South Main Street
Holly Springs, NC 27540
919-557-2929 [Telephone]
_____ [Facsimile]
Daniel.weeks@Hollyspringsnc.us [email]

9. No assignment of this Agreement shall be permitted or valid without prior written consent of both parties.

10. No waiver by either party of one or more defaults by the other party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any other existing and/or future defaults under this Agreement, whether of a like or different character.

11. THIS AGREEMENT AND ANY CLAIMS HEREUNDER SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA.

12. This Agreement and the documents expressly incorporated herein by reference constitute the entire Agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, whether oral or written, between the parties with respect to the subject matter hereof. No statement, promise, or inducement made by either party, or any agent or representative of either party that is not contained in this Agreement shall be binding on the other party. Subject to the other provisions of this Agreement, this Agreement may not be amended, changed, enlarged, modified, restated, supplemented, or altered except by a written agreement(s) signed by both parties.

13. This Agreement shall inure to the benefit of, and be binding upon the successors of the respective parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

**Public Service Company of North
Carolina, Incorporated d/b/a PSNC Energy**

By: _____
Printed Name: _____
Title: _____

**Town of Holly Springs a North Carolina
municipal corporation**

By: _____
Printed Name: Richard G. Sears
Title: Mayor

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

Finance Officer

Date: _____