



City of Bartlett
A. Keith McDonald, Mayor

BOARD OF MAYOR AND ALDERMEN MEETING AGENDA

TUESDAY, OCTOBER 11, 2022 - BARTLETT CITY HALL - 6:00 PM

INVOCATION

Opening Prayer by Johnny Byrd, Legacy Church

FUTURE MEETINGS

Parks and Recreation Advisory Board, October 13 at 6 p.m.

Bartlett Arts Council, October 18 at 6 p.m.

BPACC Advisory Board, October 18 at 6 p.m.

RECOGNITIONS

Official Business of the Day

MINUTES ACCEPTANCE

Minutes of the September 27, 2022 Board of Mayor and Aldermen Regular Meeting

CONSENT AGENDA

No consent items

NEW BUSINESS

- 1 Contract for Brunswick Road, Elmore Park Road, and Elmore Road Asphalt Resurfacing Design Project. (John Horne, Assistant Director of Engineering)**

Recommend accepting the environmental and design contract proposal from EnSafe in the amount of \$206,073.00. Funds are available in Account 311.48311.772.458.

- 2 Resolution 35-22, a resolution to amend the Fiscal Year 2023 Bartlett City Schools General Purpose School Fund and Education Capital Projects Fund. (Dick Phebus, Director of Finance)**

OPEN DISCUSSION

ADJOURNMENT



City of Bartlett

A. Keith McDonald, Mayor

BOARD OF MAYOR AND ALDERMEN MEETING MINUTES

TUESDAY, SEPTEMBER 27, 2022 - BARTLETT CITY HALL - 6:00 PM

ATTENDANCE

Mayor A. Keith McDonald: Present, Alderman W.C. Pleasant: Present, Alderman Mandy Young: Present, Alderman David Parsons: Present, Alderman Bobby Simmons: Present, Vice Mayor Jack Young: Present, Alderman Kevin Quinn: Present.

INVOCATION

Opening Prayer by Fred Shackelford, Ellendale Baptist Church

FUTURE MEETINGS

Industrial Development Board (Special Called), September 29 at 6:30 p.m.

Family Assistance Commission, October 3 at 6 p.m.

Beer Board, October 4 at 6 p.m.

Planning Commission, October 4 at 7 p.m.

Bartlett Station Commission, October 5 at 7:30 a.m.

City Beautiful Commission, October 6 at 6:30 p.m.

RECOGNITIONS

Bartlett City Schools TRAP Team Proclamation

Mayor McDonald presented the Bartlett Trap Team with a proclamation recognizing their success at the state and national competitions. Those recognized were:

Ginny Sidle, Jordan Pesti, Abbigail Longo, Cole Lindsey, Maddie Boone, Haden Russell, Graden Duckworth, Felton Adams, Ben Pair, Case Hardison, Daniel Zingraf, and Kaven Maufas.

*****Official Business of the Day*****

MINUTES ACCEPTANCE

Minutes of the September 13, 2022 Board of Mayor and Aldermen Regular Meeting

Minutes Acceptance: Minutes of Sep 27, 2022 6:00 PM (MINUTES ACCEPTANCE)

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Bobby Simmons, Alderman
SECONDER:	David Parsons, Alderman
AYES:	W.C. Pleasant, Mandy Young, David Parsons, Bobby Simmons, Jack Young, Kevin Quinn

PUBLIC HEARING

Individuals will have a maximum of three minutes to speak either for or against the item, with a total of 20 minutes for each side.

- I. Resolution 28-22, a resolution to approve a special use permit for Joyce's Gardens Planned Unit Residential Development located at 6778 Old Brownsville Road within the "RS-15" single family residential zoning districts.

The Director of Planning and Economic Development, Kim Taylor, stated that phase I of this development conforms to the RS-15 requirements for lot sizes of 15,000 square feet. The second phase would be smaller lot sizes and differentiating setbacks which require a special use permit. The Planning Commission met on August 1, 2022 with a favorable recommendation. Developer Matthew Wissinger stated the Planned Unit Development would be named after his mother and that the development would be single family homes, no apartments.

No one spoke in favor.

The following spoke in opposition:

Stephanie Woodward, 4761 Ardie Road, questioned the reasons for differing sized lots, concerns of the smaller lots becoming rental properties, and would like some investment into the existing properties.

Eileen Wilkes, 6753 Raner Creek Drive, stated that the company owned by Mr. Wissinger in Colorado was a leasing and property management company with lease to own properties. She wanted guarantee that the proposed development would be owner occupied and not rental property. She expressed concern of increased crime rate, increased rental occupancy, and a lack of safety for children in the smaller lot section and would like to see the development as all larger lots if possible. She questioned if the City of Bartlett was aware of the developer's company type.

Sam Lacastro, 6480 Raner Creek Dr., questioned the differing sized lots.

Emily Winter, 4935 Springtree Dr., questioned if water and sewer capacities had been researched for the 42 proposed units. She expressed concerns of social media posts including apartments for this development. She questioned measures that would be taken to ensure her property's protection from construction.

Adjourned at 6:22 p.m.

Developer Wissinger responded to the public hearing questions by stating they were developing the subdivision for resale, not rentals. He restated that the development would be named after his mother. The developer's uncle, Gary Blume, spoke to the size of the lots and equated them to a previous development he built, Old Bartlett Village, where they are nice sized homes on smaller lots. He stated the home would be at least 1800 square feet and they had no intention of leasing the homes built.

Director of Engineering Rick McClanahan responded by stating that the water main being installed on Old Brownsville Road will provide both water and fire protection to the new

Minutes Acceptance: Minutes of Sep 27, 2022 6:00 PM (MINUTES ACCEPTANCE)

development. In addition the developer will be extending the sewers and there is capacity in the transport system as well as capacity to treat at the Loosahatchie plant.

Police Chief Cox stated there was ample manpower and police cars in that district and the low crime rate in this part of the city is maintaining well.

Director of Code Enforcement Jim Brown stated when ground is broken a water supply is required to minimize dust and debris. Silt fences are also required.

2. Resolution 29-22, a resolution approving a special use permit to allow a tattoo and body piercing establishment to be located at 2965 North Germantown Road Suites 129 and 130, within the "C-H" Highway Business zoning district.

SUP Applicant Salina Alvarado, 711 Cedar Brake Dr., Cordova, Tenn., said that she wanted to bring a tattoo establishment to Bartlett so that individuals would not have to leave the community for this type of service.

Connie Waters, 4890 Rivercrest Lane, spoke in favor the applicant. She felt the establishment would benefit the community and enable individuals that need tattoos to reconstruct surgery wound and to memorialize loved ones. She said Ms. Alvarado will do things right.

The following spoke in opposition:

Olena Petrova, 5034 Trent Cove, asked if studies had been conducted in correlation to tattoo parlors and increased criminal activity. She expressed concerns of the Wolfchase area in close proximity to the proposed establishment and a possible increase in crime.

Stephanie Woodard, 5461 Ardie Road, asked if artists would be licensed and certified and if there would be an increase in loitering.

Adjourned at 6:30 p.m.

Chief Cox stated he did not believe the establishment would increase crime in that area, but the police department could increase the business watch and patrol for loitering.

Ms. Alvarado confirmed that the artists were required to be licensed and certified, even apprentices. She stated she would post a no loitering sign. She said as a licensed private contractor she is permitted to deny any individual from services citing examples of denying drug addicts, or gang related individuals.

UNFINISHED BUSINESS

Amendment to Res 28-22

Alderman Quinn asked the developer who would write the Homeowner Association's by-laws and if a condition could be placed regarding rentals.

Mr. Blume stated that they had engaged attorney Mike Murphy to write the covenant. Mr. Blume said he could include in the covenant that no rental properties would be permitted.

Alderman Quinn asked if there could be exceptions.

Vice Mayor Jack Young asked if they would include in the covenant that homes be owner occupied.

Mr. Blume responded yes.

Alderman Quinn asked for exceptions to rent be allowed to go before the Homeowner Association's board for approval.

Alderman Parson asked what percentage of the Homeowner Association's board would require passage.

City Attorney Ed McKenney said the vote pass basis would be clarified in the Homeowner Association's by-laws and can vary between HOAs.

Vice Mayor Young said that if the covenant states homes must be owner occupied, Alderman Quinn's request to allow exceptions for renting doesn't apply. He said the controversy and comments from citizens is that the City of Bartlett has too many leased homes now.

RESULT: **APPROVED [4 TO 2]**
MOVER: Kevin Quinn, Alderman
SECONDER: Bobby Simmons, Alderman
AYES: Mandy Young, David Parsons, Bobby Simmons, Kevin Quinn
NAYS: W.C. Pleasant, Jack Young

- 2 Resolution 28-22, a resolution to approve a special use permit for Joyce's Gardens Planned Unit Residential Development located at 6778 Old Brownsville Road within the "RS-15" single family residential zoning districts. (Kim Taylor, Director of Planning and Economic Development)**

Amended to include:

Board of Mayor and Aldermen Conditions:

Homes must be owner occupied with any exception to be approved by the Homeowner Association's Board.

RESULT: **APPROVED AS AMENDED [UNANIMOUS]**
MOVER: Jack Young, Vice Mayor
SECONDER: Mandy Young, Alderman
AYES: W.C. Pleasant, Mandy Young, David Parsons, Bobby Simmons, Jack Young, Kevin Quinn

- 3 Resolution 29-22, a resolution approving a special use permit to allow a tattoo and body piercing establishment to be located at 2965 North Germantown Road Suites 129 and 130, within the "C-H" Highway Business zoning district. (Kim Taylor, Director of Planning and Economic Development)**

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Jack Young, Vice Mayor
SECONDER: Mandy Young, Alderman
AYES: W.C. Pleasant, Mandy Young, David Parsons, Bobby Simmons, Jack Young, Kevin Quinn

CONSENT AGENDA

RESULT: **APPROVED [UNANIMOUS]**
MOVER: David Parsons, Alderman
SECONDER: W.C. Pleasant, Alderman
AYES: W.C. Pleasant, Mandy Young, David Parsons, Bobby Simmons, Jack Young, Kevin Quinn

- 1 Reschedule the Tuesday, November 8 Board of Mayor and Aldermen meeting to Monday, November 14, 2022 at 6 p.m. (Mark Brown, Chief Administrative Officer)**
- 2 Dispense with second Board of Mayor and Aldermen meetings in November and December. (Mark Brown, Chief Administrative Officer)**
- 3 Treasurer's Report for June 2022. (Dick Phebus, Director of Finance)**

Budgeted Expenditures	\$87,957,409
Year-to-date Expenditures	\$96,051,996
Budgeted Revenues	\$87,957,409
Year-to-date Revenues	\$99,417,146

NEW BUSINESS

- 1 Set a public hearing for October 25, 2022 for Resolution 34-22, a resolution approving a special use permit to allow a general automobile repair establishment to be located at 5798 Ferguson Road, within the “I-O” Wholesale and Warehouse zoning district. (Kim Taylor, Director of Planning and Economic Development)**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jack Young, Vice Mayor
SECONDER:	W.C. Pleasant, Alderman
AYES:	W.C. Pleasant, Mandy Young, David Parsons, Bobby Simmons, Jack Young, Kevin Quinn

- 2 BPACC Season Slideshow Presentation. (Michael Bollinger, Director of BPACC)**

RESULT:	NO VOTE REQUIRED
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OPEN DISCUSSION

Paul Kaiser, 3323 Marcus Cove, announced his candidacy for Alderman Position 3.

ADJOURNMENT

Meeting adjourned at 7:11 PM

W.C. Pleasant, Register to the
Board of Mayor and Aldermen

A. Keith McDonald, Mayor

Minutes Acceptance: Minutes of Sep 27, 2022 6:00 PM (MINUTES ACCEPTANCE)

**Board of Mayor and Aldermen**

6400 Stage Road
Bartlett, TN 38134

SCHEDULED**AGENDA ITEM**

Meeting: 10/11/22 06:00 PM

Department: Engineering

Category: Contract

Prepared By: Erin Campbell

Department Head: John Horne

Contract for Brunswick Road, Elmore Park Road, and Elmore Road Asphalt Resurfacing Design Project.

The Engineering Department requested a proposal to prepare NEPA (National Environmental Policy Act) documents and a design to resurface Brunswick Road, Elmore Park Road, and Elmore Road from EnSafe. This project is being funded with 80 percent federal and 20 percent local funds through the TDOT local programs office. EnSafe submitted a proposal to prepare all necessary documents to satisfy TDOT's NEPA requirements, prepare construction plans, and see the project through the bidding process for \$206,073.00 (\$27,590.00 for NEPA and \$178,483.00 for design). The Engineering Department recommends awarding this contract to EnSafe for NEPA and design in the amount of \$206,073.00.

EnSafe has performed work for the City of Bartlett on other projects. A copy of the proposal is below.

Funding is available in Account 311.48311.772.458.



July 13, 2021

Mr. John Horne
Engineering Deputy Director
City of Bartlett
6382 Stage Road
Bartlett, Tennessee 38134

via email: jhorne@cityofbartlett.org

**Re: Proposal for Brunswick Road, Elmore Park Road, and
Elmore Road Asphalt Resurfacing Design Project**

Dear Mr. Horn:

EnSafe Inc. is pleased to present a technical proposal and fee to prepare design plans for the asphalt resurfacing of the roadways Brunswick Road, Elmore Park Road, and Elmore Road.

PROJECT DESCRIPTION

The City of Bartlett needs to improve the aging asphalt pavement along Brunswick Road, Elmore Park Road, and Elmore Road. The project is a Tennessee Department of Transportation (TDOT) Local Program project with funding from the State of Tennessee and a local match.

The Brunswick Road portion of the project shall be repaved from US 64 to US 70 approximately 4 miles. Elmore Park Road is to be repaved from Elmore Road to Stage Road approximately 1 mile. The Elmore Road portion will be repaved from Bartlett Boulevard to US 70 and is approximately 1 mile. All three roadways have a rural cross section with roadway widths ranging from 22 feet to 24 feet with open shoulders and roadside drainage ditches. Brunswick Road has curb and gutter cross sections in the areas of more recent developments along the roadway. In the curb and gutter sections, the roadway width widens beyond 24 feet to accommodate turning lanes.

SCOPE OF SERVICES

EnSafe proposes the following Scope of Services:

National Environmental Policy Act Documentation

The project will start with preparing National Environmental Policy Act (NEPA) documentation for the proposed development according to *TDOT Local Government Guidelines for Completing the NEPA Process* (TDOT, January 2018). It is anticipated a Federal Highway Administration Categorical Exclusion (CE) will be required for the project since the proposed improvements are not expected to exceed the existing limits of the right-of-way. EnSafe will first prepare Agency Coordination and Section 10 Assessment letters for TDOT to begin coordination for the project. These letters will provide the core information needed for the TDOT Local Programs NEPA Template, including basic resource studies of each section of roadway included in the project to document any potential sensitive environmental resources (e.g., streams or wetlands). TDOT Local Programs will send coordination materials to all resource agencies and the State Historic Preservation Office. Upon receipt of agency responses, EnSafe will coordinate with the City of Bartlett to assemble and complete all documentation needed for the TDOT Local Programs

CE Template. The project is not expected to have significant impacts since the repaving will only affect the existing footprint of each section of road. EnSafe will assist the City of Bartlett to submit the completed Draft CE for TDOT Local Programs review.

TDOT E-Grants Program Assistance

EnSafe will subcontract with A2H to assist the City of Bartlett in managing the project through the TDOT E-Grant system. EnSafe and A2H will assist the City in organizing and uploading information throughout the life of the project for reimbursement invoices, project files for milestone submissions, and verification of project status and response to TDOT inquiries. EnSafe and A2H will verify document management through the E-Grant system to ensure that all submissions and requests are addressed in a timely manner.

Survey

The City of Bartlett is to provide EnSafe with their geographic information system curb and gutter data to be used for the design. EnSafe will also utilize the LiDAR information including aerials for the repaving design. The repaving design is to remain within the limits of the existing roadway. The design is not to include any improvements to adjacent storm water drainage ditches and properties. The repaving design shall include improvements to the Americans with Disabilities Act (ADA) ramps located at all roadway intersections within the project limits.

In order to design the improvements to the ADA ramps, EnSafe will subcontract with A2H to collect survey data of the ADA ramps along the existing roadways, Brunswick Road, Elmore Park Road, and Elmore Road. This data collection will include a topographic survey of the corners of the intersections along each roadway where ADA ramps exist and are required. A2H will mark underground utilities and collect data for existing above and underground utilities within the areas of the ADA ramps to show any conflicts with the design.

Preliminary Design

Once TDOT Local Program provides the City of Bartlett with the Notice to Proceed with design, EnSafe and their team will prepare a preliminary design for the repaving of all three roadways. EnSafe will provide street profiles and layout for Brunswick Road, Elmore Park Road, and Elmore Road. The plans will include the following:

- Layout/Street plans
- Erosion control plans
- Erosion control details
- Traffic control plans
- Design details and notes
- Structural Design for Box Culvert Guardrails (Brunswick Road) (if necessary)
- Pedestrian Signalization Improvement (US 70) (if necessary)

EnSafe will submit the preliminary design plans to the City of Bartlett Engineering Department for review. Once the City's review is complete, EnSafe will submit the plans to TDOT Local Program for approval of the plans and to begin the Right-of-Way (ROW) design phase.

During the preliminary design phase, EnSafe will begin the utility coordination required by TDOT Local Programs. EnSafe will reach out to every utility owner in Shelby County since TDOT Local Programs requires a 120-day initial contact period.

Right-of-Way Design

EnSafe will prepare and submit ROW plans per the Local Program requirement. The purchasing of ROW is not expected with the repaving project but EnSafe will investigate any potential need for construction easements along the roadways. If any easements are required, EnSafe will subcontract with A2H surveying to prepare plats for the purchase and a TDOT approved appraiser to assist the City of Bartlett in the acquisition of any required construction easement.

Final Design

For the final design phase of the project, EnSafe will incorporate any comments provided from the previous two design phases. EnSafe will submit the complete plan set to the City of Bartlett for review and once the City approves the plans, EnSafe will submit the plans to TDOT Local Programs for approval to advertise for bidding.

Box Culvert Guardrail Design

If required by the TDOT, EnSafe will prepare structural drawings to connect guardrail to the Buckhead Creek box culvert/bridge that crosses under Brunswick Road approximately 664 feet south from the intersection of Brunswick Road and US 70. The guardrail design will also include the type 38 guardrail terminals and any shoulder modifications needed at each corner of the box culvert/bridge. The box culvert/bridge is an estimated double box with 10 feet wide cells each and crosses under Brunswick Road at a 30 degree angle. The estimated length of the guardrail including terminals needed is approximately 124 feet each side of Brunswick Road.

US 70 Pedestrian Signal Design

EnSafe does not foresee the need to improve the pedestrian signals and push buttons at the intersection of Brunswick Road and US 70. If improvement are required by TDOT, EnSafe will design the new pedestrian push buttons and signal crossing.

Construction General Permit

EnSafe does not expect the areas of disturbance for the entire project to be more than 1 acre since the repaving of the roadways is not to exceed the limits of the existing roadways. Per Tennessee Department of Environment and Conservation, if the disturbance area is less than 1 acre a Storm Water Pollution Prevention Plan (SWPPP), a General Construction Permit (GCP), and the Notice of Intent are not required. If the ADA ramp modifications and TDOT requires additional work, then EnSafe will prepare a GCP and SWPPP to be submitted to Tennessee Department of Environment and Conservation.

Bidding

EnSafe will work with the City of Bartlett to bid the proposed resurfacing project. EnSafe will prepare a bid tabulation and bid book for bidding. EnSafe will work with the City of Bartlett to conduct a pre-bid meeting and reviewing the submitted bids. EnSafe will work with the City of Bartlett and TDOT Local Programs to ensure that the bidding documents meet their requirements before advertising and the opening of the bids.

Construction Engineering Inspection

EnSafe will perform the Construction Engineering Inspection services once the construction phase of the project commences. EnSafe and its team will provide the City of Bartlett a detailed scope and fee estimate for this portion of the work, after the contractor has been selected.

PERFORMANCE SCHEDULE

EnSafe will provide these services based on the following schedule.

Task	Duration
NEPA	3 months
Survey	3 weeks
Preliminary Design	5 months
ROW Design	1 month
Final Design	4 months
Bidding	2 weeks

Schedule durations are cumulative and assume tasks are in series, unless noted. Schedule durations do not include City of Bartlett and/or TDOT Local Program review and approval times. ROW design schedule does not include time for plat preparation and/or appraisals.

DELIVERABLES

1. NEPA Categorical Exclusion documentation
2. Preliminary Design
3. ROW Design
4. Final Design
5. Bid Package
6. Construction Easement Plats

PROJECT ASSUMPTIONS

- EnSafe will have access to the site, as required, to conduct site observation and field work.
- Permit, recording fees, etc., are to be paid by the Client/Owner.
- There are no historical structures involved with the project.
- Schedule is dependent upon the timely receipt of critical information, such as responses from regulatory authorities, and Owner/Contractor/Property Owners. Information to be provided by others will be received in a timely manner that corresponds to the civil engineering project schedule. If the information is not received in a timely manner, then additional design fees may be required.
- Construction administrative service does not include material testing or daily inspections.
- Floodway modeling/studies are not required.
- Wetlands and stream permitting are not needed.
- Construction staking will be provided by others.

- Geotechnical investigation is not required.
- Proposed modifications will be inside the right-of-way.
- TDOT will classify all three roadway sections as rural roads.

COMPENSATION

EnSafe proposes to conduct the described scope of work on a lump-sum basis.

Task	Fee
NEPA	\$ 27,590
Survey	\$ 16,950
Preliminary Design	\$ 54,070
ROW Design	\$ 27,415
Final Design	\$ 44,820
Bidding	\$ 10,358
Box Culvert Guardrail Design	\$ 12,950
Pedestrian Signal Improvement	\$ 8,920
GCP/SWPPP Preparation	\$ 3,000
Total	\$ 206,073

Fees for preparing plats and property appraisals are not included in the table above. Plats will be billed at \$825 per plat and appraisals will be \$5,500 for the first appraisal and \$5,280 for the second appraisal.

This work will be performed under EnSafe's standard terms and conditions, Attachment A. For any additional services, by written request only, the City of Bartlett will be billed for EnSafe's services based on the 2021 Professional Fee Schedule, Attachment B.

EnSafe sincerely appreciates the opportunity to be considered as your Consultant for this project. This proposal is based on EnSafe's understanding of the project. However, if your project objectives are not addressed or you have any questions, please feel free to contact me at 901-937-4249 or by email at ctriplett@ensafe.com.

Sincerely,

EnSafe Inc.



By: Chris Triplett, PE, PMP
Director of Design Engineering

Attachments:

- Attachment A EnSafe Terms and Conditions dated v.3.2020
- Attachment B EnSafe 2021 Professional Fee Schedule



Mr. Horne
July 13, 2021
Page 6

PROPOSAL ACCEPTANCE STATEMENT

EnSafe Inc.'s proposal dated July 13, 2021 is hereby accepted on behalf of the City of Bartlett.

By: _____
Signature

Date: _____

Name: _____

Title: _____

ENSAFE

Attachment A
EnSafe Terms and Conditions dated v.3.2020

EnSafe Inc.
Terms and Conditions

Services furnished by EnSafe Inc. and its affiliate companies shall be subject to the terms and conditions set forth below, which are a part of the Agreement between Consultant and Client. Additional terms and conditions may apply, depending upon the nature of the services being furnished and the associated risks.

1. Definitions.

- a. Agreement - the contract between Client and Consultant, including all attachments, appendices, addenda, exhibits and any documents incorporated by reference.
- b. Claim - the term "any claim" as used in the Agreement means, "Any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability."
- c. Client - the party procuring the services of EnSafe Inc.
- d. Consultant - EnSafe Inc., including its branch offices, subsidiaries and affiliates, and all officers and employees thereof.
- e. Firm Fixed Price (FFP) – agreement in which payments are based on a lump-sum amount which includes all costs for labor, overhead, subcontracts, equipment, materials, travel expenses, general & administrative costs and profit.
- f. Time and Materials (T&M) – agreement in which payments for time are based on actual labor hours at fixed hourly rates and payments for materials (including subcontracts, equipment, supplies, travel and other expenses) are based on actual cost, plus a predetermined mark-up for general and administrative expenses.

2. Billing and Payment.

Client recognizes that timely payment of Consultant's invoices is a material part of the consideration Consultant requires to perform the services indicated in this Agreement. Client will pay Consultant for professional and related services satisfactorily rendered under this Agreement in accordance with the rates, charges and reimbursement terms set forth in the EnSafe Inc. Fee Schedule. Consultant shall be permitted to revise its Fee Schedule no more than once annually, by submitting a copy of the revised Fee Schedule to Client thirty (30) days prior to its effective date. The revised Fee Schedule shall apply only to services performed after the effective date. Routine invoices will be submitted by Consultant on a monthly basis and shall be due and payable within thirty (30) calendar days after receipt of invoice. Invoices shall identify costs by Project in sufficient detail for Client to understand the type of work performed and type of costs being billed. If Client objects to any portion of an invoice, Client shall notify Consultant within fourteen (14) calendar days from the date of the invoice, identify the cause of the objection, and pay when due the undisputed portion of the invoice. Client shall pay an additional charge of one-and-one-half (1½) % of the invoiced amount per month for any payment received by Consultant more than thirty (30) calendar days from the date of the invoice, excepting any disputed portion of the invoiced amount that has been resolved in favor of Client. Payment thereafter shall be applied first to accrued interest and then to the unpaid principal amount. Payment of invoices is in no case subject to unilateral discounting or set-offs by Client.

3. Changes.

Client shall rely on Consultant's professional judgment in establishing the scope of work (SOW) and estimating costs for services performed under the Agreement, given the nature and risks of the work to be performed. Client also shall rely on Consultant's professional judgment in evaluating the continued adequacy of SOWs for Projects conducted under the Agreement, in light of occurrences or discoveries that were not originally contemplated by or known to Consultant. Should Consultant call for renegotiation of a Project, Consultant shall identify the changed conditions that make such renegotiation necessary, and Consultant and Client shall promptly and in good faith enter into the renegotiation process. If agreement cannot be reached, Client or Consultant may terminate the Project without penalty, as set forth in the paragraph entitled, "Termination."

4. Confidentiality.

In connection with this Agreement, the parties acknowledge that it may be necessary for each of them to provide to the other information that is confidential to the disclosing party ("Confidential Information"). As used herein, the term "Confidential Information" shall mean all business, technical, or scientific data and information, in any form, not previously known to or generated by the receiving party that is of a confidential or competitively-sensitive nature, or information that is marked "Confidential" by the disclosing party. Without limitation, and by way of example only, Confidential Information shall include software, systems, processes, designs, plans, engineering files, price information, business plans, business methods, financial data, and any other competitively-sensitive information or data belonging to the disclosing party. Each party shall secure and maintain the Confidential Information of the other party in strictest confidence, and shall not disclose or make available to others the Confidential Information of the other party without the express written consent, in advance, of that party. Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party; or (e) is disclosed by operation of law. This provision shall not be interpreted in any way to restrict a party from complying with a legally enforceable order to provide such information or data, provided that notice of such obligation is promptly given, in advance, to the other party. Client agrees that Consultant may use and publish Client's name and a general description of services rendered under the Agreement for purposes of describing Consultant's experience and qualifications to others.

5. Delays.

In the event that Consultant's services are interrupted by circumstances beyond Consultant's control, Client shall compensate Consultant for the labor, equipment, and other costs Consultant incurs in order to maintain continuity of Consultant's project team for Client's benefit during the interruption. Alternatively, and at Client's option, Client shall compensate Consultant for the various costs Consultant incurs for demobilization and subsequent remobilization. Consultant's compensation shall be based upon Consultant's prevailing fee schedule and expense reimbursement policy. Except for the foregoing provision, neither party shall hold the other responsible for damages or performance delays caused by circumstances beyond the control of the other party, and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, such circumstances include, but are not limited to: unusual weather; floods; illness; disease; virus; epidemic; pandemic (including but not limited to the COVID-19 pandemic or any other national or global outbreak of communicable illness or infection); wars; riots; strikes; lockouts or other industrial disturbances; protest demonstrations; unanticipated site conditions; inability (despite reasonable diligence) to supply personnel, equipment, or material to the project; or the action or inaction of government. Should such circumstances transpire, Client and Consultant shall use reasonable efforts to overcome the resulting difficulties and resume conduct of the services called for herein as soon as reasonably possible. Delays within the scope of this provision that cumulatively exceed forty-five (45) calendar days during any six (6) month period shall permit either party to terminate this Agreement at that party's sole option or permit the parties to renegotiate its terms by mutual written consent, subject to the foregoing provisions regarding compensation of Consultant.

6. *Dispute Resolution.*

All claims, disputes, controversies or matters in question arising out of, or relating to this Agreement or any breach thereof including, but not limited to, disputes arising out of alleged design defects, breaches of contract, error omissions, or acts of professional negligence (collectively "disputes") shall be decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The claimant shall file notice of demand, in writing, with the other party and the American Arbitration Association. The award rendered, if any, by the arbitrator(s) shall be final and binding on both parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The fees of the arbitrator(s) shall be borne by the non-prevailing party. Notwithstanding any other provisions of this Agreement, in no event shall a demand for mediation be made more than six (6) months from the date the party making demand knew or should have known of the dispute or six (6) years from the date of the substantial completion of Consultant's participation in the Project which date shall occur earlier, unless a shorter period shall be imposed by any applicable state statute, in which case such shorter period shall apply. The parties agree that the sole proper venue for the determination of any litigation arising under this agreement shall be in a court of competent jurisdiction which is located in Shelby County, Tennessee and the parties hereby expressly declare that any other venue shall be improper and expressly waive any right to a determination of any such litigation in any other venue, except as allowed in the section entitled Collection.

7. *Employment of Personnel.*

If Client hires one of Consultant's employees during Consultant's performance of the services indicated in the Agreement, or within six months after the completion of such services, Client shall pay to Consultant sum equal to fifty percent (50%) of the annual salary paid to the employee by Client, to recognize Consultant's lost benefits and the cost of locating and training a replacement.

8. *Governing Law.*

Unless otherwise provided, the substantive law of the State of Tennessee will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or other claims related to this Agreement.

9. *Indemnification.*

Subject to the limitations set forth herein, including without limitation as set forth in Section 13, Consultant shall defend, indemnify, and hold harmless Client against any loss or judgment, including attorney's fees and costs, to the extent such fees or expenses arise from or are incurred as a direct result of Consultant's intentional or willful failure to meet the standard of care in Section 18 hereof. Client shall defend, indemnify, and hold harmless Consultant, its officers, directors, employees, agents and representatives from and against all liabilities, claims, demands, losses, costs, damages, actions, suits, or other proceedings (collectively, "Losses") by whomsoever made arising out of or in connection with Consultant's performance of work hereunder made or brought against Consultant (other than by any employee, officer, director, agent or other representative of Consultant), except to the extent any such Losses are caused by Consultant's intentional or willful failure to meet the standard of care set forth in Section 18 hereof. Further, Client and Consultant expressly agree that Client's indemnification obligations to Consultant shall include any claims made against Consultant by Client's own officers, directors, employees, agents and representatives, as well as any third parties, alleging that Consultant's Services in the nature of consulting, planning, management, training, cleaning and/or decontamination services rendered in connection with the COVID-19 pandemic or any other pandemic or epidemic were defective, deficient or otherwise ineffective.

10. *Independent Contractor Relationship; Subcontractors.*

Except as otherwise expressly agreed to in writing by the parties, Consultant's relationship to Client shall be that of independent contractor. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, franchise, or other form of joint enterprise, employment, or fiduciary relationship between Client and Consultant, and neither of them shall have any authority to contract for or bind the other in any manner whatsoever. Consultant shall determine how to accomplish all services provided hereunder, consistent with the representations and warranties set forth in the Agreement. Irrespective of any assignment provisions, Consultant may retain subcontractors for services customarily performed by subcontractors and, should Consultant determine it appropriate or necessary to rely on a

subcontractor when it is not customary to do so, Consultant shall obtain prior written approval or subsequent written confirmation from Client.

11. *Information Provided by Others.*

Consultant shall indicate to Client the information needed to render the services described herein, and Client shall provide to Consultant as much of such information as is available to Client. Client shall inform Consultant of reports or other materials that relate to Consultant's portion of the work, and Client shall furnish these to Consultant or otherwise help Consultant gain access to them. Accordingly, Client shall, to the fullest extent permitted by law, waive any claim against Consultant and indemnify, defend and hold Consultant harmless from any claim or liability for injury or loss arising from alleged errors, omissions, or inaccuracies in documents or other information provided to Consultant by Client.

12. *Insurance.*

Consultant shall maintain workers' compensation and employer's liability insurance as required by state law, comprehensive general liability insurance with a combined single limit of \$2,000,000, automotive liability insurance with a combined single limit of \$1,000,000, and professional and pollution liability insurance with a combined single limit of \$5,000,000, subject to standard exclusions. Assuming that any noncompulsory coverages and limits now carried by Consultant remain as available and affordable as they are currently, Consultant shall maintain such policies in force for the duration of this Contract. Consultant shall furnish evidence of such coverage to Client, and shall promptly notify Client of any impending change in coverage. Consultant shall comply with Client's reasonable requests for special endorsements, additional limits, and additional coverages, etc., provided these are available to Consultant and Client remunerates Consultant for the cost thereof. Consultant shall use its reasonable best efforts to ensure that its subcontractors maintain appropriate types and adequate coverages of insurance when performing work on Client's premises.

13. *Limitation of Liability.*

In recognition of the relative risks and benefits of the project to both Client and Consultant, the risks have been allocated such that Client agrees that, under no circumstances will Consultant be liable to Client, including but not limited to claim(s) for indemnification under Section 9, for any amount in excess of the total amount of fees paid by Client to Consultant for services performed under this Contract or \$50,000, whichever is greater. This limitation shall apply to any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fee and expert witness' fees) arising from or related to work performed under the Contract from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability based on all types of legal theories, including but not limited to contract, tort, professional liability, product liability, warranty or otherwise. Client agrees that any claim for damages filed against Consultant, by Client or by any contractor or subcontractor hired directly or indirectly by Client, will be filed solely against Consultant or its successors or assigns, and that no individual shall be held personally liable for damages, in whole or in part.

14. *Location of Work and Right of Entry.*

Client shall arrange for Consultant to enter property owned by Client and/or others in order for Consultant to complete Projects.

15. *No Third Party Reliance.*

This Agreement shall not create any rights or benefits to parties other than Client or Consultant. Client understands that Consultant may become liable to third parties that ill-advisedly rely on Consultant's instruments of service under the mistaken assumption that their third-party needs are identical to Client's or that, although their needs differ from Client's, Consultant nonetheless would have performed identical services to satisfy those different needs. To help prevent problems from arising in this respect, Client shall inform Consultant of any specific third parties or types of third parties that Client believes may ask to rely on Consultant's instruments of service, and Client shall not under any circumstances permit such reliance except with Consultant's express consent. Consultant may withhold consent if the third party does not agree, in writing, to: (i) be bound by the terms of this Agreement including, without limitation, any provision limiting Consultant's liability hereunder, (ii) use such information only for the purposes contemplated by Consultant in performing its services, and (iii) be bound by the qualifications and limitations expressed in the

opinions, conclusions, certificate, or report produced. Client's payment of Consultant's invoices, as provided for herein, shall not be made contingent upon Consultant's Agreement to permit third-party reliance, if the third party does not provide compensation per terms and conditions set forth herein.

16. *Ownership of Work Product.*

As used herein below, and subject to the obligations imposed by Section 4 of this Agreement, the term "Work Product" shall mean any documentation, data compilations, reports, plans, specifications, boring logs, calculations, field data, field notes, test data, estimates, training materials, and any other media, materials or other objects produced directly as a result of Consultant's work for Client or delivered by Consultant in the course of performing that work. Consultant hereby grants to Client a non-transferable, non-exclusive license to use the Work Product created by Consultant pursuant to this Agreement. Furthermore, and notwithstanding any provision of this Agreement to the contrary, any programming, software, routines, libraries, tools, methodologies, processes or technologies created, adapted or used by Consultant in its business generally, including all associated intellectual property rights (collectively, the "Development Tools") shall be and remain the sole property of Consultant, and Client shall have no interest in or claim to such Development Tools except as necessary to exercise its license in the Work Product provided for above. In addition, notwithstanding any provision of this Agreement to the contrary, Consultant shall be free to use any ideas, concepts, or know-how developed or acquired by Consultant during the performance of this Agreement to the extent obtained and retained by Consultant personnel as impressions and general learning. Subject to Client's rights in its own intellectual property, nothing in this Agreement shall be construed to preclude Consultant from acquiring, developing, marketing, or enhancing for itself or others similar technology performing the same or similar functions as the technology used or created pursuant to this Agreement.

17. *Patents and Copyrights.*

Notwithstanding any other provision to the contrary, Consultant shall retain ownership of any and all intellectual property rights in and to (i) any systems, processes, procedures, methods, and means of expression or organization developed or utilized by Consultant in performing its obligations under this Agreement, (ii) any subject matter that is created or developed in connection with this Agreement, and (iii) any Work Product (as defined hereinabove), which rights include, without limitation, any and all rights under the patent, trade secret, copyright or other intellectual property laws of the United States.

18. *Standard of Care; Warranty; Express Disclaimer.*

Consultant will perform the Services in a manner consistent with at least the level of care and skill ordinarily exercised by other members of Consultant's profession currently practicing in the same locality under similar conditions at the same time, based on existing technology and present knowledge in the applicable field. No other representation, whether express or implied, and no warranty or guarantee of any sort is included or intended in this Contract, or in any report, opinion, document, or other instrument of service of Consultant. EXCEPT FOR ANY EXPRESS REPRESENTATION OR WARRANTY SET FORTH HEREINABOVE, ALL OF CONSULTANT'S SERVICES ARE PROVIDED "AS IS," NEITHER CONSULTANT NOR ANY OTHER PERSON ACTING ON CONSULTANT'S BEHALF OR AT CONSULTANT'S DIRECTION HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, TRADE, OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR REPRESENTATION THAT ANY PARTICULAR SERVICE WILL BE EFFECTIVE OR IS GUARANTEED TO ACCOMPLISH THE INTENDED RESULT. CLIENT ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY CONSULTANT OR ANY OTHER PERSON ACTING ON CONSULTANT'S BEHALF OR AT CONSULTANT'S DIRECTION.

19. *Future Laws.*

This Agreement contemplates that future local, state, or federal laws, regulations, orders, limitations, protections, or immunities may be enacted, issued, established, or confirmed after the effective date of this Agreement. Client agrees that any such future law, regulation, order, limitation protection, or immunity is hereby incorporated herein for the benefit of Consultant to the maximum extent permitted by law.

20. *Termination.*

Client or Consultant may terminate Projects for cause, except only Client may terminate Projects for convenience. The party initiating termination shall so notify the other party, and termination shall become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party effects termination or the cause thereof, Client shall, within thirty (30) calendar days from receipt of Consultant's termination invoice, pay Consultant's fees for services satisfactorily rendered and costs incurred, in accordance with the Fee Schedule. Client shall pay Consultant for costs reasonably stemming from termination and post-termination activities including, but not limited to, demobilization, equipment decontamination and/or disposal, and disposal and replacement of contaminated consumables.

21. *Waiver of Consequential Damages.*

Client shall not be liable to Consultant and Consultant shall not be liable to Client for any consequential damages incurred by either party due to the fault of the other, regardless of the nature of the fault; whether committed by Client or Consultant, their respective employees, agents or subcontractors; and/or whether such liability arises in breach of contract or warranty, tort (including negligence), statute, or any other cause of action. As used herein, the term "consequential damages" is intended by the parties to be construed broadly to encompass any and all special, punitive, indirect and/or consequential damages and, specifically, to include, without limitation, damages incurred for business interruption, rental expenses, losses of use, income, profit, financing, business and reputation, and for loss of management or business productivity or the services of such persons.

22. *Collection.*

Should Client's account, after payment default hereunder, be referred by Consultant to an attorney or collection agency for collection, then Client shall pay all of Consultant's expenses incurred in such collection efforts including, but not limited to, collection agency fees, court costs and reasonable attorneys' fees. Notwithstanding the above and other terms provided herein, Consultant may institute proceedings to collect payment in any court of competent jurisdiction in the United States.

Attachment B
EnSafe 2021 Professional Fee Schedule

2021 PROFESSIONAL FEE SCHEDULE

PROFESSIONALS		PER HOUR
Level 1	Scientist/Engineer	\$85
Level 2	Scientist/Engineer	\$95
	Project Supervisor	\$105
Level 3	Project Scientist/Engineer	\$120
	Project Manager	\$130
Level 4	Project Manager, Senior Scientist/Engineer	\$150
Level 5	Senior Project Manager	\$170
Level 6	Senior Project Director	\$185
Level 7	Associate Principal	\$225
	Principal	\$245
Level 8	Senior Principal	\$305
TECHNICIANS		PER HOUR
	Technician	\$70
	Senior Technician	\$90
ADMINISTRATIVE SUPPORT		PER HOUR
	Report Specialist	\$53

Note:

A general and administrative fee of 15% is added to Other Direct Costs and Expenses. Rates are subject to a surcharge for short lead-time projects requiring readjustment of professional resources. Fees for litigation or acquisition support are negotiated on an individual basis. Rates are subject to annual review. All internal copying, computer usage, and report materials are included in the above rates unless otherwise negotiated.



Board of Mayor and Aldermen

6400 Stage Road
Bartlett, TN 38134

SCHEDULED

RESOLUTION (ID # 3224)

Meeting: 10/11/22 06:00 PM

Department: Finance

Category: Presentation

Prepared By: Dick Phebus

Initiator: Dick Phebus

Sponsors:

DOC ID: 3224

Resolution 35-22, a resolution to amend the Fiscal Year 2023 Bartlett City Schools General Purpose School Fund and Education Capital Projects Fund.

WHEREAS, the Bartlett City Board of Mayor and Aldermen is required to approve the Bartlett City Board of Education General Purpose School Fund budget, as amended; and

WHEREAS, the Bartlett City Board of Education, using Resolution 10-1, has approved a budget amendment on September 22, 2022, which increases its Education Capital Projects Special Revenue Fund expenditures by \$88,000. Funds were provided for this increase from a budgeted use of General Purpose School Fund Balance of \$88,000; and

WHEREAS, resolution 10-1 of the Bartlett City Board of Education is hereby attached and made a part of this resolution by reference;

NOW THEREFORE BE IT RESOLVED By the Board of Mayor and Aldermen that the amendments to the FY2023 General Purpose School Fund and Education Capital Projects Fund of the Bartlett City Board of Education are approved.

Adopted this day of October 11, 2022

W.C. Pleasant, Register to the

Board of Mayor and Aldermen

A. Keith McDonald, Mayor

Attest: _____
Penny Medlock, City Clerk



RESOLUTION 10-1

A RESOLUTION TO APPROVE THE PLANNED USE OF GENERAL FUND BALANCE AND TO AMEND THE 2022-2023 FISCAL YEAR EDUCATION CAPITAL PROJECTS FUND BUDGET OF THE BARTLETT CITY SCHOOLS.

WHEREAS, Tennessee Code Annotated §49-2-203(a)(10)(A)(i) requires the Bartlett City Board of Education to direct the Superintendent and the Chair to prepare a budget on forms furnished by the Commissioner, and when the budget has been approved by the Board, to then submit that budget to the Bartlett Board of Mayor and Aldermen for their approval; and

WHEREAS, these amendments change the total amount of the budget.

NOW, THEREFORE, BE IT RESOLVED BY THE BARTLETT CITY BOARD OF EDUCATION:

Section 1. That the General Purpose Fund Budget and the Education Capital Projects Fund Budget for the 2022-2023 school year for the Bartlett City Schools as presented in official budget documents are hereby amended by reference in the following amounts and within the following grants referenced below:

2022-23 GENERAL PURPOSE FUND BUDGET FUND BALANCE:		\$37,944,570.99
General Purpose Fund Balance is amended in the following category:		
141-34555-00000-000-0000-0000 Fund Balance is amended from \$37,944,570.99 to \$37,856,570.99		(\$88,000.00)
Amended General Purpose Fund Balance		\$37,856,570.99
2022-23 EDUCATION CAPITAL PROJECTS FUND BUDGET REVENUES		\$4,468,547.36
Revenues are amended in the following categories:		
177-49800-00000-000-0000-5540 Education Capital Projects – Transfer In from General Fund – Freeman Park Concessions Building is amended from \$0 to \$88,000		\$88,000

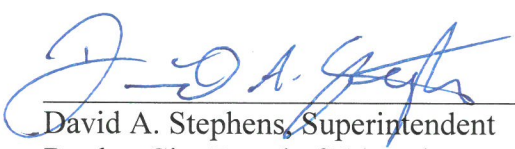
Amended 2022-23 Education Capital Projects Fund Budget Revenues		\$4,556,547.36
2022-23 EDUCATION CAPITAL PROJECTS FUND BUDGET EXPENDITURES		\$4,468,547.36
Expenditures are amended in the following categories:		
177-91300-70600-000-0000-5540 Education Capital Projects – Building Construction – Freeman Park Concessions Building is amended from \$0 to \$88,000		\$88,000
Amended 2022-23 Education Capital Projects Fund Budget Expenditures		\$4,556,547.36

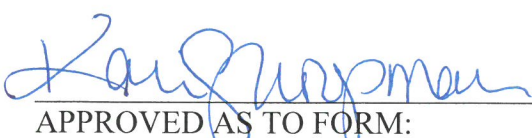
Section 2. That the budget documents required by law will be amended and submitted as required for approval to the Bartlett Board of Mayor and Aldermen, and, upon approval, shall be submitted as required to the State of Tennessee.

Section 3. That this resolution shall become effective September 22, 2022 from and after its adoption by the Bartlett City Board of Education.

Adopted this 22 day of September, 2022.


D. Bryan Woodruff, Chairman
Bartlett City Board of Education


David A. Stephens, Superintendent
Bartlett City Board of Education


APPROVED AS TO FORM:
Kari Shoopman, General Counsel